



# MORRISON COUNTY BOARD OF COMMISSIONERS OFFICIAL MINUTES

JANUARY 24, 2017

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The meeting was held in the County Board Room, Government Center, Little Falls MN, and was called to order at 9:00 a.m. by Chairman Wilson.

**Members present:** Commissioners Randy Winscher, Duane Johnson, Mike Wilson, Jeff Jelinski, and Mike LeMieur.

**Staff present:** Deb Gruber, Tabitha Maher, Brian Middendorf, Brad Vold, Deb Lowe, Kathy Marshik, Theresa Stout, Shawn Larsen, Joe Byrne, Michelle Tautges, Katy Kirchner, Steve Backowski, and Becky Moe.

**Others present:** Tyler Jensen, Mark Slupe, Tim Terill, Tom Wilczek, Karen Pundsack, Laura Hansen, and Cindy Bruggenthies.

## APPROVAL OF COUNTY BOARD MINUTES

A motion was made by Commissioner Johnson, seconded by Commissioner Jelinski and carried unanimously to approve the Morrison County Board of Commissioner Minutes for January 3, 2017.

## AGENDA CHANGES

A motion was made by Commissioner Jelinski, seconded by Commissioner Johnson and carried unanimously to adopt the agenda as presented.

## MISSISSIPPI HEADWATERS REPORT

Tim Terrill, Mississippi Headwaters Director, gave a brief report to the Board and an update on current and past projects.

## GREAT RIVER REGIONAL LIBRARY REPORT

Karen Pundsack, Executive Director, Laura Hansen, Library Assistant, and Cindy Bruggenthies, Library services Coordinator, discussed with the Board about the previous year's budget and the upcoming one as well. The Great River Regional Library operates across six counties and all programs and items purchased are available for all regions. The representatives discussed many aspects of the budget and programs with the Board and thanked them for their support of the library system.

## AUDITOR

Deb Lowe, Auditor/Treasurer, updated the Board on the balance of unpaid property taxes as of 1/1/2017, and an activity update on Interest earned and Investment levels as of 12/31/16.

A motion was made by Commissioner Johnson, seconded by Commissioner Winscher and carried unanimously to approve an exempt permit to the Royalton Sportsman Club to hold a raffle on June 10, 2017 at the club grounds.

A motion was made by Commissioner Johnson, seconded by Commissioner Winscher and carried unanimously to approve a 1-day liquor license to the Little Falls Area Chamber of Commerce to hold an event on February 23, 2017 at the Falls Ballroom.

Deb Lowe, Auditor/Treasurer, presented the December 31, 2016 Cash Report.

## COUNTY BOARD WARRANTS

A motion was made by Commissioner Winscher and seconded by Commissioner Johnson to approve the following Resolution:

WHEREAS, the Morrison County Board of Commissioners have reviewed the list of County Board Warrants;



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NOW THEREFORE, BE IT RESOLVED, that the list of County Board Warrants on file in the Auditor/Treasurer's Office for January 24, 2017 be approved for payment:

REVENUE	\$	199,974.17
PUBLIC WORKS	\$	30,446.43
SOCIAL SERVICE	\$	295,645.80
SOLID WASTE	\$	26,552.53
LOCAL COLLABORTIVE	\$	46,337.57
FORFEITED LAND	\$	99.00
	TOTAL	\$ 599,055.50
MEALS	\$	85.04

Motion carried on a roll call vote with all Commissioners voting "aye".

A motion was made by Commissioner Winscher and seconded by Commissioner Johnson to approve the Commissioners Expense Reports as presented. Motion carried on a roll call vote with all Commissioners voting "aye".

### VETERANS REPORT

A motion was made by Commissioner Winscher, seconded by Commissioner Johnson and carried unanimously to establish a line item in the budget and accept the donation from the Swanville Auxiliary.

### SHERIFF'S REPORT

Sheriff Shawn Larsen presented the Monthly Sheriff's Report for December, 2016.

A motion was made by Commissioner Jelinski, seconded by Commissioner LeMieur and carried unanimously to approve Joint Powers Agreement for Central Minnesota Violent Offender Task Force.

### SOCIAL SERVICES REPORT

A motion was made by Commissioner Johnson, seconded by Commissioner LeMieur and carried unanimously to authorize the Directors of Public Health and Social Services to sign the Delegation Agreement and business Associate Agreement between Morrison County and South Country Health Alliance. This is completed on an annual basis to update State and Federal Rules around the provision of services to individuals enrolled in South Country Health Alliance and allows us to work on their behalf.

### PUBLIC HEALTH REPORT

A motion was made by Commissioner Johnson, seconded by Commissioner Winscher and carried unanimously to approve Morrison County Public Health applying as the fiscal host for a youth alcohol, tobacco and other drug grant -Drug Free Communities (DFC) - with the Pierz School District. This grant is funded out of the Department of Human Services and will start November 2017 for 5 years.

A motion was made by Commissioner Winscher, seconded by Commissioner LeMieur and carried unanimously to approve the following 2017 Seasonal Establishment License:

Dist.	3 Boys & Girls Club of Little Falls	Little Falls \$271.00
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A motion was made by Commissioner Johnson, seconded by Commissioner Jelinski and carried unanimously to approve the Abstract of 2017 Tobacco License Renewals in Morrison County as attached.



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A motion was made by Commissioner Jelinski, seconded by Commissioner Johnson and carried unanimously to approve 2017 New Owner Tobacco License in Morrison County as follows:

Skiba's Bar and Grill fka Herold's Bar & Grill Crystal Skiba, 19251 285th Ave., Lastrup  
Herbie's Bar, LLC fka Herbie's Bar & Lounge Jason Gorka 9205 Cable Rd., Little Falls

The County Board recessed at 10:32am and reconvened at 10:42am.

## INFORMATION TECHNOLOGY

Joe Byrne, Information Technology Manager, shared with the County Board his A Year in Review presentation, and the potential for new technologies in 2017.

## EXTENSION REPORT

Becky Moe, 4-H Program Coordinator, presented the County Report for the month of December 2016 and reported on various events that have and will be taking place in the upcoming months.

## PUBLIC WORKS REPORT

A motion was made by Commissioner Jelinski, seconded by Commissioner Winscher and carried unanimously to authorize the bidding process for the construction of a warm storage building to house heavy equipment, materials, supplies, and emergency traffic control devices. Project falls within the constraints of the 2017 budget of zero levy increase.

A motion was made by Commissioner Johnson, seconded by Commissioner Winscher and carried unanimously to authorize the bidding process for the construction of 2017 Highway Improvement Plan.

A motion was made by Commissioner LeMieur, seconded by Commissioner Johnson and carried unanimously to approve 2017 and 2018 Independent Contractor Agreement for Cable Locating and Cable Guarding Contract between Morrison County and Citi Lites, Inc., Pequot Lakes, MN.

A motion was made by Commissioner Jelinski, seconded by Commissioner Johnson and carried unanimously to authorize the Public Works Director to request proposals for gravel production, highway striping and calcium chloride application.

A motion was made by Commissioner Winscher, seconded by Commissioner LeMieur and carried unanimously to authorize the Public Works Director to advertise 2017 Seasonal Bids for equipment rental, bituminous material and winter maintenance sand.

A motion was made by Commissioner Johnson, seconded by Commissioner Jelinski and carried unanimously to authorize the Public Works Director or his appointee to negotiate Gravel Pit Agreements with property owners for use on the County highway system.

A motion was made by Commissioner LeMieur, seconded by Commissioner Johnson and carried unanimously to authorize the Public Works Director to establish, place, and when appropriate, remove road restrictions.

A motion was made by Commissioner Winscher, seconded by Commissioner Jelinski and carried unanimously to approve Bridge Funding Resolution #2017-008.

## ADMINISTRATOR'S REPORT

A motion was made by Commissioner Jelinski, seconded by Commissioner Wilson and carried unanimously to approve the agreement between Morrison County and Vetter Johnson Architects.



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A motion was made by Commissioner Winscher, seconded by Commissioner Johnson and carried unanimously to approve Darrel Larsen filling the vacancy from his district on the County Extension committee for a 3-year term from January 1, 2017 to December 31, 2019.

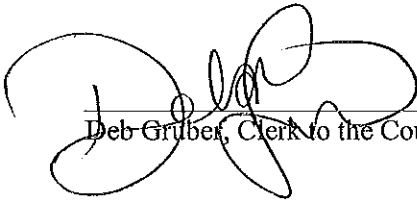
**COUNTY BOARD REPORTS AND SCHEDULE**

Members of the County Board reported on various meetings they have attended and on their upcoming schedule of meetings with various organizations.

**ADJOURNMENT**

A motion was made by Commissioner Johnson, seconded by Commissioner Winscher and carried unanimously to adjourn the meeting at 11:43 a.m.

  
\_\_\_\_\_  
Mike Wilson, Chairman

  
\_\_\_\_\_  
Deb Gruber, Clerk to the County Board

DATE: 1/24/17

**MORRISON COUNTY BOARD OF COMMISSIONERS  
COUNTY BOARD MEETING**

**PLEASE SIGN IN**

NAME

ADDRESS/REPRESENTING

Tim Terrill

Miss. Handwritten Board

Mark Slype

GRTV Channel 180

Tom Wilczek

Karen Purkade

GRRL

Laura Hansen

GRRL

Cindy Bruggenthies

GRRL

# JOINT POWERS AGREEMENT TO FORM THE CENTRAL MINNESOTA VIOLENT OFFENDER TASK FORCE

Version date: Dec 22, 2016

WHEREAS, Minn. Stat. §387.03 requires that the sheriff of each county shall keep and preserve the peace of the county and perform all of the duties pertaining to the office; and,

WHEREAS, Minn. Stat. §412.221, Subd. 32, empowers the city to prevent crime and to provide for the protection of property and the promotion of health, safety, order and convenience; and,

WHEREAS, Minn. Stat. §436.05 provides that the city can contract with the county for the performance of police service within the city by the sheriff; and,

WHEREAS, Minn. Stat. §471.59 provides that cities and counties may jointly exercise any power common to each or any similar powers,

NOW, THEREFORE, BE IT RESOLVED by the county boards of Benton, Morrison, Todd and Stearns and Sherburne Counties, and the city council of the cities of Sartell, Sauk Rapids, Waite Park, St. Joseph, St. Cloud and Little Falls, hereinafter called the parties or member parties, as follows:

## **I. Purpose**

The Central Minnesota Violent Offender Task Force (hereinafter "Task Force") is formed to investigate, identify and disrupt illegal drug and gang activity within the cities of Little Falls, St. Cloud, Sartell, Sauk Rapids, Waite Park and St. Joseph and counties of

Benton, Todd, Stearns, Sherburne and Morrison. The foregoing jurisdictions are known as the Participating Agencies. The Participating Agencies promote cooperative law enforcement through multi-jurisdictional investigations in Central Minnesota.

The Task Force is governed by the Task Force Board of Directors (Board). The Board is a joint powers board established under Minn. Stat. 471.59. The predecessor to this Task Force was an entity known as the Major Crimes Investigation Unit (MCIU). The business of the MCIU that had been conducted shall now be conducted by the Central MN Violent Offender Task Force. The purpose for the dual designation is that the federal tax identification number and the yearly grant are placed in the name of the MCIU.

The Board meets *bi*-monthly and reviews the activities of the Task Force. The By-Laws and Task Force Policies and Guidelines address staffing, supervision, equipment, accounting, management of confidential funds and daily operations. All actions shall be conducted in a manner consistent with federal and state regulations for grant program funds. All Task Force accounts shall be annually audited by an independent auditor.

## **II. Task Force Board**

The members of the Board shall be the sheriff of each member county, a county attorney from a member county as the advisor to the Task Force, the chief of police for the Little Falls Police Department, the chief of police for City of St. Cloud and one representative from among the chiefs of police of Sartell, Sauk Rapids, Waite Park and St. Joseph. The board member from the chiefs of Sartell, Sauk Rapids, Waite Park and St. Joseph will be selected annually by a majority vote of the chiefs of police. The Board may have as ex-officio members the following: the Sherburne County Attorney, a



Sherburne County Commissioner, the St. Cloud City Attorney, a member of the St. Cloud City Council and other law enforcement representatives as the Board deems appropriate.

The Board shall elect a chair which shall be the *Board Chair*, a Secretary and a Treasurer from among its members. Said officers shall serve a one-year term of office and may serve more than one term. The *Board Chair* shall be responsible for conducting the business meetings, documenting meeting minutes and maintaining frequent communication with the members of the Board and the Task Force Commander. The *Board Chair*, at each of the business meetings, shall review operational activities and expenditures and discuss relevant issues to the Task Force. In the absence of the Board Chair, the duties may be assumed by the Secretary of the Board, or in their absence, the Treasurer.

The Chain of Command shall be: The Board, the Board Chair, the Task Force Commander, the Team Leader and the investigators. If the Task Force Commander requires direction, he may seek such direction from the Board Chair, in the absence of the Chair, the Secretary, or in their absence, the Treasurer. In the absence or unavailability of an officer of the Board, the Commander may contact the Task Force Commander's Sheriff or other Board member for advice and direction.

All actions of the Board shall be consistent with this Joint Powers Agreement, its By-Laws and Task Force Policies and Guidelines. The Board shall adopt such bylaws and operating rules as it deems necessary. The Task Force operations shall adhere to the



Gang/Drug Oversight Council Guidelines as minimum professional guidelines. The Board shall establish the mission and the goals of the Task Force and shall monitor the progress toward the Task Force goals. The Board shall be responsible for the records management system, the statistical records and all financial reports. All Task Force policies and procedures shall be adopted by the Board as well as any amendments thereto.

The Board may receive and disburse public funds, private donations and grants to carry out the purposes of this Agreement. The Board shall be strictly accountable to the Participating Agencies for all funds and shall report to the parties hereto on all receipts and disbursements. The reporting period shall be the calendar year. Contracts let and purchases made by the Board shall conform to Minn. Stat. §471.345 (Uniform Municipal Contracting Law). The Treasurer who will be the fiscal agent shall be elected annually by the Board. The Board may elect a fiscal agent upon motion and approval of the majority vote of the Board and consent of the Board member being asked to be fiscal agent.

The Board shall meet on the call of the Chair or on written notice by any three Board members.

The majority of the Board shall constitute a quorum for a meeting. A majority vote of the full Board shall be necessary to approve a motion. A meeting of the Board shall be required to transact business.

**III. NonWaiver of Immunities**

The joining of the Participating Agencies in this Joint Powers Agreement shall not

waive any immunities that the parties may enjoy under statute or common law, nor shall the joinder of the parties constitute a "stacking" of any insurance each party carries for their own benefit and/or that of its agents and employees.

**IV. Task Force Officers**

Participating Agencies can assign one or more officers to the Task Force. Any change or addition of officers will be voted on by the board. The Commander shall be a licensed police officer appointed by the Board. The Commander, pursuant to the Operating Procedures and Guidelines Manual as adopted by the Board, shall be a full-time Task Force Commander with the operational direction of the Unit (See, 1-01 Organizational Structure). Two Team Leaders shall be appointed by the board to assist the Commander with daily operations.

Employees who are assigned to the Task Force shall be entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the assigning agency for all other purposes except that the supervision of their duties during the period of detail may be governed pursuant to this Agreement. Employees who are assigned will be "Task Force Officers."

Participation of an assigning agency's employee in the Task Force is deemed to advance the interests of the assigning agency. Therefore, participation of an assigning agency's officer in the Task Force is deemed to be in the course of the officer's employment with the assigning agency.

**V. Task Force Officers**

Task Force Officers assigned to the Task Force shall be under the command of the Team Leaders and the Task Force Commander.

Task Force Officers shall prepare and submit their investigation reports to the Task Force Team Leader.

#### **VI. Contributions**

Each Participating Agency agrees to provide resources as agreed in the annual grant application proposal. These resources can include funding, personnel and/or equipment as necessary to meet the annual grant proposal requirements. The amount of contribution made toward the grant match shall be voted on by the Board after agreement by each Participating Agency. The contribution amount shall be reviewed annually. Each Participating Agency shall agree in advance to the number of personnel, the funding and the equipment to be assigned to the Task Force prior to the submittal of the grant.

Each Participating Agency may make financial contributions to be administered by the Task Force.

#### **VII. Coordinating Agency**

The Board shall designate a Task Force Commander who will be responsible for supervising the day-to-day operations of the Task Force, including supervision of staff, intelligence sharing, management of confidential funds and coordination with other agencies. The Commander, in conjunction with the members of the Board, shall be responsible for development of any recommended changes to the Task Force Policies and Guidelines and shall ensure Task Force compliance with all current policies and guidelines. The Commander shall present to the Board proposed budgets and grant applications for approval. The Commander shall assess each Task Force Officer's training needs and ensure that the Task Force Officers comply with the guidelines adopted by the Board.

### **VIII. Fiscal Agency**

The Board shall elect the Treasurer to serve as the fiscal agent of the Board. The Treasurer shall be responsible for proper fiscal management of the Task Force grants and all other resources. The Treasurer shall ensure compliance with all state and federal accounting and auditing requirements, including oversight of confidential funds.

Any forfeited property and proceeds that stem from the Task Force operations shall be accounted for in writing, identifying each case and location of the property. The Task Force shall adhere to the guidelines of the agency retaining the property and compliance shall be subject to random audit. Further, any law enforcement proceeds of any forfeiture shall return to the Task Force as the law enforcement agency of record. The proceeds of any forfeiture for the prosecutor shall be returned to the prosecution agency that handled the prosecution and forfeiture cases.

### **IX. Data and Public Information Releases**

Data gathered, collected, stored and used by the Task Force shall be subject to the Minnesota Government Data Practices Act and Rules issued pursuant thereto.

The law enforcement agency having venue over the offense for prosecution purposes shall control and be responsible for public information releases, including arrest data.

### **X. Liability and Indemnification**

MCIU now known as the Central MN Violent Offender Task Force agrees to defend and indemnify its Participating Agencies for any liability claims arising from Task Force activities or operations and decisions of the Board. Nothing in this Agreement shall constitute a waiver of the statutory limits on liability set forth in Minnesota Statutes Chapter 466 or a waiver of any available immunities or defenses.



To the fullest extent permitted by law, action by the Participating Agencies to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Participating Agencies that they shall be deemed a "single governmental unit" for the purposes of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(a), provided further that for purposes of that statute, each Participating Agency to this Agreement expressly declines responsibility for the acts or omissions of another Participating Agency. The Participating Agencies to this Agreement are not liable for the acts or omissions of another Participating Agency to this Agreement except to the extent they have agreed in writing to be responsible for the acts or omissions of the other Participating Agencies. The Task Force Board shall provide insurance coverage for the Task Force, the Task Force Board of Directors and the officers assigned to the Task Force.

Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any Participating Agency for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

Any excess or uninsured liability shall be borne equally by all the Participating Agencies, but this does not include the liability of any individual officer, employee, or volunteer which arises from his or her own malfeasance, willful neglect of duty, or bad faith.

Each Participating Agency shall be responsible for injuries to or death of its own personnel.

Each Participating Agency will maintain workers' compensation insurance or self-insurance coverage covering its own personnel while they are assigned to the Task Force or are otherwise participating in or assisting with Task Force operations or activities. Each Participating Agency waives the right to, and agrees that it will not, bring any claim or suit

against the Task Force or any other Participating Agencies for any workers' compensation benefits paid to its own employee or dependents, that arise out of participation in or assistance with Task Force operations or activities, even if the injuries were caused wholly or partially by the negligence of any other Participating Agency or its officers, employees, or volunteers.

Each Participating Agency shall be responsible for damages to or loss of its own equipment. Each Participating Agency waives the right to, and agrees that it will not, bring any claim or suit against the Task Force, or any other Participating Agency, for damages to or loss of its equipment arising out of participation in or assistance with Task Force operations or activities, even if the damages or losses were caused wholly or partially by the negligence of any other Participating Agency or its officers, employees, or volunteers.

All insurance policies and certificates required under this Agreement shall be open to inspection by any Participating Agency and copies of the policies or certificates shall be submitted to a Participating Agency upon written request.

## **XI. Duration**

The duration of this Agreement shall continue until terminated as hereinafter provided. This Agreement overrides and replaces any previous MCIU Joint Powers Agreements.

## **XII. Withdrawal and Termination**

Any Participating Agency of the Task Force may withdraw from this Agreement upon sixty (60) days written notice to all other Participating Agencies and upon the completion of their responsibility to the grant agreement. Upon any Participating Agency's withdrawal, the balance of this entire Agreement remains in full force and effect. Alternatively, this entire Agreement may be terminated at any time by the written agreement of a majority of the

Board members.

### **XIII. Distribution of Property on Termination or Withdrawal**

A. Termination. Upon complete termination of this Agreement by all Participating agencies and after the purpose of the Agreement has been completed, any property acquired by the Board as a result of the joint exercise of powers hereunder and any surplus monies shall be returned to the Participating Agencies in proportion to contributions of the Participating Agencies after satisfaction of any liabilities or responsibilities of the joint powers board has been satisfied. Liabilities shall be shared equally among the Participating Agencies.

B. Withdrawal. In the event of withdrawal from this Agreement by one or more Participating Agencies, if two or more of the remaining Participating Agencies continue this Agreement, the remaining Participating Agencies may either distribute the MCIU property contributed by the withdrawing Participating Agency to the withdrawing Participating Agency or buy out the withdrawing Participating Agency's interest therein by purchasing the withdrawing Participating Agency's proportionate share of the actual cash value of the property measured at the time of withdrawal of the Participating Agency. Surplus monies or surplus cash shall be retained by the remaining Participating agencies to this Agreement.

Any agency joining the Task Force after the formation of the Central MN Violent Offender Task Force are eligible for distribution or property accrued after the date of inclusion.

### **XIV. Amendment of the Joint Powers Agreement**



This Agreement may be amended by agreement of all Participating Agencies to the same and upon approval of the Participating Agencies' city council or county board.

THIS AGREEMENT, AS AMENDED, APPROVED AND ADOPTED by the Participating Agencies as follows:

Dated: \_\_\_\_\_ CITY OF LITTLE FALLS  
By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_ CITY OF ST. CLOUD  
By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_ CITY OF ST. JOSEPH  
By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_ CITY OF SARTELL  
By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_ CITY OF SAUK RAPIDS  
By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_ CITY OF WAITE PARK  
By: \_\_\_\_\_  
Its \_\_\_\_\_

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

COUNTY OF BENTON

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

Dated: 1/24/17

COUNTY OF MORRISON

By: *Mark Wilson*  
Its County Board Chairman

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

COUNTY OF SHERBURNE

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

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

COUNTY OF STEARNS

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

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

COUNTY OF TODD

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

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## 2017 DELEGATION AGREEMENT

**THIS DELEGATION AGREEMENT** effective January 1, 2017 by and between Morrison County (“Delegated Entity”) and South Country Health Alliance (“SCHA”).

**WHEREAS**, South Country Health Alliance desires to delegate the provision of certain services described herein to Delegated Entity; and

**WHEREAS**, Delegated Entity desires to provide the delegated services described herein in accordance with SCHA policies and procedures and in compliance with applicable federal and state laws, regulations, and National Committee for Quality Assurance (NCQA) accreditation standards;

**NOW THEREFORE**, in consideration of the terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### SECTION 1 DEFINITIONS

The following terms as used in this Agreement shall have the meanings ascribed to them below unless the context clearly requires a different meaning:

- 1.1 Action:** 1) the denial or limited authorization of a requested service, including the type or level of service; 2) the reduction, suspension, or termination of a previously authorized service; 3) the denial, in whole or in part of payment for a service; 4) the failure to provide services in a timely manner; 5) the failure of the MCO to act within the timeframes identified; 6) for a resident of a rural area with only one MCO, the denial of a member’s request to exercise his or her right to obtain services outside the network.
- 1.2 Agreement:** This Agreement, including any schedules or other attachments hereto, all as presently in effect or as hereafter amended.
- 1.3 Appeal:** The oral or written request from the member, or the Provider acting on behalf of the member with the member’s written consent to the MCO for review of an Action. An appeal may be expedited if the member’s medical condition requires a decision within 3 days.
- 1.4 Care Coordination:** The assignment of an individual who coordinates the provision of all Medicare and Medicaid health and long-term care services for members, and who coordinates services to a member among different health and human service professionals and across settings of care. The individual must be a social worker, public health nurse, registered nurse, physician assistant, nurse practitioner or physician.
- 1.5 Case Management:** The coordination of care and services provided to members to facilitate appropriate delivery of care and services. It involves comprehensive assessment

of the member's condition; determination of available benefits and resources; and development and implementation of a case management plan with performance goals, monitoring and follow-up.

- 1.6 **Care Transition:** The movement of a member from one care setting to another as the member's health status changes; for example, moving from home to a hospital as the result of an exacerbation or a chronic condition or moving from the hospital to a rehabilitation facility after surgery.
- 1.7 **Care Transition, Planned:** Include elective surgery or a decision to enter a long-term care facility.
- 1.8 **Care Transition Process:** The period from identifying a member who is at risk for a care transition through the completion of a transition. This process goes beyond the actual movement from one setting to another; it includes planning and preparation for transitions and the follow-up care after transitions are completed.
- 1.9 **CMS:** The federal Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration.
- 1.10 **CMS Contract:** The contract between SCHA and CMS for the provision of Medicare services.
- 1.11 **Complex Case Management:** The systematic coordination and assessment of care and services provided to members who have experienced a critical event or diagnosis that requires the extensive use of resources and who need help navigating the system to facilitate appropriate delivery of care and services.
- 1.12 **Client Contact Manager System (CCM):** A Windows-based software system that was designed for case management activities. CCM provides a communication link and integrated case management system for Third Party Administrators (TPA), SCHA, Public Health and Human Services in assisting SCHA members with their health care needs.
- 1.13 **Disclosing Entity:** A Medicaid Provider (other than an individual practitioner or group of practitioners), or a fiscal agent as stated in 42 CFR §455.101
- 1.14 **Elderly Waiver:** The Elderly Waiver (EW) program funds home and community-based services for people age 65 or older who require the level of medical care provided in a nursing home, but choose to reside in the community. To receive EW services a person must choose community care and be eligible for Medical Assistance (MA) payment of long-term (LTC) services; assessed through a Long-Term Care Consultation (LTCC) and determined to need the level of care provided in a nursing facility (NF-I or NF-II); be in need supports and services beyond those available through the standard MA benefit set according to the LTCC screening or MNChoices; and incurring a cost to MA for community-based services that is less than the cost of institutional care.

- 1.15 Grievance:** An expression of dissatisfaction about any matter other than an Action, including but not limited to, the quality of care or services provided or failure to respect the member's rights.
- 1.16 Managed Care Organization (MCO):** An entity that has or is seeking to qualify for a comprehensive risk contract and that is: (1) a Federally Qualified HMO that meets the advance directives requirements of 42 CFR 489.100-104; or (2) any public or private entity that meets the advance directives requirements and is determined to also meet the following conditions: a) makes the services that it provides to its Medicaid Enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid Recipients within the area served by the entity; and b) meets the solvency standards of 42 CFR 438.116.
- 1.17 Managing Employee:** A general manager business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization or agency as defined in 42 CFR §455.101.
- 1.18 Minnesota Health Care Programs (MHCP):** Medical Assistance, General Assistance Medical Care, Prepaid Medical Assistance Program, and MinnesotaCare.
- 1.19 Minnesota Senior Care Plus (MSC+):** The benefit set that includes all services under MSC plus the Elderly Waiver home and community-based services and one hundred and eighty days (180) of nursing facility care.
- 1.20 Minnesota Senior Health Options (MSHO):** The prepaid managed care program for Medical Assistance-eligible seniors, age 65 and over, with or without Medicare. SCHA's MSHO product is called SeniorCare Complete.
- 1.21 MSHO Community Well Members:** Members enrolled in SeniorCare Complete, SCHA's MSHO product and SCHA is receiving a Community Well rate cell payment.
- 1.22 National Committee for Quality Assurance (NCQA):** A nonprofit organization that seeks to improve patient care and health plan performance in partnership with Managed Care Plans, purchasers, consumers and the public sector. NCQA evaluates health plans' internal quality processes through accreditation reviews and works to develop health plan performance measures.
- 1.23 Ownership Interest:** The possession of equity in the capital, the stock, or the profits of the Disclosing Entity.
- 1.24 Person with an Ownership or Control Interest:** Person or corporation that: A) has an ownership interest, directly or indirectly totaling five percent (5%) or more in the MCO or a Disclosing Entity; B) has a combination of direct and indirect Ownership Interests equal to five percent (5%) or more in the MCO or the Disclosing Entity; C) owns an interest of 5% or more in any mortgage, deed of trust, note, or other obligation secured by the MCO or the Disclosing Entity; or D) is an officer or director of the MCO or the

Disclosing Entity (if it is organized as a corporation) or E) is a partner in the MCO or the Disclosing Entity (if it is organized as a partnership).

- 1.24.1** Direct Ownership Interest is defined as the possession of stock, equity in capital or any interest in the profits of the Disclosing entity.
- 1.24.2** Indirect Ownership Interest is defined as ownership interest in an equity that has a direct or indirect ownership interest in the Disclosing Entity. The amount of indirect ownership interest in the Disclosing Entity that is held by any other entity is determined by multiplying the percentage of ownership interest at each level. An indirect ownership interest must be reported if it equates to an ownership interest of 5% or more in the Disclosing Entity. Example: If C owns 10% of the stock in a corporation that owns 80% of the stock of the Disclosing entity, C's interest equates to an 8% indirect ownership and must be disclosed.
- 1.24.3** Controlling Interest is defined as the operational direction or management of a disclosing entity which may be maintained by any or all of the following devices: the ability or authority, expressed or reserved, to amend or change the corporate identity, (i.e., joint venture agreement, unincorporated business status) of the disclosing entity; the ability or authority to nominate or name members of the Board of Directors or Trustees of the disclosing entity; the ability or authority, expressed or reserved to amend or change the by-laws, constitution, or other operating or management direction of the disclosing entity; the right to control any or all of the assets or other property of the disclosing entity or the sale or dissolution of that entity; the ability or authority, expressed or reserved, to control the sale of any or all of the assets, to encumber such assets by way of mortgage or other indebtedness, to dissolve the entity, or to arrange for the sale or transfer of the disclosing entity to new ownership control.
- 1.25** **Provider:** An Individual or entity that is engaged in the delivery of health care services and is legally authorized to do so by the state in which it delivers the services.
- 1.26** **Significant Business Transaction:** Any business transaction or series of related transactions that, during any one fiscal year, exceeds either \$25,000 or 5 percent (%) of a provider's total operating expenses.
- 1.27** **Special Needs BasicCare (SNBC) Plan:** A service delivery system in which the State contracts with a Medicare Advantage Special Needs Plan to provide Medicaid services and/or integrated Medicare and Medicaid services to Medicaid eligible people with disabilities who are between the ages of 18 through 64 at the time of enrollment. SCHA's SNBC products are called AbilityCare, SingleCare and SharedCare.
- 1.28** **State:** The Minnesota Department of Human Services or its agents, and the Commissioner of Human Services.
- 1.29** **State Contract:** The contract between SCHA and the Minnesota Department of Human Services for the purpose of providing and paying for health care services and supplies to

recipients enrolled in SCHAs under Minnesota Health Care Programs, MSC+, MSHO, or the SNBC Plan.

## **SECTION 2 SCHAs RESPONSIBILITIES**

- 2.1 Delegated Activities.** SCHAs shall delegate to Delegated Entity the provision of Care Coordination duties and other services as set forth in Exhibit A, which is attached hereto and incorporated herein, and in accordance with SCHAs policies and procedures, applicable laws and regulations, and NCQA accreditation standards.
- 2.2 SCHAs Policies and Procedures.** Prior to execution of this Agreement, SCHAs shall provide to Delegated Entity copies of SCHAs policies and procedures applicable to this Agreement either through regular mail or electronically. SCHAs may change its policies and procedures by providing thirty (30) days prior written notice to Delegated Entity of the changes and their effective dates. However, if required by state or federal law, regulation, or regulatory action, SCHAs may change its policies and procedures by providing written notice to Delegated Entity of the changes and their effective dates. Any notice provided to Delegated Entity under this section may be in an electronic format. Procedures are available in the care coordination web-manual online at [www.mnscha.org](http://www.mnscha.org).
- 2.3 Oversight, Monitoring and Audit.** SCHAs shall perform ongoing oversight and monitoring of Delegated Entity's performance under this Agreement, including but not limited to, review of any required reporting under this Agreement. At any time, but at least annually, SCHAs will audit records and documents related to the activities performed under this Agreement. This process does include the annual care plan audits required through DHS MSHO/MSC+ and SNBC products. SCHAs will perform the annual care plan audits as per DHS' protocol. SCHAs, in its sole discretion, will conduct review of Delegated Entity's written policies and procedures and member files. SCHAs will provide written notice of annual audits at least thirty (30) calendar days prior to the audit. SCHAs shall provide a report of its audit findings to Delegated Entity within ninety (90) calendar days of the audit's conclusion. For all additional audits, SCHAs shall provide at least fourteen (14) calendar days prior written notice, unless state or federal regulators or NCQA accreditation agencies require a shorter timeframe. The audit notes shall include a list of the records to be reviewed.
- 2.4 Revocation of Delegation.** SCHAs may revoke the delegation of some or all of the activities which Delegated Entity is obligated to perform under this Agreement in the event Delegated Entity fails to perform the delegated activities or correct non-compliant delegated activities as outlined in the Corrective Action Plan, as provided in Section 3.3 of this Agreement, in a timely manner and to the satisfaction of SCHAs and in accordance with SCHAs policies and procedures and applicable laws, regulations and NCQA accreditation standards. The delegate agrees to allow SCHAs to perform additional audits as necessary to verify compliance of the Corrective Action Plan. In such event, SCHAs may elect to terminate or modify this Agreement pursuant to Section 5.
- 2.5 SCHAs Accountability.** SCHAs shall oversee and at all times remain accountable to CMS



and the State for any functions or responsibilities of SCHA under its contracts with CMS and the State, including functions or responsibilities delegated to Delegated Entity under this Agreement.

- 2.6 Public Health Goal.** SCHA agrees to meet with Delegated Entities to develop and discuss mutual objectives related to public health priorities.
- 2.7 Provision of Member Data.** South Country agrees to provide the following information when requested: member experience data, if applicable and clinical performance data. This data requested may be, but not limited to, results of member experience surveys, relevant to delegate functions, relevant claims data or results of relevant clinical performance measures. The delegate must give written notice of the data request to South Country at least 30 days in advance, unless state or federal regulators require a shorter timeframe. The delegate agrees to work with South Country as needed regarding the obtaining of the data.

### **SECTION 3 DELEGATED ENTITY RESPONSIBILITIES**

- 3.1 Delegated Activities.** Delegated Entity shall provide the services set forth in Exhibit A and Exhibit B in accordance with SCHA policies and procedures and applicable law, regulations and NCQA accreditation standards.
- 3.2 Law, Regulations and Licenses.** Delegated Entity shall maintain all federal, state and local licenses, certifications, accreditations and permits, without material restriction, that are required to provide the services under this Agreement. Delegated Entity shall notify SCHA in writing within ten (10) business days after it learns of any suspension, revocation, condition, limitation, qualification or other material restriction on Delegated Entity's licenses, certifications, accreditation or permits.
- 3.3 Corrective Action Plans.** In the event that, during an audit or any other time during the term of this Agreement, SCHA discovers any deficiencies in Delegated Entity's performance of any services under this Agreement, Delegated Entity shall develop a Corrective Action Plan for the specific activity that SCHA determines to be deficient. The Corrective Action Plan shall include specifics of and timelines for correcting any deficiencies and shall be provided to SCHA within two (2) weeks after SCHA notifies Delegated Entity of the deficiency (ies) or issues its annual audit report to Delegated Entity. SCHA shall review and comment on the Corrective Action Plan within two (2) weeks after receiving it from Delegated Entity. Delegated Entity shall implement the Corrective Action Plan within the specified timeframes. In the event the Corrective Action Plan is not developed and/or implemented within such timeframes, SCHA may revoke all or certain delegated activities pursuant to Section 2.4 and/or terminate this Agreement pursuant to Section 5. If deficiencies are identified or repeated, SCHA retains the right to increase its monitoring, evaluations, and audits of Delegated Entity until the deficiencies are corrected.

- 3.4 Reporting.** Delegated Entity shall provide SCHA with regular reports; at least semi-annually, regarding the provision of services under this Agreement. SCHA shall review any required reporting as part of its ongoing oversight and monitoring of compliance with this Agreement. SCHA shall promptly notify Delegated Entity of any concerns identified as a result of regular reporting or as a result of a failure to provide regular reports. Reports are identified on Exhibit C of this Agreement.
- 3.5 Document Submission.** Delegated Entity shall provide to SCHA its Waiver Quality Assurance Plan Survey and Gaps Analysis in availability of EW services if requested by SCHA within 60 days of the request.
- 3.6 Appeals and Grievance.**
- a) Notify SCHA's Grievance & Appeals (G/A) department of any potential grievance and appeals requests (filed by or on behalf of the member) as follows (requests are to be submitted via email to [Grievances-Appeals@mnscha.org](mailto:Grievances-Appeals@mnscha.org) or via FAX to SCHA's G/A department at (507) 444-7774): **No later than** one business day of receipt for all standard grievance and appeal requests.
  - b) **No later than** four (4) regular business hours of receipt **AND** no later than end of the same business day in which it is first received, for all expedited grievance and appeal requests.
    - i. Place "EXPEDITED G/A REQUEST" in the Subject headline of the email.
  - c) If placing a contact note in SCHA's electronic system (currently CCM), please also cc the Grievance & Appeals Manager on this note.
- 3.7 Utilization Management.** Delegated Entity agrees to forward all requests to SCHA Health Services for prior authorization or pre-certification regarding dental, medical or pharmacy within one business day of knowledge of request. If the service is expedited, the Delegated Entity will forward the request within three hours of receipt and will verbally notify SCHA.
- 3.8 Long Term Care Screening Document Entry.** The Delegated Entity will be responsible to enter all Screening Documents into MMIS for all LTCC or MNChoices screenings performed, as applicable. This includes initial LTCC or MNChoices screenings, reassessments, member refusals to screenings, Pre-Admission Screening (PAS) for Nursing Home placements and non-Elderly Waiver community members.
- 3.8.1** Enter member Elderly Waiver – LTCC Screening Documents into MMIS prior to the first capitation cut-off date each month or alert SCHA Health Services of the delay.
  - 3.8.2** Enter and exit LTCC Screening Document exiting a member from the Elderly Waiver when the member moves into a nursing home. The LTCC screening document must be entered within 60 days of the living arrangement change.
  - 3.8.3** Complete a Level I PAS for all nursing home admissions and make these available to SCHA within one week.

- 3.8.4** South Country enters the LTC Screening Document into MMIS for all Special Needs Basic Care (SNBC) members. The Delegated Entity must fax or scan and securely email the complete health risk assessment and care plan for all AbilityCare, SingleCare/SharedCare (SNBC) members to South Country within thirty (30) days of the health risk assessment completion date. This includes refusals and unable to reach.
- 3.8.5** The Delegated Entity will notify SCHA within one business day of a Member who previously was determined to meet Nursing Facility Level of Care but upon subsequent assessment is determined to not meet the Nursing Facility Level of Care criteria, to request a review of the assessment results.
- 3.9** **Request for a Long Term Care Consultation (LTCC).** The Delegated Entity must provide for a LTCC within 20 calendar days of request and make that assessment available to SCHA upon request. The Delegated Entity agrees to provide SCHA with a LTCC or MNChoices assessment performed for a member to determine the member's risk of nursing home placement or current need for nursing home care according to applicable MN statutes. Delegated Entity agrees to report annually to SCHA all Health Risk Assessment and Re-Assessment data.
- 3.10** **Care Coordinator Assignment:** The Delegated Entity will assign a care coordinator to each newly enrolled member on SeniorCare Complete, MSC+, AbilityCare, and SingleCare for the required Care Coordination Activities. Delegated Entity will need to enter all required information into CCM as defined by the Care Coordination Grids. A monthly report will be sent to each Delegated Entity outlining the missing information and the requested information will need to be entered within 10 business days.
- 3.11** **LTCC Expansion.** The Delegated Entity will assist the member moving to a registered housing with services facility to obtain or recover a verification code from the Senior Linkage Line or found in MMIS.
- 3.12** **Comply with Minnesota Statute 62Q75 Subd.3.** Delegated Entity will comply with said statute that states that "healthcare providers and facilities must submit their charges to a health plan company or third-party administrator (TPA) within 6 months from the date of service or the date the healthcare provider knew or was informed of the correct name and address of the responsible health plan company or TPA, whichever is later."
- 3.13** **Enrollee Satisfaction Survey.** The Delegated Entity agrees to cooperate with SCHA to conduct a satisfaction survey of members.
- 3.14** **Care Coordinator Performance:** The Delegated Entity shall have a process to evaluate the performance of individual care coordinator in the provision of care coordination for SCHA Members and report to SCHA performance that is negatively affecting the care coordination of the SCHA Member.

Members may request and be offered a different care coordinator and the Delegated Entity will immediately notify SCHA of any such request.

SCHA will share care coordinator performance information with the Delegated Entity as appropriate (i.e. feedback from the care coordinator survey, care plan audits, etc.)

#### **SECTION 4 SUB-DELEGATION**

Under certain circumstances, SCHA may allow Delegated Entity to sub-delegate all or part of the delegated Services under this Agreement to another entity. Prior to any such sub-delegation arrangement, Delegated Entity must receive written approval from SCHA and must:

- (a) Provide SCHA with Delegate entity's pre-delegation assessment finding of the potential sub-delegate;
- (b) Warrant the delegation agreement between Delegated Entity and sub-delegate meets (1) all applicable SCHA, (2) all applicable state and federal law requirements, and (3) all terms and conditions of this Agreement;
- (c) Agree to oversee and perform audits of those activities it has delegated to another entity;
- (d) Provide all reports to SCHA that are required under this Agreement; and
- (e) Agree that Delegated Entity and the Sub-Delegate adhere to delegation requirements as per applicable State and Federal law and NCQA requirements, including the Medicare Advantage Special Needs Plan regulations.

#### **SECTION 5 TERM, TERMINATION, MODIFICATION**

**5.1 Initial Term.** This Agreement shall commence on January 1, 2017 and continue through December 31, 2017.

**5.2 Contract Renewal.** Unless otherwise terminated pursuant to Section 5.3, this Agreement will automatically renew on the termination date and on each one (1) year anniversary of such date for additional terms of one (1) year.

**5.3 Termination.** This entire Agreement, complete sections of this Agreement, or certain delegated services contained in this Agreement, may be terminated as follows:

- (a) by either party, without cause upon one hundred twenty (120) days written notice to the other party;
- (b) by either party, in the event of a material breach of this Agreement by the other party, upon thirty (30) days prior written notice to the other party;
- (c) by SCHA immediately, due to failure of Delegated Entity to perform delegated activities under this Delegation Agreement that could endanger or harm SCHA health plan enrollees;
- (d) by SCHA, upon thirty (30) days prior written notice to Delegated Entity, in the event Delegated Entity is out of compliance with this Agreement and refuses to enter into a Corrective Action Plan or agree to a modification of this Agreement;

- (e) by SCHA, upon thirty (30) days prior written notice to Delegated Entity, in the event Delegated Entity does not comply with an established Corrective Action Plan;
- (f) by SCHA immediately, if Delegated Entity seeks to sub-delegate the performance of delegated services under this Agreement without SCHA's written prior approval to sub-delegate; or
- (g) by SCHA immediately, due to Delegated Entity's loss or suspension of any applicable licensure status or loss of liability insurance.

**5.4 Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which, taken together, shall constitute a single original. Electronic, scanned or facsimile signatures shall be deemed originals for the purpose of this Agreement.

## SECTION 6 REGULATORY COMPLIANCE

- 6.1** SCHA, Delegated Entity and Delegated Entity's contractors and subcontractors, agree to comply with all applicable federal and state statutes and regulations, as well as local ordinances and rules now in effect and hereinafter adopted, including, but not limited to all applicable Medicaid and Medicare laws, regulations, and CMS instructions.
- 6.2** Disclosure of Ownership Information: All subcontracts must be in writing. Delegated Entity must update disclosure information as needed in accordance with 42 CFR 455.104. The required information includes: (a) the name, address, date of birth, social security number (in case of an individual), and tax identification number (in the case of a corporation) of each Person with an Ownership or Control Interest in the Delegated Entity or in any subcontractor in which there is direct or indirect ownership of 5% or more. The address for corporate entities must include primary business address, every business location, and P.O. box address; (b) a statement as to whether any Person with an Ownership or Control Interest in the entity as identified in Paragraph (a) is related (if an individual) to any other Person with Ownership or Control Interest as a spouse, parent, child, or sibling; and (c) the name of any other Disclosing Entity in which a Person with Ownership or Control Interest in the Disclosing Entity also has an ownership or control interest; and (d) the name, address, date of birth and social security number of any Managing Employee of the Delegated Entity.
- 6.3** All tasks performed under the Agreement must be performed in accordance with SCHA's Policy and Procedure regarding Care Coordination for MSC+ and SeniorCare Complete(MSHO) and AbilityCare, SingleCare/SharedCare (SNBC) programs, the provisions of which are incorporated into the Agreement by reference. Nothing in the Agreement relieves SCHA of its responsibility under such contracts with the State and CMS. If any provision of the Agreement is in conflict with provisions of such contracts, the terms of such contracts shall control.

- 6.4** Delegated Entity is obligated to comply with other laws, specifically Federal laws and regulations designed to prevent or detect fraud, waste, and abuse including, but not limited to: applicable provisions of Federal criminal law; the False Claims Act (31 U.S.C. 3729 et seq.); the Anti-kickback statute (Section 1128B (b) of the Act); HIPAA administrative simplification rules at 45 CFR Part 160, 162, and 164, and with Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub Law 111-5 (“ARRA”) and any implementing regulations that may be enacted.
- 6.5** Delegated Entity agrees that members are not discriminated against in the delivery of health care services consistent with benefits covered in their Certificate of Coverage based on medical coverage, health status, receipt of health care services, claims experience, medical history, genetic information, disability (including mental or physical impairment), marital status, age, sex (including sex stereotypes and gender identity), sexual orientation, national origin, race, color, religion, creed, or public assistance status.
- 6.6** Delegated Entity assures that services are provided in a culturally competent manner.
- 6.7** Delegated Entity adheres to the prohibited use of Medicare excluded practitioners.
- 6.7.1** Delegated Entity will search the OIG List of Excluded Individuals/Entities (LEIE) and the Excluded Parties List (EPLS) databases monthly, and require all subcontractors to search the LEIE monthly, for any Employees, Agents, Providers, or Persons with an Ownership or Control Interest to verify that these persons:
- 6.7.1.1** Are not excluded from participation in a federal health care program under Section 1128 or 1128A of the Social Security Act; and
- 6.7.1.2** Have not been convicted of a criminal offense related to that person’s involvement in any program established under Medicare, Medicaid or the title XX services program.
- 6.7.2** Delegated Entity will report to SCHA within five (5) days any information regarding individuals or entities specified in 6.7.1.1, who have be convicted of a criminal offense related to the involvement in any program established under Medicare, Medicaid, and title XX services program, or those have been excluded from participation in a federal health care program under Sections 1128 or 1128A of the Social Security Act.
- 6.7.3** Upon discovery of an ineligible individual or entity, Delegated Entity will immediately relieve the employee, agent, Provider or subcontractor from his or her responsibilities or the business relationship will immediately be discontinued.
- 6.7.4** Delegated Entity shall report within one business day to SCHA the Name, specialty, and address, and reason for nonrenewal or termination of each Contracted Healthcare Provider whose contracts have been terminated not renewed during the previous quarter.

- 6.8 Delegated Entity agrees to send to members only SCHA approved written materials, related to SCHA benefits. Mailed care coordination and benefit items must include the disclaimer: SCHA Important Plan Information.
- 6.9 Delegated Entity recognizes and agrees that it is obligated by law to meet the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Pub Law 104-191, and its implementing regulations, 45 C.F.R. Parts 160, 162 and 164 (“HIPAA”), including the safeguarding of individuals’ Protected Health Information (“PHI”), and with Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub Law 111-5 (“ARRA”) and any implementing regulations that may be enacted, as detailed in the Business Associate Agreement (Exhibit D) attached to this Agreement.
- 6.10 Upon request, Delegated Entity must report to SCHA information related to business transactions in accordance with 42 CFR 455.105(b). Delegated Entity must be able to submit this information to SCHA within fifteen (15) days of the date of a written request from the State or CMS.

## SECTION 7 BOOKS AND RECORDS

- 7.1 **Confidential and Accurate Records.** SCHA and Delegated Entity agree to maintain the confidentiality of protected health information regarding SCHA enrollees and to comply with all state and federal requirements for accuracy and confidentiality of enrollees’ records, including the requirements established by SCHA and each applicable product.
- 7.2 **Collection and Retention of Information.** Delegated Entity shall maintain an accurate and timely record system through which all pertinent information relating to this Agreement is documented. Delegated Entity shall retain all information and records related to this Agreement for a period of ten (10) years following the termination of this Agreement or for such longer period as required by applicable state or federal law or regulation.
- 7.3 **Right to Inspect; Release of Information to SCHA.** Delegated Entity agrees to provide to SCHA during the term of this Agreement and for a period of ten (10) years following the provision of services access to all information and records, or copies of records, related to this Agreement. Delegated Entity shall promptly provide information to SCHA as requested for payment purposes, administration of benefits or any other obligation SCHA has to an enrollee under the law. SCHA shall develop and implement a process for securing necessary consents from enrollees or their legal representatives in connection with the enrollment process to authorize the release of records provided under this Section. Delegated Entity has no obligation to release records to the extent such release is unlawful.
- 7.4 **Right to Inspect; Release of Information to Federal and State Agencies.** Delegated Entity shall provide the state and federal government and any of their authorized representatives, including but not limited to CMS, the Comptroller General and the State



with the right, in accordance with state and federal laws and regulations, to inspect, evaluate, and audit any pertinent books, documents, financial records, papers, and records pertaining to any aspect of services performed, reconciliation of benefit liabilities, determination of amounts payable or financial transactions related to this Agreement. The right to inspect, evaluate and audit under this Section shall extend through ten (10) years from the termination date of the Agreement or such longer period as permitted or required by applicable state or Federal law or regulation.

Delegated Entity shall make all such records available to authorized representatives of the state and federal government during normal business hours and at such times, places, and in such manner as authorized representatives may reasonably request for the purposes of audit, inspection, examination, and for research as specifically authorized by the state in fulfillment of state or federal requirements.

Delegated Entity specifically acknowledges and agrees that the U.S. Department of Health and Human Services and the Comptroller General, or their designees, shall have the right to audit, evaluate, and inspect pertinent books, contracts, documents, papers, and records involving transactions related to the CMS Contract. This right shall extend for ten (10) years following the termination of this Agreement or from the date of completion of any audit, whichever is longer. SCHA shall develop and implement a process to authorize the release of records provided under this section. Delegated Entity has no obligation to release records to the extent such release is unlawful.

## **SECTION 8 RESPONSIBILITY FOR DAMAGES**

Each party shall be responsible for all damages, claims, liabilities, or judgments that may arise as a result of its own negligence or intentional wrongdoing. Any costs for damages, claims, liabilities, or judgments incurred as a result of the other party's negligence or intentional wrongdoing shall be the responsibility of the negligent party.

## **SECTION 9 DISPUTE RESOLUTION**

SCHA and Delegated Entity agree to work together in good faith to resolve any and all disputes related to this Agreement. In the event SCHA and Delegated Entity are unable to resolve disputes arising as a result of this Agreement, this Agreement shall be modified or terminated pursuant to Section 5.

## **SECTION 10 FEES AND REIMBURSEMENT**

The parties agree that SCHA will pay Delegated Entity those rates specified in Exhibit D and Exhibit E for the services rendered by Delegated Entity pursuant to this agreement.

## **SECTION 11 MISCELLANEOUS**

- 11.1 Incorporation of Relevant Statutes and Regulations.** The parties agree that the services to be provided under this agreement, the contractual arrangements between the parties, and the respective responsibilities and obligations of the parties, shall be further specified in relevant state and federal regulations and contracts, and that those regulations and contracts shall be incorporated into the subsequent contract between the parties.
- 11.2 Binding Effect of Agreement; Subsequent Contract.** The parties agree to be bound by the terms of this Agreement for the services to be provided under this agreement until the parties enter a subsequent agreement or the Agreement is terminated by either party.
- 11.3 Notices.** All notices, payments, requests or demands or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given (i) two (2) days after when mailed by registered or certified U.S. mail, postage prepaid, and addressed to the recipient at the address shown in the signature block to this Agreement; or (ii) upon receipt when delivered in person, by courier or by delivery service, return receipt requested, to the address of the parties set forth herein. A party may change the address to which notices may be sent by giving written notice of such change of address to the other party.
- 11.4 Assignment.** Neither party may assign, delegate or transfer this Agreement or the rights granted herein without consent of the other party, with the exception of the Sub-Delegation arrangements outlined in Section 4, and which consent shall not be unreasonably withheld.
- 11.5 Amendment.** This Agreement may only be modified through a written amendment signed by both parties. Notwithstanding the foregoing, SCHA may unilaterally amend this Agreement to comply with applicable state or federal law or regulation or NCQA accreditation standards. Such amendment will be effective on the date the applicable statute, regulation or NCQA accreditation standard becomes effective. The amendment will not require agreement by Delegated Entity.
- 11.6 Waiver.** The waiver of any provision (including the waiver of breach of any such provision) of this Agreement shall not be effective unless made in writing by the party granting the waiver. Any waiver by a Party of any provision or the waiver of breach of any provision of this Agreement shall not operate as, or be construed to be, a continuing waiver of the provision or a continuing waiver of the breach of the provision.
- 11.7 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Minnesota.
- 11.8 Entire Agreement.** This Agreement, which incorporates all exhibits, attachments, addenda, and appendices to it, constitutes the entire understanding between the parties in regard to its subject matter and supersedes all other previous oral or written agreements concerning all or any part of the subject matter of this Agreement.

11.9 **Severability.** If any part of this Agreement should be determined to be invalid, unenforceable, or contrary to law, that part shall be deleted and the other parts of this Agreement shall remain fully effective.

11.10 **Survival.** Any section of this Agreement that by its terms contemplates or requires continuing effect following termination of this Agreement shall survive such termination.

11.11 **Approvals of this Agreement.** The effectiveness of this Agreement is subject to the approval of this Agreement by the Minnesota Department of Human Services.

IN WITNESS WHEREOF, the parties have executed this Delegation Agreement to be effective as of the Effective Date.

<b>DELEGATED ENTITY:</b>  Morrison County By: <u><i>Brad Vold</i></u> Print Name: <u>Brad Vold</u> Title: <u>Social Services Director</u> Date: <u>1/31/17</u>  By: <u><i>Katy Kirchner</i></u> Print Name: <u>Katy Kirchner</u> Title: <u>Public Health Director</u> Date: <u>2/1/17</u>  By: _____ Print Name: _____ Title: _____ Date: _____	<b>SOUTH COUNTRY HEALTH ALLIANCE</b> 2300 Park Drive Owatonna, Minnesota 55060  By: <u><i>Leota B Lind</i></u> Print Name: <u>Leota B. Lind</u> Title: <u>CEO, South Country Health Alliance</u> Date: <u>1/18/17</u>
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## EXHIBIT A

### SERVICES TO BE PROVIDED BY DELEGATED ENTITY

Delegated Entity agrees to perform the following services and/or meet the following State mandated requirements on behalf of SCHA:

1. Hire staff qualified to perform the duties outlined in the Community Care Connector Position Description. Duties are outline in Exhibit B.
2. Hire staff to perform Care Coordination duties consistent with MCO/DHS contracts which read that for MSHO/MSCH+ the Certified Assessor must also serve as the on-going care coordinator/case manager of the Enrollees assessed. For SNBC, the case manager/care manager must be a social worker, licensed social worker, registered nurse, physician assistant, nurse practitioner, public health nurse, or a physician with experience working with individuals with disabilities, primary care, nursing, behavioral health, or social services and/or community-based services. All care coordinators must not be in a position to directly influence an Enrollee's housing or employment to help avoid possible conflicts of interest.
3. Perform the Care Coordination duties outlined in the SCHA Policy and Procedures including, but not limited to, Care Coordination for members on MSCH+ and SeniorCare Complete and AbilityCare, SingleCare/SharedCare and other members as requested by SCHA. Policies and procedures are available in the care coordination web-manual online at [www.mnscha.org](http://www.mnscha.org).
4. Delegated Entity shall provide SCHA with written reports or supply the information specified therein as identified by SCHA. SCHA agrees to provide reasonable advance notice when requesting information from the Delegated Entity. The Delegated Entity shall submit written reports or supply the information therein to [countyinfo@mnscha.org](mailto:countyinfo@mnscha.org). Reports are identified on Exhibit C.
5. Delegated Entity agrees to appoint representatives to participate in SCHA work groups and scheduled meetings with SCHA for the regular sharing and exchange of information. It is the responsibility of the Delegated Entity's participant to transfer information to the appropriate others.
6. The Delegated Entity will fully cooperate with the annual Care Plan Audit and Care System Review and any other audits requested and/or completed by SCHA personnel. The County will provide all necessary documentation as requested by SCHA and have available supporting evidence of required elements within the designated time lines as requested by SCHA.
7. The Delegated Entity will act as a pass-through entity for Elderly Waiver Direct-Delivery Services (tier 2) or Purchased-Item Services (tier 3). Providers of tier 2 and tier 3 services must meet State service standards, but may deliver goods as enrolled or non-enrolled

providers. For non-enrolled providers, the delegated entity on behalf of South Country must assure that the provider is qualified according to State standards, execute a purchase agreement utilizing MN DHS edoc 7004c, follow record retention guidelines, and maintain a written record of approved tier 2 and 3 providers. Delegated Entities will submit copies of the provider approval log at least one time per year and/or as requested by South Country.

8. Delegated Entity shall individually develop a written plan which works for their specific system regarding the establishing of caseload ratios. South Country expects delegates to consider the following when weighting cases and developing caseload ratios: members on the caseload with low English proficiency or need for translation; case mix; rate cell designation; member need for high intensity acute Care Coordination; mental health status; travel time to/from member's home; or lack of family or informal supports. South Country generally recommends that non-Elderly Waiver caseloads be no more than 1:100 and Elderly Waiver caseloads be no more than 1:50. Delegated Entities must submit their plan to South Country upon request.

## **EXHIBIT B**

### **Community Care Connector JOB DESCRIPTION**

**Position:** Community Care Connector  
**Reports to:** Health Service Department and County Supervisor  
**Effective Date:** January 1, 2012

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#### **I. PRIMARY FUNCTION:**

Primary goals are to assure all that members receive the services necessary to meet their needs and experience smooth transitions between settings of care. Connectors also assure that communication between settings of care and communication between SCHA, County Staff and providers occur in order to support member's needs. Desired outcomes are attained through collaborative problem solving approaches.

The Connector works to assure a collaborative approach between the SCHA and County team members. The position will develop positive relationships with and between SCHA staff, County staff, local health care providers, nursing facilities and members. They will help to assure timely and accurate communication between team members. The Connector serves as the SCHA expert within the community/county, working towards positive outcomes for the member and SCHA. The position promotes preventive services, early intervention to members and utilizes referral services available throughout the county.

Reporting: Under the general direction of the Director of Health Services, reports to the Health Services Department at SCHA and the County Supervisor.

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#### **MINIMUM QUALIFICATIONS OF EDUCATION & EXPERIENCE**

Registered Nurse, licensed in Minnesota; or Social Worker with experience with medical issues; or Bachelor Degree, with a minimum of three years previous experience in a County Public Health and/or Social Service department with understanding of medical issues.

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## **ESSENTIAL DUTIES AND RESPONSIBILITIES:**

- Collaborate
  - Assist in identifying moderate to complex members by informing Health Services staff of members health issues;
  - Assist in creating and maintaining reports and follow-up as requested by Health Services staff.
  - Promote early intervention and preventative services to members and importance of establishing care with a primary care physician.
  - Work with Health Services staff to ensure appropriate use of the Emergency Department, hospitalization, and re-admissions to hospital through telephonic, written or face-to-face follow-up with members after discharge to promote physician follow-up to decrease and/or avoid readmissions.
  - Collaborate with Health Services staff to schedule and assist with the facilitation of the County Care Coordination meetings including creating the member list to be discussed and assure participation or a written report from County staff.
  - Assist with assuring compliance with transition of care policy and procedures as appropriate and assure that care plans are used and updated as needed.
  - Assist with transitions of care through working with discharge planners, providers, members and/or authorized representatives until delegated to SCHA care coordinator or County Case Manager if indicated.
  
- Communicate
  - Reach out and follow up with members and connect members to medical and /or social resources. If appropriate, provide short term case management as agreed upon by Health Services staff until needs are met or can be referred to other Case Managers.
  - Document in CCM members responses and update care plans if required;
  - Document member contacts in CCM using the information and plan format.
  - Reinforce with members and/or member's family an understanding of treatment decisions and care plans.
  - Document the outcomes of meetings in CCM following SCHA documentation standards.
  - Develop relationships with key providers in the community (physicians/clinics; hospitals; nursing facilities) and be on-site if requested by Health Services staff.
  - Communicate on a routine basis with Health Services staff.



- Coordinate
  - Organize and attend interdisciplinary care team meetings as needed.
  - Refer members and/or families, county staff, providers, community resources to Member Services or other appropriate SCHA staff for benefit and issue resolution.
  - Refer member issues to county staff and/or other agencies as needed to assure member's access to community services and resources;
  - Coordinate activities and information with the County Supervisor.
  
- Other duties as assigned.

**PROFILE REQUIREMENTS:**

- Works as a team with SCHA Health Services staff and County staff
- Promotes SCHA policies and mission in performing all duties and responsibilities
- Incorporates best practice into all process initiatives
- Valid driver's license
- Excellent communication skills
- Working knowledge of community/county services and resources
- Working knowledge of SCHA products and operations including the website.

## **EXHIBIT C**

**2017**

### **Delegated Entity Reporting Responsibility**

- 1. Recommendation for Action Denial, Termination or Reduction of Waivered Services**
  - a. Complete and send to South Country the "Notice of Recommendation for Action, Denial, Termination or Reduction (DTR for Waivered Services) Fax to: 507-431-6329 or send securely to CountyInfo@mnscha.org Attention: Health Services Dept.
  
- 2. Recommendation for Request of Services**
  - a. Complete and send to South Country the "Elderly Waiver Notification Form or DHS edoc 5841: Recommendation for State Plan Home Care Services Fax to: 507.431.6329 or send securely to CountyInfo@mnscha.org Attention: Health Services Department
  
- 3. New Member Care Coordination Activity Report**
  - a. The delegated entity will submit a health risk assessment (completed within 30 days of enrollment) and a care plan (completed within 30 days of the assessment) for each new member on AbilityCare and SingleCare to South Country by the 15<sup>th</sup> of the 2<sup>nd</sup> month following the member's enrollment. For example for a member enrolling as of January 1<sup>st</sup> the assessment and care plan would be due to South Country by March 15<sup>th</sup>. South Country will enter this data into CCM. The care plan can be entered into CCM or faxed to 507.431.6329 or securely emailed to countyinfo@mnscha.org.
  
  - b. The County will enter data in all the required fields of a care plan in CCM for each new SCC and MSC+ member, within 30 days from the date of the completed HRA. South Country will provide the County with a report of missing data on the 25<sup>th</sup> of each month, for the previous month's new members. For example the February 25<sup>th</sup> report will be for missing data on the January 1<sup>st</sup> new members. The County will enter the missing data into CCM or submit to South Country, prior to the 10<sup>th</sup> of the following month.
  
  - c. Required care plan data fields include the following: Program Type, Program Open Date, South Country/Primary Care Coordinator, Welcome Letter Sent, HRA/Refusal Type, HRA/Refusal Date, Care Plan Development Date, Care Plan Date Signed, Date Care Plan sent to Member or Authorized Representative, Advance Directive Information, County of Service, ICT members listed, Member Contact Plan, and ICT Communication Letter Sent Date.
  
- 4. Care Coordinator Caseload Report**
  - a. Delegated Entity will submit on the designated form provided by SCHA, the Care Coordinator contact information and caseload size report, by August 31, 2017

**5. Medicare Part C Report and Initial Assessments and Reassessment Data**

- a. The delegated entity will complete all SCC, MSC+ community well, AbilityCare and SingleCare member health risk assessments within 30 days of enrollment and re-assessments within 365 days from the of the previous health risk assessment and enter the screening document into MMIS or send the assessment to South Country via fax or secure email (attention: Health Services Department) to enter into MMIS.

**6. Transitions of Care Follow-Up Contacts and designated ER Visits**

- a. The County designated staff or delegated entity staff will document in CCM all hospital follow-up and designated ER visit contacts according to SCHA standards.
- b. The County designated staff will notify a member's Care Coordinator of a hospital admission, the same day as the notification was sent to the County from SCHA.
- c. The County or Delegated Entity Care Coordinator will provide and document care transitions for EW and Community Well members on SCC, MSC+, AbilityCare, and SingleCare using a Transition of Care Log, case notes and offering a Medication Reconciliation service as appropriate and submit to SCHA upon request.

**7. Report of Special Health Care Needs**

- a. SCHA will inform the Connector of a member with Special Health Care Needs. The Connector will follow up with the member and document in CCM. The Connector will notify the member's Care Coordinator if one is assigned.

**8. County Policy and Procedure for Providing Care Coordination and Elderly Waiver Case Management**

- a. Fax to: 507.431.6329 or email to [CountyInfo@mnscha.org](mailto:CountyInfo@mnscha.org) Attention: Health Services Department by June 30, 2017.

**9. Elderly Waiver Provider Network Analysis**

- a. Delegated Entity will inform South Country of any observed EW provider gaps within their county and work with South Country staff as appropriate to resolve any member unmet needs and ensure provider access for all members on the Elderly Waiver program.

## EXHIBIT D

### Morrison County 2017 Rates

- |  | <u>Rate</u>            |
|--|------------------------|
| <b>1. Non-Elderly Waiver Community Well and Nursing Home Members</b>   |                        |
| • Care Coordination Activity for:  |                        |
| ○ SeniorCare Complete (SCC) and MSC+<br>Non-EW Community Well and Nursing Home   | \$24.01/15 Minute Unit |
| ○ AbilityCare, SingleCare/SharedCare<br>Community Well and Nursing Home  |                        |
| <b>2. Relocation Service Coordination for all MSC+ and SCC</b>   | \$15.53/15 Minute Unit |
| <b>3. Elderly Waiver Members</b>   |                        |
| • Care Coordination Activity for SCC and MSC+ Elderly<br>Waiver Members  | \$25.46/15 Minute Unit |
| • Case Management Aide (Paraprofessional) Activity for<br>SCC and MSC+ Elderly Waiver Members  | \$9.39/15 Minute Unit  |
| <b>4. Morrison County Community Care Connector Position</b>  | \$45,492 Annually      |
| • 24 Average Connector Weekly Hours dedicated to<br>SCHA duties  |                        |
| • 4 Average Case Aide Weekly Hours dedicated to<br>SCHA duties   | \$7,837 Annually       |
| Payment will be made bi-annually on or about mid-June and mid-December 2017.   |                        |
| <b>5. Please reference the Care Coordination HCPC/ Service/ Rate Limits Form billed to Health<br/>Solutions for additional information, EXHIBIT E.</b> |                        |

## EXHIBIT E

Care Coordination HCPCs Service Rate Limits Billed to Health Solutions Effective January 1, 2017

Service Name	Service Unit	Proc Code (HCPC)	Rate	Modifier	Prior Auth required?	Prior Auth process	Annual Threshold	Products
Initial Comprehensive Health Assessment	15 Minutes	T2024	\$24.01		No	N/A	None	MSC+ SeniorCare Complete(MSHO) AbilityCare SingleCare/SharedCare(SNBC)
Comprehensive Health Re-Assessment	15 Minutes	T1028	\$24.01		No	N/A	None	MSC+ SeniorCare Complete(MSHO) AbilityCare SingleCare/SharedCare(SNBC)
Care Coordination	15 Minutes	G9005	\$24.01		No	N/A	None	MSC+ SeniorCare Complete(MSHO) AbilityCare SingleCare/SharedCare(SNBC)
Care Transition Management	15 Minutes	T2038	\$24.01		No	N/A	None	MSC+ SeniorCare Complete(MSHO) AbilityCare SingleCare/SharedCare(SNBC)
PASRR: Care Transition Management	15 Minutes	T2038	\$24.01	U1	No	N/A	None	MSC+ SeniorCare Complete(MSHO) AbilityCare SingleCare/SharedCare(SNBC)
Relocation Service Coordination	15 Minutes	T1017	\$15.53		No	N/A	32 units/day 5 days/week 180 days limit (per Nursing Facility stay)	MSC+ SeniorCare Complete(MSHO)
SeniorCare Complete Health and Safety Benefit	Per Item	T2025	Up to \$300/year maximum		Yes	Care Coordinator submits request to SCHA using <u>SCC Health and Safety Prior Authorization Request</u> form. If approved SCHA will submit <u>Health Services Prior Authorization</u> form to Health Solutions.	\$300/calendar year	SeniorCare Complete(MSHO)
SharedCare Face to Face Visit	15 Minutes	T2022	\$24.01	UI	No	N/A	None	SharedCare (SHC)

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into as of January 17, 2017, between South Country Health Alliance, located at 2300 Park Drive, Owatonna, Minnesota 55060 ("Covered Entity") and Morrison County, located at 200 Broadway E., Little Falls, MN 56345, ("Business Associate").

**WHEREAS**, Covered Entity has entered into a contractual agreement with Business Associate that requires Business Associate to perform certain services on behalf of Covered Entity that may require Business Associate to create, receive, maintain, or transmit Protected Health Information, as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Pub Law 104-191, and its implementing regulations, 45 C.F.R. Parts 160 and 164 ("HIPAA Rules") including all current and subsequent amendments.

**WHEREAS**, HIPAA and its implementing regulations require that Covered Entity and Business Associate enter into an agreement to ensure that Business Associate will appropriately safeguard Protected Health Information, as such term is defined under the HIPAA Rules.

**WHEREAS**, Covered Entity and Business Associate desire to conduct their relationship and services in compliance with HIPAA.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein set forth, the parties to this Agreement hereto agree as follows:

**1. DEFINED TERMS.**

- a. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. "Business Associate" shall have the meaning given to such term at 45 CFR Section 160.103, and in reference to this Agreement, shall mean Morrison County.
- c. "Covered Entity" shall have the meaning given to such term at 45 CFR Section 160.103, and in reference to this Agreement, shall mean South Country Health Alliance.
- d. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

**2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.** Business Associate agrees to:

- a. Not Use or Disclose PHI other than as permitted or required by this Agreement to perform its services under the Business Agreement or as required by law.
- b. Use appropriate administrative, technical and physical safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to preserve the integrity and confidentiality of PHI, and to prevent Use or Disclosure of PHI other than as provided for by the HIPAA Rules and this Agreement.
- c. Report to Covered Entity any Use or Disclosure of PHI not provided for by the Agreement which it becomes aware, including Breaches of Unsecured PHI as required by 45 CFR 164.410, any breach under state law, and any Security Incident of which it becomes aware. Such incidents shall be reported without delay, but in no event later than five (5) calendar days from the date the incident was discovered by the Business Associate. Notification from Business Associate to Covered Entity must include information regarding individuals affected and number of individuals affected, description of the Breach or situation, types of PHI involved, steps taken by Business Associate to investigate, mitigate and protect against similar future incidents, and contact information for the individual who is reporting the incident to Covered Entity. Covered Entity reserves the right to make further inquiries or request further action related to the reported incident. Reporting requirements related to the incident shall be handled by Covered Entity unless Covered Entity, at its option, delegates this responsibility to Business Associate. Business Associate shall be required to pay all reasonable costs of investigations related to improper use or disclosure, Breach or Security Incidents and all reasonable costs of any resulting required notifications.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to PHI. Business Associate is not in compliance with the HIPAA Rules if it knew of a pattern of activity or practice of a Subcontractor that constitute a material breach or violation of the subcontractor's obligation under its contract with Business Associate or other arrangement, unless Business Associate took reasonable steps to cure the breach or end the violation, and if such steps were unsuccessful terminated the Subcontractor or arrangement, if feasible.
- e. Make available PHI in a Designated Record Set to Covered Entity in order to timely meet Covered Entity's obligations under 45 CFR 164.524. Any request received by Business Associate from an Individual who is requesting access to a Designated Record Set shall be promptly forwarded to Covered Entity. Promptly make any amendment(s) to PHI in a Designated Record Set as directed or agreed to pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations timely under 45 CFR 164.526. Any request received by Business Associate from an Individual who is requesting amendment to a Designated Record Set shall be promptly forwarded to Covered Entity.
- f. Maintain a system of documentation to make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered

Entity's obligations under 45 CFR 164.528. Any request received by Business Associate from an Individual who is requesting an accounting of disclosures shall be promptly forwarded to Covered Entity.

- g. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, the HIPAA Privacy Rule, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
- h. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services or his or her designee, in a reasonable time and manner for the purpose of permitting the Secretary to determine compliance with the HIPAA Rules.

**3. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

- a. Business Associate may Use or Disclose PHI as permitted by HIPAA as necessary to perform the services set forth in the Administrative Services Agreement between Covered Entity and Morrison County.
- b. Business Associate may Use or Disclose PHI as Required by Law.
- c. Business Associate agrees to make Uses and Disclosures and requests for PHI consistent with the minimum necessary standards at 45 CFR 164.502(b) and Covered Entity's policies regarding minimum necessary.
- d. Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth below:
  - (1) Business Associate may Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
  - (2) Business Associate may Disclose PHI for the proper management and administration of Business Associate, provided that Disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - (3) Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

**4. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE**



## **OF PRIVACY PRACTICES AND RESTRICTIONS.**

- a. Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices under 45 CFR § 164.520, to the extent that such limitations may affect Business Associate's Use or Disclosure of PHI.
  - b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use and Disclosure of PHI.
  - c. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
5. **PERMISSIBLE REQUESTS BY COVERED ENTITY.** Covered Entity will not knowingly request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except Business Associate may Use or Disclose PHI for data aggregation or management and administrative activities of Business Associate as described in Section 3 of this Agreement

## **6. TERM AND TERMINATION**

- a. **Term.** The Term of this Agreement and the obligations herein will be deemed effective as of the date of this Agreement and will terminate when the Delegation Agreement between Covered Entity and Business Associate terminates or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section 6.
- b. **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.
- c. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity shall:
  - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - (2) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that Business Associate still maintains in any form;
  - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent Use or Disclosure of the PHI,

other than as provided for in this Section, for as long as Business Associate retains the PHI;

- (4) Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3 paragraphs (d) which applied prior to termination; and
- (5) Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

d. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Agreement.

## 7. MISCELLANEOUS

- a. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect, or as amended, and for which compliance is required.
- b. **Amendment.** The parties will take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable laws.
- c. **Interpretation.** Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.
- d. **Indemnification.** Business Associate will indemnify, defend and hold harmless Covered Entity and its employees from and against any and all claims, penalties, legal actions, liabilities, damages, expenses (including, for example, breach reporting expenses and mitigation, such as credit monitoring), settlements, or costs (including reasonable attorneys' fees) that may arise from (i) the negligence or willful misconduct of Business Associate or its employees, subcontractors or agents in the performance of this Agreement; (ii) from Business Associate's failure to perform its obligations under this Agreement; or (iii) from any improper use or disclosure of PHI that occurred while it was in the hands of Business Associate or its subcontractors or agents.
- e. **Penalties.** Business Associate shall comply with the HIPAA Rules standards and regulations and understands that Business Associate is subject to all regulatory rules and related penalties as set forth in the HIPAA Rules.

IN WITNESS WHEREOF, Covered Entity and Business Associate execute this Agreement to be effective as of the date written above.

**SOUTH COUNTRY HEALTH ALLIANCE**

By: Leota B Lind

Name: Leota B. Lind

Title: CEO, South Country Health Alliance

Date: 1/18/17

**Morrison County**

By: Brad Vold

Name: Brad Vold

Title: Social Services Director

Date: 2/1/17

***Citi Lites, Inc.***  
***P.O. Box 440***  
***Pequot Lakes, MN 56472***

**2017 and 2018 Independent Contractor Agreement for  
Cable Locating and Cable Guarding**

This agreement is made by and between MORRISON COUNTY HIGHWAY DEPARTMENT and Citi Lites, Inc. (hereinafter "Independent Contractor"), party of the second part.

**RECITALS**

MORRISON COUNTY HIGHWAY DEPARTMENT desires for the Independent Contractor to locate and mark its underground facilities with regard to Minnesota State Statute 216D, Gopher State One Call.

Independent Contractor agrees to perform those services for MORRISON COUNTY HIGHWAY DEPARTMENT under the terms and conditions set forth in this contract.

**AGREEMENT TERMS**

In consideration of the mutual promises set forth herein, it is agreed by and between MORRISON COUNTY HIGHWAY DEPARTMENT and the Independent Contractor.

**SECTION ONE: Consideration.**

The parties hereto acknowledge that the mutual promises contained herein constitute adequate consideration for the Agreement.

**SECTION TWO: Description of work.**

The work to be performed by the Independent Contractor includes providing cable locating and marking, using appropriate flags or paint and related services. All flagging material excluding paint will be furnished by MORRISON COUNTY HIGHWAY DEPARTMENT. The Independent Contractor will furnish all spray paint. Paint must be approved by MORRISON COUNTY HIGHWAY DEPARTMENT. Cable plant damage found while performing locations should be reported to MORRISON COUNTY HIGHWAY DEPARTMENT. All ground connections loosened for purposes of locating must be reconnected upon completion of locating process. If a dairy farm has an electric company installed ground isolation device and the telephone company cable ground connection is left floating, or the ground connection is not connected at the isolation pedestal, these cables are to be tagged or marked, the metallic shield must remain sealed or isolated. Do not make ground connections at these pedestals. If problems occur, MORRISON COUNTY HIGHWAY DEPARTMENT personnel will aid in location. Road jobs or major construction involving which put the cable in jeopardy require notification to MORRISON COUNTY HIGHWAY DEPARTMENT.

**SECTION THREE: Compensation.**

MORRISON COUNTY HIGHWAY DEPARTMENT will pay the Independent Contractor for all work in accordance with the schedule (Proposal attached hereto) furnished by the Independent Contractor.

**SECTION FOUR: Relationship of parties.**

The Independent Contractor represents himself as being self-employed, and shall, during the term of this agreement, be engaged in various other business activities, which are pursued for profit. The parties intend that an Independent Contractor relationship between the parties will be created by this contract. MORRISON COUNTY HIGHWAY DEPARTMENT is interested only in the results to be achieved, and the conduct and control of the work will lie solely with the Independent Contractor. The Independent Contractor is not to be considered an agent or employee for any purpose, and the Independent Contractor is not entitled to any of the benefits that MORRISON COUNTY HIGHWAY DEPARTMENT provides for its' own employees. Furthermore, unless specifically authorized by the Board of Commissioners of MORRISON COUNTY HIGHWAY DEPARTMENT, the Independent Contractor shall not have the authority to bind MORRISON COUNTY HIGHWAY DEPARTMENT to any contract or any obligations of any kind whatsoever.

**SECTION FIVE: Confidentiality.**

MORRISON COUNTY HIGHWAY DEPARTMENT agrees to provide Independent Contractor with maps and all updates thereto necessary to locate its' underground facilities on a monthly basis. Any such maps, drawings, sketches or other technical information either oral, written or otherwise furnished or disclosed to, or obtained by the Independent Contractor in their performance of the Agreement shall remain the property of MORRISON COUNTY HIGHWAY DEPARTMENT. All copies of such information shall be returned to MORRISON COUNTY HIGHWAY DEPARTMENT upon written request or at the completion of this Agreement. Unless materials were previously known to Independent Contractor free of any obligation to keep them confidential, or have subsequently been made public by MORRISON COUNTY HIGHWAY DEPARTMENT material shall be kept confidential by the Independent Contractor, shall be used only in the performance of this contract and may not be used for other purposes except upon such terms as may be agreed upon by MORRISON COUNTY HIGHWAY DEPARTMENT in writing. This obligation of confidentiality shall survive the termination of this Agreement. MORRISON COUNTY HIGHWAY DEPARTMENT will furnish training on the use of the maps.

**SECTION SIX: Liability, License, Insurance and Bonding.**

The work to be performed under this contract will be performed entirely at the Independent Contractor' risk. Independent Contractor will carry, for the duration of this contract, liability insurance with a minimum of \$1,000,000 coverage at Independent Contractor's own cost. Independent Contractor agrees to indemnify, including reasonable attorney's fees, and hold harmless MORRISON COUNTY HIGHWAY DEPARTMENT from any and all liability, loss, claim or damages whatsoever, arising in any way out of the performance of this contract. Independent Contractor agrees to obtain and maintain any municipal or State License required at Independent Contractor's own expense.

**SECTION SEVEN: Self-employment obligations.**

Independent Contractor shall be responsible for all self-employment taxes, Workers Compensation, unemployment taxes, withholding taxes (State or Federal), FICA, or any similar reports and payments to be made by an employer.

**SECTION EIGHT: Subcontractor's Requirement.**

Independent Contractor shall not subcontract the work to be performed hereunder, or any part of said work, unless it has first obtained the written approval of MORRISON COUNTY HIGHWAY DEPARTMENT who shall have full and complete discretion in withholding granting said approval.

**SECTION NINE: Duration of Agreement and Termination.**

This Agreement shall continue until terminated as follows: MORRISON COUNTY HIGHWAY DEPARTMENT may terminate this Agreement at any time without prior notice, for just cause. Just cause shall be deemed to exist for any breach of any term of this contract by the Independent Contractor, Independent Contractor's incompetence, inefficiency or misconduct. In addition, either party upon giving written notice of thirty (30) days may terminate this Agreement.

**SECTION TEN: Independent Contractor Acknowledges Understanding and Receipt of Copy.**

Both parties hereto acknowledge that they have read this Agreement, understand it, and accept it and Independent Contractor acknowledges that he has received a copy of this Agreement.

**SECTION ELEVEN: Entire agreement.**

This Agreement and the attached Exhibit 1 and Proposal, are the entire Agreement between the parties and there is no other written or verbal agreement. Should any provision of this Agreement be deemed void, the remaining provisions shall not be affected.

**SECTION TWELVE: Damages.**

It will be required of the Independent Contractor to have a representative at all reported damages and a damage report must be signed by all parties involved. MORRISON COUNTY HIGHWAY DEPARTMENT will be required to submit any billing for damage claims to the Independent Contractor within 40 days.

In the event of a damaged facility, Citi Lites, Inc. will not be held liable for the following:

1. Incorrect mapping of a facility by operator of the damaged facility.
2. Not being notified by facility operator to represent Citi Lites, Inc. at a damage site with one of his or her own personnel at the time of damage.
3. Damages resulting from abandoned facilities, which are still bonded and grounded to pedestal power boxes.

**SECTION THIRTEEN: Assistance.**

MORRISON COUNTY HIGHWAY DEPARTMENT will provide assistance upon request to assist on problem locates and mapping interpretations as necessary.

**SECTION FOURTEEN: Snow conditions.**

When snow conditions exceed two feet during winter season and excess digging is required, the Independent Contractor rate will be billed as stated in the hourly rate (Exhibit I).

IN WITNESS WHEREOF, the parties have executed this Agreement  
this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

**MORRISON COUNTY HIGHWAY DEPARTMENT Commissioner**

By *Mark Wilson*

Title Morrison County Chair

**MORRISON COUNTY HIGHWAY DEPARTMENT Administrator**

By \_\_\_\_\_

Title \_\_\_\_\_

**Citi Lites, Inc.**

By \_\_\_\_\_

Title \_\_\_\_\_

## EXHIBIT II

It will be required of the Independent Contractor to have a representative at all reported damages and a damage report must be signed by all parties involved.

MORRISON COUNTY HIGHWAY DEPARTMENT will be required to submit any billing for damage claims to the Independent Contractor within 40 days.

MORRISON COUNTY HIGHWAY DEPARTMENT will provide assistance upon request to assist on problem locates and mapping interpretations as necessary.

When snow conditions exceed two feet during winter season and excess digging is required, the Independent Contractor's rate will be billed in an hourly rate, see Proposal.

All Gopher State One Call ticket locates in excess of 1/2 hour will convert to a 5-minute unit rate, hourly rate or project, see Proposal.

Requested meets by Gopher State One Call shall be billed at the hourly rate. See Proposal.

Overtime will be charged only after locator has accrued a normal 40-hour workweek. This will only be assessed after a basic unit locate is over 1/2 hour.

A project is defined as anything over two days of locating. Projects are billed in 15-minute units. If locator has accrued 40 hours straight time, overtime will be assessed at a 15-minute overtime unit. If the work can be held over until the following work week to prevent overtime charges, Citi Lites, Inc. will do so. If the contractor requests markings, a fully updated report will be given to utilities involved to justify charges of overtime.

Also, if a large project comes up, (ex: 2-3 months) and the utilities involved were concerned with overtime, it would be possible to stagger two locators Monday through Friday or Wednesday through Sunday to minimize overtime.

MORRISON COUNTY HIGHWAY DEPARTMENT reserves the right to utilize any and all of the services as listed herein.

1. The contractor shall provide and pay for all supervision, labor, safety equipment, tools, communication equipment, transportation and other items necessary for the proper execution and completion of the work intended.
2. The operating utilities require a minimum of one year of locating experience in the appropriate fields.
3. The contractor shall provide each locator a mobile telephone and pager.
4. The contractor shall submit a Certificate of Insurance when contract is awarded.
5. MORRISON COUNTY HIGHWAY DEPARTMENT herein reserves the right to reduce locating needs on a seasonal basis.
6. Each of the operating utilities reserves the right to withdraw from the list of operating utilities listed herein.



7. MORRISON COUNTY HIGHWAY DEPARTMENT will provide training on map reading and emergency response as required.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/7/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Insurance Brokers of MN, Inc. PO Box 659 Pequot Lakes MN 56472		<b>CONTACT NAME:</b> Jacob Cameron <b>PHONE (A/C, No, Ext):</b> (218) 568-4620 <b>E-MAIL ADDRESS:</b> j.cameron@insurancebrokersmn.com <b>FAX (A/C, No):</b> (218) 568-4344	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> State Auto P & C	<b>NAIC #</b> 25127
		<b>INSURER B:</b> State Auto Mutual	25135
		<b>INSURER C:</b> Evanston Insurance Company	35378
		<b>INSURER D:</b> Maxum Indemnity Company	26743
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES** CERTIFICATE NUMBER: 2016 Certs REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			BOP2825706	11/1/2016	11/1/2017	EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:							MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY \$ 1,000,000	
	OTHER:						GENERAL AGGREGATE \$ 2,000,000	
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			BAP2414924	11/1/2016	11/1/2017	PRODUCTS - COMP/OP AGG \$ 2,000,000	
	<input checked="" type="checkbox"/> ANY AUTO						*DATA \$ 25,000	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS						
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS						
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			CXS2128937	11/1/2016	11/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					BODILY INJURY (Per person) \$	
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> CLAIMS-MADE					BODILY INJURY (Per accident) \$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PROPERTY DAMAGE (Per accident) \$	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				PIP-Basic \$ 20,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below						EACH OCCURRENCE \$ 1,000,000	
C	PROFESSIONAL LIABILITY			EO861721	11/1/2016	11/1/2017	AGGREGATE \$	
D	EXCESS PROF. LIABILITY			PFX6025384-03	11/1/2016	11/1/2017	EACH OCCURRENCE \$	
							EACH CLAIM/AGGREGATE \$ 3,000,000	
							EACH CLAIM/AGGREGATE \$ 3,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
RETRO DATE: 11/01/2014 CLAIMS MADE COVERAGE FORM; PROFESSIONAL SERVICES: UTILITY LOCATING SERVICES; \$10,000 DEDUCTIBLE. SL1011 10 13 Contractors Plus Endorsement: Additional Insured - Automatic Status when Required in Construction Agreements or Permits. SA3000 BAP Plus Endorsement: Additional Insured - Automatic Status and Transfer of Rights of Recovery Against Others to us.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
SteveB@co.morrison.mn.us	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
Morrison County Public Works Steve Backowski 213 1st Ave. SE Little Falls, MN 56345	AUTHORIZED REPRESENTATIVE
	Jacob Cameron/JAKE

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**Workers Compensation And Employers Liability Insurance Policy Information Page**

**AMERICAN INTERSTATE INSURANCE COMPANY - 24759**

2301 HWY 190 WEST Home Office  
 DERIDDER, LA 70634  
 3374639052 NCCI Carrier Code 24759

Current Policy Number: AVWCMN2544052016  
 Renewal of Policy : AVWCMN2444632015  
 Business Market : Voluntary

**1. Named Insured And Address:**

Citi Lites, Inc.  
 PO Box 440  
 PEQUOT LAKES, MN 58472

**Agent Name and Address**

BAXTER INSURANCE GROUP OF AGENTS, LLC  
 (BAXTER)  
 8374 BRANDON ROAD  
 BAXTER, MN 58425

Telephone: ( ) -

Risk ID:

FEIN: 411744143

Entity of Insured : Corporation

Telephone: (218)855-0331

Producer Number: 00013566

SIC Code: 8712

**2. Policy Period:** This policy period is from 11/01/2016 To 11/01/2017

\*12:01 A.M. Standard Time At  
 The Insured's Mailing Address.

**3. Coverage:**

A. Worker's Compensation Insurance: Part One Applies to the Worker's Compensation Law of the states listed here:  
 MN

B. Employer's Liability Insurance: Part Two Applies to work in each state listed in item 3A. The limits of our liability under Part Two Are:

Bodily Injury By Accident	\$ 500,000	Each Accident
Bodily Injury By Disease	\$ 500,000	Policy Limit
Bodily Injury By Disease	\$ 500,000	Each Employee

C. Other States Insurance. Part Three of the policy applies to the states, if any, listed here:

All states except those listed in ITEM 3A and Connecticut, Hawaii, New Jersey, New York, North Dakota, Ohio, Washington, Wyoming.

D. This policy includes these endorsements and schedules : (See Attached Schedule of Endorsements)

**4. Premium:** The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Sub Total:	\$19,083
Other Charges/Credits Subject to Mod:	\$535
Deductibles:	\$0
<b>Total Premium Subject To The Experience Modification:</b>	<b>\$19,618</b>
Modified Premium:	\$33,154
Other Charges/Credits Not Subject to Mod:	\$0
Schedule Rating Factor:	\$8,289
Premium Discount (if Applicable):	\$-4,093
Expense Constant Charge:	\$250
Other Coverage Charges:	\$0
<b>Total Estimated Annual Premium:</b>	<b>\$37,800</b>
Taxes, fees and surcharges:	\$1,188

\* Please Note:

This is the summary information for this policy. Please see the additional attached pages for a more detailed listing.

Please see the declaration's addendum page for any state mandated taxes, fees or surcharges.

Interim adjustments to premium, if any, shall be made: Monthly

Minimum Premium: \$750  
 Deposit: \$5,529

Name of Producer: BAXTER INSURANCE GROUP OF AGENTS, LLC (BAXTER)

Servicing Office: DERIDDER, LA

Customer Acct#: 01133341

Date: 10/21/2016 10:21:25 AM

Countersigned By

Authorized Representative

10/21/2016

Date

THIS INFORMATION PAGE WITH THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED POLICY

OPERKINS  
 WC 00 00 01 A (1/09)

**Resolution #2017-008**  
**For Creating a Prioritized Bridge Replacement List**

**WHEREAS**, Morrison County has reviewed the pertinent data on bridges requiring replacement, rehabilitation, or removal, supplied by local units of government, and

**WHEREAS**, Morrison County has identified those bridges that are high priority and that require replacement, rehabilitation, or removal within the next five years;

**NOW, THEREFORE BE IT RESOLVED** that the following deficient bridges are high priority and Morrison County intends to replace, rehabilitate or remove these bridges as soon as possible when funds are available,

Old Bridge Number	Road Number or Name	Feature Crossed	Twp or State Bridge	Local or State Aid Funds	Total Project Cost	Proposed Construction Year
L9437	BELLE PR TWP KING RD	PLATTE RIVER	\$100,000	NONE	\$100,000	2017
7362	CR 268	SKUNK RIVER	\$150,000	\$50,000	\$200,000	2017
49514	CSAH 1	LITTLE ELK RIVER	\$500,000	\$100,000	\$600,000	2018
49515	CSAH 12	SWAN RIVER	\$400,000	\$100,000	\$500,000	2018
NONE	CR 245	PUBLIC DITCH NO. 21	\$100,000	\$80,000	\$180,000	2018
2930	CUSHING TWP AGATE TRL	LITTLE ELK RIVER	\$230,000	\$20,000	\$250,000	2018
49516	CSAH 6	SWAN RIVER	\$800,000	\$200,000	\$1,000,000	2019
7351	CSAH 47	PLATTE RIVER	\$400,000	\$100,000	\$500,000	2019
7343	CSAH 26	LITTLE ROCK CREEK	\$500,000	\$100,000	\$600,000	2019
L9533	TWO RIVERS TWP 100 <sup>TH</sup>	TWO RIVERS	\$230,000	\$20,000	\$250,000	2019
92472	CSAH 34	W BR RUM RIVER	\$300,000	\$100,000	\$400,000	2019
R0160	BUH TWP 168TH ST	BIG MINK CREEK	\$60,000	\$20,000	\$80,000	2019
49503	CSAH 21	TWO RIVERS	\$500,000	\$100,000	\$600,000	2020
6924	CSAH 21	TWO RIVERS	\$200,000	\$60,000	\$260,000	2020
49501	CSAH 1	SWAN RIVER	\$800,000	\$200,000	\$1,000,000	2020
7357	CR 220	SWAN RIVER	\$400,000	\$60,000	\$460,000	2020
L2899	BUCKMAN TWP 230 <sup>TH</sup> AV	BUCKMAN CREEK	\$80,000	\$20,000	\$100,000	2020

**FURTHERMORE**, Morrison County does hereby request authorization to replace, rehabilitate or remove such bridges, and

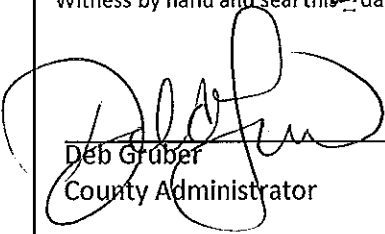
**FURTHERMORE**, Morrison County does hereby request financial assistance with eligible approach grading and engineering costs on township bridges, as provided by law, and

**FURTHERMORE**, Morrison County grants the County Engineer the authority to request funds.

STATE OF MINNESOTA }  
 COUNTY OF MORRISON }

I, Deb Gruber, County Administrator, Morrison County, Minnesota hereby certify that I have compared the foregoing copy of the resolution of the County Board of said County with the original record thereof on file in the Administration Office of Morrison County in Little Falls, Minnesota as stated in the minutes of the proceedings of said board at a meeting duly held on this 24 day of Jan, 2017, and that the same is a true and correct copy of said original record and of the whole thereof, and that said resolution was duly passed by said board at said meeting.

Witness by hand and seal this 24 day of Jan, 2017.



Deb Gruber  
County Administrator

Commissioner	Yes	No	Abs	Mot	2nd
Jelinski	X				X
Johnson	X				
Winscher	X			X	
Wilson	X				
LeMieur	X				



# AIA<sup>®</sup> Document B132<sup>™</sup> – 2009

## Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the tenth day of January in the year 2017  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

County of Morrison  
Morrison County Courthouse  
213 First Avenue SE  
Little Falls, Minnesota 56345

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

Vetter Johnson Architects, Inc.  
4245 Cottonwood Lane North  
Plymouth, Minnesota 55441

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

Remodeling of the Morrison County Courthouse.  
Little Falls, Minnesota

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

Contegrity Group, Inc.  
101 First Street SE  
Little Falls, Minnesota  
56345

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132<sup>™</sup>-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232<sup>™</sup>-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132<sup>™</sup>-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232<sup>™</sup>-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(3B9ADA25)

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.  
*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

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

To be determined.

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

Remodeling of portions of the Morrison County Courthouse, including space reconfiguration, new finishes and new mechanical and electrical systems.

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

To be determined.

§ 1.1.4 The Owner's anticipated design and construction schedule:  
1 Design phase milestone dates, if any:

To be determined.

**.2 Commencement of construction:**

Fall of 2017

**.3 Substantial Completion date or milestone dates:**

To be determined.

**.4 Other:**

Not applicable.

**§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:**

*(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)*

One Contractor

Multiple Prime Contractors

Unknown at time of execution

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

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

Construction phasing to be determined.

**§ 1.1.7 Other Project information:**

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

Not applicable.

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

*(List name, address and other information.)*

Ms. Deb Gruber

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

*(List name, address and other information.)*

To be determined.

**§ 1.1.10 The Owner will retain the following consultants:**

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

**.1 Construction Manager:** The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

Not applicable.

Init.



- .2 Cost Consultant (if in addition to the Construction Manager):  
*(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)*

Not applicable.

- .3 Land Surveyor:

Not applicable

- .4 Geotechnical Engineer:

To be determined.

- .5 Civil Engineer:

Not applicable.

- .6 Other consultants:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)*

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:  
*(List name, address and other information.)*

Steven. C. Johnson

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
*(List name, legal status, address and other information.)*

§ 1.1.12.1 Consultants retained under Basic Services:

- .1 Structural Engineer:

LS Engineers

Le Sueur, MN

**.2 Mechanical Engineer:**

Engineering Design Initiative

Minneapolis, MN

**.3 Electrical Engineer:**

Engineering Design Initiative

Minneapolis, MN

**§ 1.1.12.2 Consultants retained under Additional Services:**

To be determined, if required.

**§ 1.1.13 Other Initial Information on which the Agreement is based:**

Not Applicable.

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

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect shall provide the professional services as set forth in this Agreement.

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2009, Standard Form of Agreement Between Owner and Construction Manager. The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

**§ 2.6** The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

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§ 2.6.1 Comprehensive General Liability with policy limits of not less than two million dollars (\$ 2,000,000.00 ) for each occurrence and for each occurrence and four million dollars (\$4,000,000.00) aggregate.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than two million dollars (\$ 2,000,000.00 ) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability at statutory limits.

§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than two million dollars (\$ 2,000,000.00 ) per claim and in the aggregate.

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

init.

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User Notes:

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§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by,

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the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.3.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

**§ 3.3.3** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

**§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

**§ 3.4.3** During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

**§ 3.4.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

**§ 3.4.5** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

**§ 3.5 Bidding or Negotiation Phase Services**

**§ 3.5.1 General**

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

**§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and

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- 3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by

- 1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- 2 participating in selection interviews with prospective contractors; and
- 3 participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

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

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work.

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

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a

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decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232-2009, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify an application for payment not more frequently than monthly. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- 1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- 2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

**§ 3.6.3.2** The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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

**§ 3.6.3.4** The Architect shall maintain a record of the applications and certificates for payment.

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an

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approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.6.4.4** After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

**§ 3.6.5.2** The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

**§ 3.6.5.3** The Architect shall maintain records relative to changes in the Work.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and

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completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

**ARTICLE 4 ADDITIONAL SERVICES**

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

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

Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming (B202™-2009)	In basic services	
§ 4.1.2 Multiple preliminary designs	Architect	
§ 4.1.3 Measured drawings	Architect	
§ 4.1.4 Existing facilities surveys	Architect	
§ 4.1.5 Site evaluation and planning (B203™-2007)	Architect	
§ 4.1.6 Building information modeling (E202™-2008)	Architect	
§ 4.1.7 Civil engineering	Owner	
§ 4.1.8 Landscape design	Architect	
§ 4.1.9 Architectural interior design (B252™-2007)	Architect	
§ 4.1.10 Value analysis (B204™-2007)	Owner	
§ 4.1.11 Detailed cost estimating	Owner	
§ 4.1.12 On-site project representation (B207™-2008)	Owner	
§ 4.1.13 Conformed construction documents	Owner	
§ 4.1.14 As-designed record drawings	Owner	
§ 4.1.15 As-constructed record drawings	Owner	
§ 4.1.16 Post occupancy evaluation	Owner	
§ 4.1.17 Facility support services (B210™-2007)	Owner	
§ 4.1.18 Tenant-related services	Owner	
§ 4.1.19 Coordination of Owner's consultants	Architect	
§ 4.1.20 Telecommunications/data design	Architect	
§ 4.1.21 Security evaluation and planning (B206™-2007)	Owner	
§ 4.1.22 Commissioning (B211™-2007)	Owner	
§ 4.1.23 Extensive environmentally responsible design	Owner	
§ 4.1.24 LEED® certification (B214™-2012)	Not applicable	
§ 4.1.25 Historic preservation (B205™-2007)	Not applicable	
§ 4.1.26 Furniture, furnishings, and equipment design (B253™-2007)	Architect	

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

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Not applicable

**§ 4.3** Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
- .6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of bidders or persons providing proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

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

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

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- 6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

**§ 4.3.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- 1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- 2 Thirty-Two ( 32 ) visits to the site by the Architect over the duration of the Project during construction
- 3 One per phase inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- 4 One per phase ( ) inspections for any portion of the Work to determine final completion

**§ 4.3.4** If the services covered by this Agreement have not been completed within Thirty-Two ( 32 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

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

**§ 5.2** The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to the agreement.

**§ 5.3** The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

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

**§ 5.4.1** The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents; and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

**§ 5.5** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.6** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements

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and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

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

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

§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

## **ARTICLE 6 COST OF THE WORK**

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service,

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revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

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

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

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

**§ 6.6** If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

**§ 6.7** After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

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

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

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

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

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

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

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

### **§ 8.3 Arbitration**

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

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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

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

### **§ 8.3.4 Consolidation or Joinder**

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

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

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## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

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

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

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction.

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

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

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

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

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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### ARTICLE 11 COMPENSATION

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

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

Compensation shall be a percentage of construction cost equal to ten percent (10%). It is agreed that, at the end of the Design Development Phase the percentage fee, based on the Construction Manager's DD estimate, including contingencies, shall be converted to a stipulated sum fee.

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

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

Hourly, based on annual rates applicable on the first day of January, each year unless it is agreed that the cost for any particular Additional Service shall be a percentage of the related cost.

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

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

Hourly, based on annual rates applicable on the first day of January, each year unless it is agreed that the cost for any particular Additional Service shall be a percentage of the related cost.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty-Five	percent (	45	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)

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Total Basic Compensation	one hundred percent (	100	%)
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The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

**§ 11.6** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

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

Not applicable.

Employee or Category	Rate (\$0.00)
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**§ 11.8 Compensation for Reimbursable Expenses**

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred.

**§ 11.9 Compensation for Use of Architect's Instruments of Service**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

To be determined.

**§ 11.10 Payments to the Architect**

**§ 11.10.1** An initial payment of Zero Dollars (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

%

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

12.1 Field observation under Basic Services will be provided with an average of two (2) site visits monthly. Basic Services include a maximum of thirty six (36) visits. Authorization to exceed this amount will require an Additional Services amendment to this agreement.

12.2 Additional Services will be required if a revision in project scope and/or quality level is required to reduce the Construction Cost if it is exceeded by the sum of the lowest bids. Specifically, if the Architect is asked to modify the drawings and specifications as necessary to comply with the latest estimated Construction Cost as prepared by the Construction Manager, the Architect shall be entitled to payment for all services performed in accordance with these modifications, whether or not the construction phase is commenced.

12.3 To the maximum extent permitted by law, the Owner agrees to limit the Architect's liability for the Owner's damages to the Architect's total fee for services rendered on the project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise limited by law.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

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

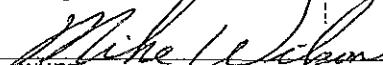
§ 13.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B132™-2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

(Paragraphs Deleted)

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

  
OWNER (Signature)

Mike Wilson, Morrison County  
(Printed name and title)  
Chair

\_\_\_\_\_  
ARCHITECT (Signature)

Steven, C. Johnson, President  
(Printed name and title)

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