**Associated General Contractors of Minnesota**

Owner - Contractor Agreement Addendum

 Re: Early Payment for Disadvantaged Small Business Enterprises

This Addendum to the Owner – Contractor Agreement regarding Early Payment for Disadvantaged Small Business Enterprises is made on the Effective Date of Click or tap to enter a date. by and between the Parties: Click or tap here to enter text. (“Owner”) and Click or tap here to enter text. (“Contractor”).

**Whereas**, Owner and Contractor entered into the Owner Contractor Agreement dated Click or tap to enter a date. (“OCA”) to perform work as defined in the OCA at the following Project: Click or tap here to enter text. located at: Click or tap here to enter text. (“Project”);

**Whereas**, the Parties desire participation and development of disadvantaged small business enterprises (“DSBE”) on the Project which the Parties agree adds value to the Project and industry;

**Whereas**, the Parties recognize barriers deterring participation and development of DSBE including cash flow challenges;

**Whereas**, the Parties agree that the following is appropriate to encourage participation of DSBE on this project and developing DSBEs in the construction industry;

**Now, Therefore**, in consideration of the respective agreements and terms set forth hereinafter, the Parties, intending to be legally bound, agree as follows:

1. **Contract Documents**. This Addendum is included in “Contract Documents.”
2. **Definition of DSBE**. A DSBE is a firm qualified to perform a scope of work on the Project and who meets all the following criteria:
	1. Social and Economic Disadvantage. The DSBE must be owned at least fifty one percent (51%) by an individual whose personal net worth is less than two million dollars ($2,000,000) and who is a member of a socially and economically disadvantaged group, namely woman, Black American, Hispanic American, Native American, Asian-Pacific American, and Subcontinent Asian American; or is a veteran and has business receipts less than twenty-five million dollars ($25,000,000) averaged over three years. Further, that individual must control the firm’s overall management, operations, and policies.
	2. Independence. The DSBE must be independent and not share employees, equipment, space, or other material resources with another firm.

This definition is intended to be consistent with definitions of the certified small business by the State.

1. **Certification of DSBE**. Contractor will review and certify any subcontractor on the Project who complies as a DSBE.

[ ]  If checked, then the subcontractor must receive certification as a DSBE with a government agency with jurisdiction over this Agreement or the Project site.

1. **Early Payments to DSBE Subcontractors**. The Payment provision (¶6(e)) of the OCA hereby is amended to provide for early payment to DSBE Subcontractors under this Addendum. Other than providing for this option for early payment to DSBE Subcontractors, the terms in the OCA remain in effect and unamended.
	1. DSBE Subcontractor Pay Requests.
		1. *Materials.* The DSBE Subcontractor may request payment up to fifty percent (50%) of the value of the goods and supplies provided to and used on the Project. The Subcontractor’s request may be made at any time after the Goods are ordered. Subcontractor must provide all documentation related to the request showing that the Goods are for use on the Project, and, when available, when and where delivered, and proof of payment.
		2. *Labor*. The DSBE Subcontractor may request on a monthly basis payment for actual wages (including monies, benefits and fringe benefits, paid time off, allowances, and per diem) earned for work performed by the DSBE Subcontractor’s employees on the Project. Contractor may require the DSBE Subcontractor to provide any records supporting this request including certified payroll.
	2. Early Payment**.** Owner will pay to Contractor the DSBE Subcontractor’s pay requests as follows:
		1. *Goods.* Within ten (10) business days of receipt of the pay request, and Contractor will pay to the DSBE Subcontractor within ten (10) business days of receipt of funds by Owner.
		2. *Labor*. Within five (5) business days of receipt of the pay request, and Contractor will pay to the DSBE Subcontractor within five (5) business days of receipt of funds by Owner.

Contractor may issue joint checks to the DSBE Subcontractor and other interested parties as Contractor reasonably deems appropriate.

* 1. Obligations of DSBE Subcontractor.
		1. *Monies in Trust*. All monies received by the DSBE Subcontractor pursuant to this Addendum will be in trust to pay the DSBE Subcontractor’s vendors, subcontractors and employees.
		2. *Monies as an Advance*. All monies received by the DSBE Subcontractor pursuant to this Addendum are an advance on Payment(s) in the OCA and do not relieve, affect, or alter any duties owed by the DSBE Subcontractor (such as warranty, completing or fixing Work, or paying back monies overpaid or owed).
		3. *Confirming Records***.** DSBE Subcontractor will provide to Contractor within twenty-one (21) days of receipt of the Early Payment all required documents, including certified payroll records, lien waivers from all vendors and subcontractors for the amounts received, and, upon request by Contractor, receipts or other documents appropriate within the reasonable opinion of Contractor that the monies were used to pay the requested vendors, subcontractors, and employees, respectively.
	2. Termination or Suspension of Early Payment. Contractor may reject or hold without processing pay requests by DSBE Subcontractor if, in Contractor’s opinion, the DSBE Subcontractor fails to comply fully with its obligations (above or in the Contractor-Subcontractor Agreement), including failure to pay or provide information of payment to a vendor, employee, or third-party administrator of employee benefits, and until such time as Contractor reasonably deems such failure to be cured. Contractor further may terminate this early payment program on prospective requests with any individual or all DSBE Subcontractors on the Project for any reason or no reason whatsoever.
1. **Payment of Balance**. The balance of monies paid to a DSBE Subcontractor (contract price less monies received including monies received pursuant to this Addendum) will be paid pursuant to terms and conditions of the agreement between Contractor and DSBE Subcontractor and consistent with the OCA.

**In Witness Whereof**, the Parties have caused this Agreement to be executed on the Effective Date.

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| **On behalf of Owner**: Name: Click or tap here to enter text. Title: Click or tap here to enter text. Date: Click or tap to enter a date.  | **On behalf of Contractor**: Name: Click or tap here to enter text. Title: Click or tap here to enter text. Date: Click or tap to enter a date.  |

**The Undersigned Subcontractor** represents that it qualifies as a DSBE, and desires to participate in the program between the Owner and Contractor related to their Addendum for Early Payment to DSBE Subcontractors (“Program”). The Undersigned Subcontractor acknowledges and agrees that the benefits it receives from the Program are without consideration, it is an unintended third-party beneficiary of the Addendum between the Owner and Contractor, and any reliance or efforts undertaken by the Undersigned pursuant to the Program do not constitute consideration. The benefits are provided wholly by the goodwill of Owner and Contractor, and may be suspended or terminated at any time by Contractor for any reason, with or without cause or penalty.

**Click here to enter name of Subcontractor Firm**

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date: Click or tap to enter a date.