

ConsensusDocs 803

STANDARD AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL

(Where a Construction Manager Acting as an Agent Has Been Retained by the Owner)



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This Agreement has important legal and insurance consequences. Consultations with an attorney and with insurance and surety consultants are encouraged with respect to its completion or modification. Notes indicate where information is to be inserted to complete this Agreement.



ARTICLE 1 AGREEMENT

This Agreement is made this 03/11/2015, by and between the

OWNER

State of Iowa - DAS, Department of Administrative Services ("DAS"). DAS's principal office is located: 109 SE 13th Street, Des Moines, Iowa, 50319-0120.

and the

ARCHITECT, DESIGN PROFESSIONAL or ENGINEER (hereinafter Design Professional)
Example Contractor

,

for work in connection with the following

PROJECT
Practice Project

The CONSTRUCTION MANAGER is

,

Notice to the Parties shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1 The Design Professional shall furnish or provide the architectural and engineering Services necessary to design the Project in accordance with the Owner's requirements, as may be outlined in the Owner's Program and other relevant data defining the Project. The architectural and engineering Services shall include Basic Services plus Additional Services as may be authorized by the Owner. If the Owner does not have an official written Program, the Design Professional will work with the Owner and the Construction Manager to Verify the Owner's objectives, including budget and time criteria, Space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements for phased occupancy.

2.2 RELATIONSHIP OF THE PARTIES The Design Professional accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and the Construction Manager and exercise the Design Professional's skill and judgment in furthering the interests of the Owner to the extent that doing so is not in violation of Iowa law and the professional license obligations of the Design Professional. The Design Professional represents that it possesses the requisite skill, expertise, and licensing to perform the required Services. The Owner and Design Professional agree to work together on the basis of mutual trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. The Owner and Design Professional shall endeavor to promote harmony and cooperation among all Project participants.

2.3 Neither the Design Professional nor any of its agents or employees shall act on behalf of or in the name



of the Owner except as provided in this Agreement or unless authorized in writing by the Owner.

2.4 The Owner and the Design Professional shall perform their obligations with integrity, including but not limited to:

2.4.1 conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.4.2 The Design Professional and the Owner warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subconsultants or others for whom they may be liable, to secure preferential treatment.

2.5 CONSTRUCTION MANAGER The Owner shall retain or employ a Construction Manager to be the Owner's agent and to furnish construction administrative and management Services for the Project. The Design Professional shall coordinate its scope of Services with that of the Construction Manager so as to avoid any duplication of Services. The Design Professional shall provide those Services reasonably requested by the Owner and the Construction Manager and included within the Design Professional's scope of Services under this Agreement. Such Services shall be provided promptly and in accordance with time schedules agreed upon by the Owner, Construction Manager and Design Professional. The Owner shall cause the Construction Manager to provide those Services reasonably requested by the Design Professional. Such Services shall be provided promptly and in accordance with time schedules agreed upon by the Owner, Design Professional and Construction Manager. Upon request of the Design Professional, the Owner shall furnish to the Design Professional a copy of the Owner's Agreement with the Construction Manager. The Agreement between the Owner and the Construction Manager shall not be modified without written notification to the Design Professional.

2.6 EXTENT OF AGREEMENT This Agreement represents the entire and integrated agreement between the Owner and the Design Professional and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design Professional and not for the benefit of any third party except to the extent expressly provided in this Agreement.

2.7 DEFINITIONS

2.7.1 Agreement means this ConsensusDocs 803, Standard Agreement Between Owner and Design Professional (Where a Construction Manager Acting as an Agent Has Been Retained by the Owner) as modified by the Parties, and Exhibits and Attachments made part of this Agreement upon its execution.

2.7.2 Design Professional means the person or entity identified in ARTICLE 1 and includes the Design Professional's representative. The use of the term Design Professional in this Agreement is for convenience and is not intended to imply or infer that the individual or entity named in ARTICLE 1 will provide design professional Services in a discipline in which it is not licensed.

2.7.3 Construction Budget means the budget prepared by the Construction Manager for review by the Design Professional and approval by the Owner. It is prepared when the Owner and the Construction Manager agree that the Construction Documents are sufficiently complete, and includes the sum of the estimated cost of the Work, the clarifications and assumptions upon which it is based, allowances, reasonable contingencies and the Construction Manager's compensation.

2.7.4 Construction Manager means the person or entity identified in ARTICLE 1 responsible for furnishing construction administrative and management Services for the Project.

2.7.5 The Construction Schedule is the document initially prepared by and updated by the Construction Manager and approved by the Owner that indicates proposed activity sequences, durations, or milestone



dates for such activities as receipt and approval of pertinent information, issuance of the Construction Documents, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. The Construction Schedule shall also include the date of Final Completion of the Project.

2.7.6 The term Cost of Construction shall mean the Owner's total cost of Project components (excluding the services provided by the Construction manager and /or any other professional service). In the event the Project is not completed, Cost of Construction shall mean the final approved estimated cost of construction of Project components (excluding the services provided by the Construction Manager and/or any other professional service). The estimated Cost of Construction has the same meaning as the "estimated total cost of construction" set forth in Iowa Code Section 26.1 and thereby affects the appropriate competitive bidding procedure for the Project. Cost of Construction is synonymous with the Cost of the Work for the Project.

2.7.7 Others means other contractors, material suppliers and persons at the Worksite who are not employed by the Contractor or Subcontractors. The term Others does not include the Construction Manager or the Design Professional.

2.7.8 Owner is the person or entity identified in ARTICLE 1 and includes the Owner's representative.

2.7.9 The Owner's Program is an initial description of the Owner's objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. As stated above, the owner may not have an official written Program.

2.7.10 The Project, as identified in ARTICLE 1, is the building, facility or other improvements for which the Contractor is to perform Work under the agreement between the Owner and Trade Contractor(s). It may also include construction by the Owner or Others.

2.7.11 Services means the Services provided by the Design Professional or by consultants retained by the Design Professional for the Project. Such Services may constitute the whole or a portion of the Project.

2.7.12 A Subcontractor is a party or entity retained by the Trade Contractor as an independent contractor to provide the labor, materials, equipment or Services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.

2.7.13 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

2.7.14 Trade Contractor means a party or entity retained by the Owner as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. A Trade Contractor is a principal contractor, as referenced in Iowa Code Chapter 573.

2.7.15 Work means the construction and services provided by the Trade Contractors necessary or incidental to fulfill the Trade Contractor's obligations for the Project in accordance with and reasonably inferable from the Construction Documents. The Work may refer to the whole Project or only a part of the Project.

2.7.16 Worksite means the location of the Project as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES



3.1.1 PROJECT REQUIREMENTS The Design Professional, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information set forth in the Owner's Program. The Design Professional shall confirm its understanding of such requirements with the Owner and the Construction Manager and shall assist the Owner to refine or make clarifications to the Owner's Program for the Project. The Owner, however, may not have an official written program for this Project. Inasmuch case, the Design Professional shall work with the Owner and the Construction Manager to determine the Owner's objectives, including budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements and any requirements for phased occupancy. Further, the Design Professional shall ascertain the information needed to provide its design services and shall request from the Owner in writing any information that the Design Professional needs to provide its design services that it is unable to ascertain. If the Design Professional did not separately agree to provide program management services but is requested to prepare an official written Program then the preparation of the Program shall be considered an additional service.

3.1.2 The Design Professional shall not proceed with the development of successive design documents until receiving written approval from the Owner. The Design Professional shall promptly revise without additional compensation:

3.1.2.1 those documents which have not been previously approved by the Owner and to which the Owner has reasonable objections, and

3.1.2.2 those documents identified by the Construction Manager as presenting constructability problems,

3.1.2.3 Deleted.

To the extent that any design documents approved by the Owner deviate from the requirements of the Owner's Program, the approved design documents shall govern.

3.1.3 The Design Professional shall have reasonable access to the Worksite at all times.

3.1.4 Except as provided in this Agreement or unless otherwise directed by the Owner, the Design Professional shall communicate with the Trade Contractor and Subcontractors only through the Construction Manager unless otherwise agreed to by the Owner in writing.

3.1.5 The Design Professional shall assist the Owner and the Construction Manager with filing required documents with governmental authorities having jurisdiction over the Project, including permits necessary for construction of the Project.

3.1.6 The Design Professional shall not be responsible for the acts or omissions of the Owner, the Construction Manager, the Trade Contractor and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of the Design Professional.

3.1.7 Services to be provided by the Design Professional shall be rendered promptly so as not to delay the Owner, Construction Manager, Trade Contractor, Subcontractors or Others.

3.1.8 The Design professional shall preform the Services required by this Agreement in a workmanlike manner and in accord with the degree of skill, care, and learning ordinarily possessed and exercised by competent and knowledgeable members of its profession currently practicing under similar circumstances at the same time and in a same similar location.

3.2 BASIC SERVICES The Design Professional's Basic Services consist of any Services provided pursuant to Sections 3.1 and 3.2. The Design Professional shall identify here or in a separate attached exhibit: (a)



other Services included in Basic Services, (b) the specific design disciplines included in Basic Services, and (c) those portions of the Project design to be furnished by the Owner, Trade Contractor or Others: If professional design Services are to be furnished by the Owner, Trade Contractor or Others, the Design Professional shall indicate all performance and design criteria to be satisfied in accordance with the Owner's Program, and the Owner, Trade Contractor or Others shall not be responsible for the adequacy of such performance and design criteria. Design Services furnished by parties other than the Design Professional shall be obtained from licensed design professionals, who shall in the manner required by law affix their signature and seal on all drawings, specifications, calculations and technical submittals prepared by them, and the Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of such design Services.

3.2.1 BUDGETS The Design Professional promptly shall review and make recommendations to the Owner about the budgets prepared by the Construction Manager for the Project. The Design Professional shall provide its Services in conformance with the budgets approved by the Owner.

3.2.2 CONSTRUCTION SCHEDULE The Design Professional promptly shall review and make recommendations to the Construction Manager and Owner about the preliminary and updated Construction Schedule prepared by the Construction Manager. To facilitate the preparation of the Construction Schedule by the Construction Manager, the Design Professional shall submit for the Construction Manager's review and the Owner's approval a schedule of the Design Professional's Services. The Design Professional shall provide its Services within the times given for such Services in the Construction Schedule approved by the Owner.

3.2.3 SCHEMATIC DESIGN DOCUMENTS Based upon the Owner's Program, including any approved refinements or clarifications, the Design Professional shall prepare, for the Construction Manager's review and the Owner's approval, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; approximate areas, volumes and dimensions; and preliminary selections of materials and systems. Two printed sets and one reproducible set of Schematic Design Documents shall be provided to the Owner for its review and for distribution to the Construction Manager. When the Design Professional submits the Schematic Design Documents, the Design Professional shall identify in writing for the Construction Manager's review and the Owner's approval all material / important changes and deviations that have taken place from the Design Professional's approved preliminary estimate of the Cost of Construction and Project Schedule.

3.2.4 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, the Design Professional shall prepare, for the Construction Manager's review and the Owner's approval, Design Development Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the structural, architectural, mechanical and electrical systems. Design Development Documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When the Design Professional submits the Design Development Documents, the Design Professional shall identify in writing all material / important changes and deviations for the Owner's approval that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. Two printed sets and one reproducible set of Design Development Documents shall be provided to the Owner for its review and for distribution to the Construction Manager.



3.2.5 CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, the Design Professional shall prepare, for the Construction Manager's review and the Owner's approval and the approval of governmental authorities, including any revisions necessary to secure such approvals, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable codes, laws and regulations enacted at the time of their preparation at the location of the Project. When the Design Professional submits the Construction Documents, the Design Professional shall identify in writing all material / important changes and deviations for the Owner's approval that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall completely describe all work necessary to bid and construct the Project. Two printed sets and one reproducible set of the Construction Documents shall be provided to the Owner for its review and for distribution to the Construction Manager.

3.2.5A In accordance with Iowa Code Chapter 26, the Design Professional shall calculate the estimated total Cost of Construction which shall be used to determine the applicable competitive bidding procedure. The Construction Manager shall aid the Design professional in performing this calculation.

3.2.6 DESIGN COORDINATION The Design Professional shall coordinate the Services of all its design consultants for the Project who are or will be (List here or in a separate attached exhibit the names or disciplines of design consultants) As an additional service to the Owner, the Design Professional shall coordinate the Service of the following design consultants of the Owner (list here or in a separate attached exhibit the names of the design consultants of the owner who have separate contracts with the owner:

3.2.7 LONG-LEAD ITEMS The Design Professional shall assist the Owner to evaluate a schedule prepared by the Construction Manager for procurement of long-lead-time items which shall constitute part of the Work as required to meet the Construction Schedule.

3.2.8 BIDDING ASSISTANCE The Design Professional shall assist the Owner in evaluating the Construction Manager's recommendations regarding the division of the Work into Trade Contractor Bid packages or proposals. The Design Professional shall assist the Construction Manager and the Owner in obtaining bids from contractors by providing up to six (6) sets of drawings, specifications and any addenda, attending pre-bid or pre-award meetings, clarifying the scope and intent of the Construction Documents and, if appropriate, evaluating proposed subcontractors and material suppliers for portions of the Work. The Design Professional shall issue any addenda or clarifications promptly in writing.

3.2.8.1 If the lowest bona fide bid exceeds the Design Professional's final approved estimate of the Cost of Construction by Twenty (20.00)% or more, and the Owner, in its sole discretion, elects not to accept such bid or proposal or to rebid or renegotiate the Project, the Design Professional, without additional compensation, shall work with the Construction Manager and the Owner to make the necessary modifications to the Construction Documents to reduce the Cost of Construction to an amount less than or equal to the sum of the final approved estimate of the Cost of Construction plus the percentage stated above. This Clause shall not apply if estimates are prepared by or are the responsibility of the Trade Contractor or Others.

3.2.9 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the earlier of (a) the first award of a Trade Contract or (b) such other date as the Parties agree. Such award or authorizations by Owner shall be issued with contemporaneous notification to the Design Professional. If requested by the Owner, the Design Professional shall assist the Construction Manager to review the schedule of values submitted by the Trade Contractors for the Work. The Design Professional shall furnish upon request to the Owner and to the Construction Manager interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda or otherwise, as are necessary for the proper execution and



progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

3.2.9.1 SUBMITTALS The Design Professional shall collaborate with the Construction Manager to establish and implement procedures for expediting the processing and approval of shop drawings and samples. The Design Professional shall review the Trade Contractors' submittals and make approvals of or recommendations about such submittals to the Construction Manager and the Owner within Ten (10) Days of receiving the submittals from the Construction Manager, unless otherwise agreed to by the Owner in writing. The Design Professional shall check the Trade Contractors' submittals for conformance with the design and scope of the Project and for compliance with the Construction Documents. The Design Professional shall be entitled to rely on the accuracy and completeness of any professional certifications required by the Construction Documents of Trade Contractors concerning the performance criteria of systems, equipment or materials, including all calculations relating thereto and any governing performance requirements. The Design Professional's review of submittals shall not extend to the Trade Contractors' means, methods, techniques, sequences or procedures, unless such means, methods, techniques, sequences or procedures have been specified by the Design Professional.

3.2.9.2 The Design Professional shall assist the Construction Manager and the Owner in the evaluation and processing of requests for changes in the Work.

3.2.9.3 WORKSITE VISITS The Design Professional shall visit the Worksite at appropriate intervals, but not less than (As needed, but a minimum of 3) times, or pursuant to such schedule as the Parties may establish by attachment of Exhibit F to this Agreement, to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Document. After each Worksite visit, the Design Professional shall promptly provide the Owner with a written report. If the Design Professional becomes aware of any defects or deficiencies in the Work, the Design Professional shall provide prompt notice, followed by written confirmation, to the Owner. If, in the Design Professional's opinion, special testing or inspection of the Work is needed, the Design Professional shall recommend such testing or inspection procedures and appropriate consultants to the Construction Manager. The Design Professional shall not be responsible for construction means, methods, techniques, sequences and procedures, unless they are specified by the Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

3.2.9.4 SAFETY The Design Professional shall not be responsible for the Trade Contractor's safety precautions and programs. However, if the Design Professional has actual knowledge of safety violations, the Design Professional shall give prompt written notice to the Owner. While at the Worksite, the Design Professional shall comply with the safety programs of the Construction Manager and the Trade Contractors.

3.2.9.5 The Design Professional shall review and approve or reject the Trade Contractors' applications for payment. Application for payment should be collected and reviewed by the Construction Manager before the Design Professional shall consider the Construction Manager's recommendation. The Payment process must comply with Iowa law (and in particular Iowa Code chapter 573).

3.2.9.6 The Design Professional shall participate in regular meetings with the Owner and the Construction Manager upon reasonable request of the Owner or the Construction Manager.

3.2.9.7 The Design Professional shall assist the Owner and Construction Manager in conducting up to (1 per trade) inspections to determine the date or dates of Trade Contractor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that the Owner may occupy or utilize the Work or a designated portion for its intended use.



3.2.9.8 The Design Professional shall assist the Owner and Construction Manager in conducting up to (1 per trade) inspections to determine Trade Contractor's Final Completion of the Work.

3.2.9.9 The Design Professional shall make One (1) visits to the Worksite during the Trade Contractors' one-year correction periods to assist the Owner in evaluating the need for any corrective measures.

3.2.10 HAZARDOUS MATERIAL A Hazardous Material is any substance or material identified as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up. To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, the Design Professional shall not be required to perform Services relating to or in the area of the Hazardous Material without written mutual agreement.

3.2.10.1 INDEMNIFICATION To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design Professional, Construction Manager, Trade Contractors and their subcontractors and suppliers, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, fines, penalties, costs and expenses, whether direct, indirect or consequential, including but not limited to attorneys' fees, costs and expenses incurred in connection with litigation or arbitration arising out of or relating to the performance of Services in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee. To the extent portions of this paragraph are in conflict with SF 396 (codified at Iowa Code Section 573A.5) said portions are void and unenforceable.

3.3 ADDITIONAL SERVICES The following Services shall be provided by the Design Professional and paid for as Additional Services, if they are authorized in advance by the Owner in writing and are not included in Basic Services as set forth in Sections 3.1 and 3.2:

3.3.1 Investigation of sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.3.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.3.3 Surveys, site evaluations, legal descriptions and aerial photographs.

3.3.4 Appraisals of existing equipment, existing facilities, new equipment and developed properties.

3.3.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.3.6 Document reproduction exceeding the limits provided for under Sections 3.2.

3.3.7 Investigating or making measured drawings of existing conditions or the verification of Owner provided drawings and information.

3.3.8 Artistic renderings, models and mockups of the Project or any part of the Project.

3.3.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Project.

3.3.10 Interior design and related Services, including procurement and placement of furniture, furnishings, artwork and decorations.

3.3.11 Making revisions to the Schematic Design, Design Development, or Construction Documents after



they have been approved by the Owner, and which are due to causes beyond the control of the Design Professional (including unreasonable acts by a building code official).

3.3.12 Design, coordination, management, expediting and other Services supporting the procurement of materials to be obtained or work to be performed by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

3.3.13 Estimates, proposals, appraisals, consultations, negotiations and Services in connection with the repair or replacement of an insured loss.

3.3.14 The premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Design Professional to maintain the Construction Schedule for causes that are the responsibility of the Design Professional.

3.3.15 Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup.

3.3.16 Services for tenant or rental spaces not a part of this Agreement.

3.3.17 Serving or preparing to serve as an expert witness on behalf of the Owner in connection with any proceeding, legal or otherwise, regarding the Project in which the Design Professional is not a party.

3.3.18 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes made during the Construction Phase.

3.3.19 Worksite visits in excess of the number of visits provided for in Clauses 3.2.9.3, 3.2.9.8, and 3.2.9.9 or the number of visits in a schedule established by attachment to this Agreement.

3.3.20 Attending meetings in excess of the number provided for in Clause 3.2.9.6 3.2.9.7.

3.3.21 Providing Services relating to Hazardous Material discovered at the Worksite.

3.3.22 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

3.3.23 Out-of-town travel by the Design Professional in connection with the Work, except between the Design Professional's office, the Owner's office and the Worksite.

3.3.24 Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

3.3.25 Other Services as agreed to by the Parties and identified in an attached exhibit.

3.4 QUALIFICATIONS The Design Professional warrants and represents that the Design Professional and its consultants are duly qualified, licensed, registered and authorized by law to perform the Services under this Agreement.

3.5 CONSULTANTS The Design Professional shall not engage the Services of any consultant without first obtaining the Owner's written approval, which approval shall not be unreasonably withheld. Such approval by the Owner shall not be deemed to create any contractual relationship between the Owner and any such consultant, except that the Owner shall be considered the intended beneficiary of the performance of their Services. Except for the waivers required under Section 5.4 and Subsection 7.3.2, the Design Professional shall not include any limits of liability in its agreements with any consultants without the prior written approval of the Owner. The Design Professional shall bind its consultants in the same manner as the Design



Professional is bound to the Owner under this Agreement.

3.6 DESIGN PROFESSIONAL'S REPRESENTATIVE The Design Professional's representative is , who shall possess full authority to receive and act on instructions from the Owner. Unless agreed to by the Parties in an exhibit attached hereto, the Design Professional's representative is also authorized to bind the Design Professional in all matters relating to this Agreement including, without limitations, all matters requiring the Construction Manager's approval, authorization, or written notice. The Design Professional's representative is also authorized to resolve disputes in accordance with Section 9.2 of this Agreement.

3.7 KEY PROJECT PERSONNEL The key Project personnel whom the Design Professional shall assign are as set forth in an exhibit attached hereto, including the estimated percentage of time to be devoted by each to the Design Professional's Services. Such personnel shall not be changed without the written approval of the Owner, which approval shall not be unreasonably withheld.

3.8 FINANCIAL INFORMATION Prior to commencement of Services, and thereafter, the Design Professional shall have the right, upon written request, to receive from the Owner evidence of the Owner's financial ability to pay for the Design Professional's Services. Evidence of the Owner's financial ability to pay for Services shall be a condition precedent to the Design Professional commencing or continuing Services. The Design Professional shall be notified prior to any material change in the Owner's ability to pay for Services.

3.9 ROYALTIES, PENALTIES AND COPYRIGHTS The Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional shall defend and hold the Owner, Construction Manager, Trade Contractor and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. To the extent portions of this paragraph are in conflict with SF 396 (codified at Iowa Code Section 573A.5) said portions are void and unenforceable.

3.10 CONFIDENTIALITY The Owner shall treat as confidential information all proprietary design systems and methods that may be disclosed to the Owner in connection with the performance of this Agreement if they are specified and marked as "Confidential". If a document is not marked as "Confidential" it will not be treated as such. Nothing contained herein, however, shall be interpreted in a manner that modified or is in conflict with the purpose and application of the open records laws contained in the Code of Iowa.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY THE OWNER

4.1.1 To the extent the Owner has obtained the information and Services identified below, the Owner shall provide them to the Design Professional in a timely manner. The Design Professional shall be entitled to rely on the completeness and accuracy of such information and Services.

4.1.1.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations, all as set forth in Exhibit A.

4.1.1.2 Inspection and testing Services during construction as required by law or as mutually agreed.

4.1.1.3 Unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required Services. The information required by Clause 4.1.1.1 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include



existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available Services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out the Work. The Design Professional shall in writing request from the Owner any information identified in Paragraph 4.1.1 that the Design Professional believes the Owner has obtained but has not provided to the Professional.

4.1.2 The Owner shall promptly report to the Design Professional errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this subsection shall relieve the Design Professional of responsibility for its own errors, inconsistencies and omissions.

4.1.3 Approvals by the Owner shall not be deemed to be an assumption of responsibility by the Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by the Design Professional, its employees, agents or consultants. The Owner shall provide all approvals required under this Agreement in a timely manner.

4.2 OWNER'S REPRESENTATIVE The Owner's representative is . The Representative:

4.2.1 shall be fully acquainted with the Project;

4.2.2 agrees to furnish the information and Services required of the Owner pursuant to section 4.1 so as not delay the Services of the Design Professional; and

4.2.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Design Professional in writing in advance. The Owner's Representative is also authorized to resolve disputes in accordance with Section 9.2 of this Agreement.

4.3 TRADE CONTRACTS The Owner shall provide the Design Professional with copies of all executed Trade Contracts.

4.4 LEGAL REQUIREMENTS The Owner will not provide legal advice to or act as the attorney for the Design Professional. The Owner expects that the design Professional will consult an attorney whenever the Design Professional believes that doing so is its best interest.

4.5 ROYALTIES, PATENTS AND COPYRIGHTS The Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems specifically required by the Owner to be incorporated in the design documents of the Design Professional. The Owner agrees to defend and hold the Design Professional harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems required by the Owner or used by the Trade Contractor but not required by the Owner or Design Professional. To the extent portions of this paragraph are in conflict with SR 396 (codified at Iowa Code Section 573A.5) said portions are void and unenforceable.

ARTICLE 5 TIME

5.1 TIME FOR SERVICES The Design Professional shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by the Owner. The Design Professional's Fee as set forth in Section 6.1 is based on completion of Construction Documents no later than Zero (0) Days following execution of this Agreement. If completion of Construction Documents is not achieved within this time through no fault of the Design Professional, the Design Professional's Fee shall be equitably adjusted.



The term Project Schedule in this paragraph shall have the same meaning as the Construction Schedule defined in Section 2.7.5.

5.2 DELAYS BY DESIGN PROFESSIONAL If the progress or completion of the Project is delayed by reason of any error, inconsistency or omission of the Design Professional which violates the applicable standard of care, the Design Professional shall compensate the Owner for and indemnify it against all damages which may accrue as a result of such delay, except as otherwise provided in Section 5.4. In addition, the Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to the Owner because of such delay. The Owner shall provide prompt written notice to the Design Professional of such delay after the Owner first recognizes the delay.

5.3 DELAYS BY OWNER If the Design Professional is delayed in the performance of its Services by any act or omission of the Owner, or by changes ordered by the Owner which are due to causes beyond the Design Professional's control, or by a delay authorized by the Owner pending dispute resolution, then the time allotted in the Project Schedule for the Design Professional's Services shall be extended for the period of such delay or the Owner shall authorize the Design Professional to work overtime to make up such lost time, and the Design Professional's compensation shall be equitably adjusted. The Design Professional shall provide prompt written notice to the Owner of such delay after the Design Professional first recognizes such delay.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 The Owner and the Design Professional waive claims against each other for consequential damages arising out of or relating to this Agreement, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing, except for those specific items of damages excluded from this waiver, as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, or loss of reputation. The Design Professional agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project or loss of reputation. The Owner does not waive delay and/or acceleration damages claimed by the Trade Contractor caused by the negligent performance of the Design Professional:

5.4.1.1 The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Design Professional shall require similar waivers in contracts with their consultants retained for the Project.

ARTICLE 6 COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR BASIC SERVICES

6.1A The design Professional's compensation shall not include any form of compensation that is in violation of Iowa law. Payment requests and processes shall conform and be documented in accordance with the State Accounting Enterprise's (SAE's) policies and Procedures. Documents concerning compensation will be subject to open records laws.

6.1.1 For Basic Services as described in Sections 3.1 and 3.2, the Owner shall compensate the Design Professional on the following basis, including applicable sales taxes (Exclude options not applicable):

6.1.1.1 Stipulated Fee. The amount of Zero Dollars and No Cents (\$0.00).

6.1.1.2 Guaranteed Maximum Fee. The actual cost of the following:



- a. Design Professional's personnel as listed in Exhibit B.
- b. Services of consultants at a multiple of N/A times the amount billed to the Design Professional for such Services.
- c. Reimbursable Expenses incurred in connection with Basic Services.
- d. The Design Professional shall be compensated for the above costs up to a Guaranteed Maximum Fee of N/A.

6.1.1.3 Other basis of Fee:
N/A

6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 The Design Professional shall be compensated for Additional Services as described in Sections 3.3 on the following basis:

6.2.2 The Design Professional shall be compensated for the Reimbursable Expenses described in Exhibit D at their actual cost, unless otherwise provided in Subsection 6.1.1. The Design Professional's Reimbursable Expenses must conform to and be documented in accordance with the policies and procedures of the State Accounting Enterprise (SAE). Records concerning Reimbursable Costs will be subject to open records laws.

6.3 PAYMENTS

6.3.1 The Design Professional shall submit to the Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. The Owner shall pay approved amounts no later than thirty (30) Days after the Design Professional has submitted its applications for payment. No matter how computed in Section 6.1, payments for Basic Services:

6.3.1.1 shall not exceed the following percentages of the total Fee for Basic Services at the completion of each Phase of the Design Professional's Services:

Schematic Design Documents []%
 Design Development Documents []%
 Construction Documents []%
 Bidding or Negotiation Assistance []%
 Construction Phase []%
 TOTAL 100%

6.3.1.2 shall not exceed the following lump sum amounts for each Phase of the Design Professional's Services:

N/A

Upon receipt of payment from the Owner, Design Professional shall promptly make payment to its consultants as appropriate.

6.3.2 Prior to final payment to the Design Professional, the Design Professional shall furnish evidence satisfactory to the Owner that there are no claims, obligations or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by the Design Professional for compensation for its Services.

6.3.3 Should there be any claim, obligation or lien asserted before or after final payment is made that arises from the negligent performance of the Design Professional's Services, the Design Professional shall



reimburse the Owner for any costs and expenses, including attorneys' fees, costs and expenses, incurred by the Owner in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided the Owner is making payments or has made payments to the Design Professional in accordance with the terms of this Agreement.

6.3.4 Should the Design Professional or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.5 The Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to the Owner at mutually convenient times for all Services to be compensated on the basis of actual cost.

6.3.6 LATE PAYMENT Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project. Interest, however, shall not start to accrue until sixty (60) days following the receipt of an appropriate pay application.

ARTICLE 7 INDEMNITY, INSURANCE AND WAIVERS

7.1.1 DESIGN PROFESSIONAL'S INDEMNITY To the fullest extent permitted by law, the Design Professional shall indemnify and hold harmless the Owner, from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs and expenses, for bodily injury, sickness or death, and property damage (other than property insured in paragraph 7.3, that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions of the Design Professional, the Design Professional's consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Design Professional shall be entitled to reimbursement of any defense costs paid above Design Professional's percentage of liability for the underlying claim to the extent provided for under Section 7.1.2. Nothing in this indemnity shall be construed to limit the insurance obligations agreed to herein.

7.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design Professional from all claims for bodily injury and property damage, other than property insured under Section 7.3, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of or the failure to perform work by Owner or Others, but only to the extent caused by the negligent acts or omissions of the Owner or Others. The Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under Section 7.1.1.

7.1.3 CONSTRUCTION MANAGER AND TRADE CONTRACTOR INDEMNITY The Owner shall cause the Construction Manager and Trade Contractors to agree to indemnify and hold harmless the Owner from all claims for bodily injury and property damage and other property insured under Section 7.3, that may arise from the Construction Manager's Services or the Trade Contractor's Work, but only to the extent that such claims result from the negligent acts or omissions of the Construction Manager or the Trade Contractor, respectively, or anyone for whose acts or omissions the Construction Manager or Trade Contractor, respectively, is liable. Such provisions shall be in a form no less protective of the Parties than the Construction Manager's Indemnity provided in ConsensusDocs 801 (as modified by the Owner's Supplemental Terms and Conditions) or the Trade Contractor's indemnity provided in ConsensusDocs 802 (as modified by the Owner's Supplemental Terms and Conditions) respectively, and shall be reasonably satisfactory to the Owner and the Design Professional.

7.1.4 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the



Design Professional, anyone directly or indirectly employed by the Design Professional or anyone for whose acts the Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design Professional under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

7.2 DESIGN PROFESSIONAL INSURANCE

7.2.1 Before commencing its Services and as a condition of payment, the Design Professional shall purchase and maintain such insurance, to the extent it is commercially available, as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by the Design Professional or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 The Design Professional shall maintain in effect all insurance coverage required under Subsection 7.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to the Owner:

7.2.2.1 Workers' Compensation -- \$1,000,000 or an amount required by the laws of Iowa, whichever is greater:

7.2.2.2 Employers' Liability Insurance - \$1,000,000 or an amount required by the laws of Iowa, whichever is greater.

7.2.2.3 Commercial General Liability Insurance, including contractual liability insurance for the liability assumed in Subsection 7.1.1, with at least the following limits of liability:

- a. \$1,000,000 Each occurrence limit
- b. \$2,000,000 General aggregate
- c. \$1,000,000 Products/Completed Operations aggregate
- d. \$1,000,000 Personal and Advertising Injury Limit

7.2.2.4 Business Automobile Liability Insurance with at least the following limit of liability:

- a. \$1,000,000 Each Accident

7.2.3 The Design Professional shall require its consultants to maintain Business General Liability and Business Automobile Liability coverage with a company satisfactory to the Owner and with limits acceptable to the Owner.

7.2.4 PROFESSIONAL LIABILITY INSURANCE The Design Professional shall maintain Professional Liability Insurance with a company satisfactory to the Owner for claims arising from the negligent performance of professional Services under this Agreement, which shall be either:

- ☒ Practice Policy
- ☐ Project Specific Coverage

written for not less than \$2,000,000 per claim and in the aggregate with a deductible not to exceed \$25,000, unless otherwise agreed to by the Owner. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by the Design Professional for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for ten (10) year(s) following final payment to the Design Professional to the extent such coverage is commercially



available. The deductible shall be paid by the Design Professional.

7.2.5 Consultants retained by the Design Professional for this Project shall maintain Professional Liability Insurance with a company and for such amounts as are satisfactory to the Owner for claims arising from the negligent performance of their professional Services, which shall be either:

☒ Practice Policy

☐ Project Specific Coverage

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by the consultants for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for ten (10) year(s) following final payment to the Design Professional; to the extent such coverage is commercially available. Deductibles shall be paid by the Design Professional.

7.2.6 To the extent commercially available, the policies of insurance required under Subparagraph 7.2 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format; (a) 30 days before coverage is nonrenewal by the insurance company and (b) with 10 business days after cancellation of coverage by the insurance company. Prior to commencement of services, the Design professional shall furnish the Owner with certificates evidencing the required coverage's. In addition, if any insurance policy required under Subparagraph 7.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Design Professional shall give Owner Prompt written notice upon actual or constructive knowledge of such action. The Owner shall have the right to notify directly the Design Professional's Professional Liability insurance carrier of a claim against the policy. The Professional Liability policies shall be continued in effect for ten (10) year(s) following final payment to the Design Professional.

7.3 PROPERTY INSURANCE

7.3.1 The Owner shall provide builders risk insurance that names the Design Professional and its consultants as named additional insureds. The Owner shall furnish to the Design Professional certificates of insurance evidencing such coverages.

7.3.2 The Owner and Design Professional waive all rights against each other and the Trade Contractor, Subcontractors, and Sub-subcontractors for loss or damage to the extent covered by builders risk insurance, except such rights as they may have to the proceeds of such insurance. The Owner and the Design Professional shall require similar waivers from all of their consultants retained for the Project.

ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Either Party may terminate this Agreement upon seven (7) Days' written notice if the other Party materially breaches its terms through no fault of the initiating Party.

8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, the Owner may, without cause, terminate this Agreement with the Design Professional. If this Agreement is terminated pursuant to this section, the Design Professional may recover from the Owner payment for all Services performed in accordance with this Agreement, and any proven loss, cost or expense in connection with the Services, including those resulting from the termination. If the fee agreed to be paid to the Design Professional is lump sum then the Design Professional should be paid on a pro rata basis for the Services completed.:

8.3 ADDITIONAL GROUNDS FOR TERMINATION FOR CAUSE The Owner may terminate the Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:



- i. Design Professional furnished any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- ii. Design Professional or any of its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- iii. Design Professional or any parent or affiliate of Design Professional owning a controlling interest in Design Professional dissolves;
- iv. Design Professional terminates or suspends its business;
- v. Design Professional's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Design Professional related to Design Professional's performance under this Agreement is suspended, terminated, revoked, or forfeited;
- vi. Design Professional has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;
- vii. The Design Professional engaged in conduct that: (a) has or may expose the Owner/State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- viii. The Design Professional infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Design Professional misappropriates a trade secret; or

8.4 BANKRUPTCY If the Design Professional files a petition under the Bankruptcy Code, this Agreement may be terminated for cause at the discretion of the Owner. Further, the Owner may terminate the Agreement for cause at its discretion if the Design Professional takes any of the following actions: a) Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; b) Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; c) Making an assignment for the benefit of creditors; d) Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Design Professional's performance of its obligations under this Agreement; or e) Taking any action to authorize any of the foregoing. The Owner's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Owner, and the Owner shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

9.1 CONTINUANCE OF SERVICES AND PAYMENT Unless otherwise agreed in writing, the Design Professional shall continue to perform its Services during any dispute mitigation or resolution proceeding. If



the Design Professional continues to perform, the Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

9.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' authorized representatives. The authorized representative for the Design Professional as identified in Paragraph 3.6 of the Agreement. The Parties' authorized representatives are among other things, authorized to resolve matters of disagreement and disputes between the Parties. If the Parties representatives are unable to resolve the dispute within fifteen (15) days of meeting to resolve it then the Parties shall submit such matter to the dispute mitigation and procedures.

9.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in Section 9.5. The Parties agree that the dispute mitigation procedure shall be:

(Designate only one:)

☒ Project Neutral

☐ Dispute Review Board

9.3.1 MITIGATION PROCEDURES The Project Neutral/Dispute Review Board shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Project Neutral's/Dispute Review Board's responsibilities. The costs and expenses of the Project Neutral/Dispute Review Board shall be shared equally by the Parties. The Project Neutral/Dispute Review Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Project Neutral/Dispute Review Board to address matters in dispute between the Parties promptly and knowledgeably. The Project Neutral/Dispute Review Board shall issue nonbinding finding(s) within five (5) business Days of referral of the matter to the Project Neutral, unless good cause is shown.

9.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Project Neutral/Dispute Review Board fails to issue nonbinding findings within five (5) business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in Section 9.5.

9.4 MEDIATION If direct discussions pursuant to Section 9.2 do not result in resolution of the matter and no dispute mitigation procedure is selected and implemented under Section 9.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. Unless otherwise agreed to by the Parties, the mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) business Days of the matter first being discussed. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

9.5 BINDING DISPUTE RESOLUTION If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected herein.



(Designate only one:)

☐ Arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

☒ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

9.5.1 The costs of any binding dispute resolution processes shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute. The cost of binding dispute resolution does not include attorney fees. The Parties are each responsible for paying for their own attorney fees.

9.5.2 VENUE The venue of any binding dispute resolution procedure shall be the Des Moines, Iowa.

9.6 MULTIPARTY PROCEEDINGS The Owner and Design Professional agree that all Parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the joinder or consolidation of such dispute resolution procedures.

9.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Design Professional that the Design Professional may have under lien laws. The Design Professional acknowledges that it has no mechanic's lien right on this Project.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Design Professional or by consultants retained by the Design Professional and distributed to the Owner for this Project, upon the making of final payment to the Design Professional or in the event of termination under ARTICLE 8, upon payment for all sums due to Design Professional pursuant to Sections 8.1 and 8.2.

10.1.1 COPYRIGHT The Parties agree that Owner ☒ shall / ☐ shall not (indicate one) obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by section 10.1 and the payment of the fee reflecting the agreed value of the copyright set forth below: If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Design Professional.

10.1.2 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 8, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subsection 10.1.1, provided payment has been made pursuant to Section 10.1.

10.1.3 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Owner may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. The Owner's use of the Documents without the Architect/ Engineer's involvement or on other projects is at the Owner's sole risk, except for the Design Professional's indemnification obligations pursuant to Section 3.9, and the Owner shall defend and hold harmless the Design Professional and its consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.



10.1.4 DESIGN PROFESSIONAL'S USE OF DOCUMENTS Where the Design Professional has transferred its copyright interest in the Documents under Subsection 10.1.1, the Design Professional may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

10.1.5 The Design Professional shall obtain from its consultants rights and rights of use that correspond to the rights given by the Design Professional to the Owner in this Agreement and the Design Professional shall provide evidence that such rights have been secured.

10.2 ELECTRONIC DOCUMENTS If the Owner requires that the Owner, Design Professional, Construction Manager and Trade Contractor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, Construction Manager and Trade Contractor shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate Agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and Services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

10.3 ASSIGNMENT the terms and conditions of this Agreement shall be binding upon Parties, their partners, successors, assign and legal representatives. Neither Party to this Agreement the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Design Professional or to an institutional lender providing financing for the Project as long as the assignment is no less favorable to the Design Professional than this Agreement. In the event of such assignment, the Design Professional shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Construction Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

10.4 GOVERNING LAW AND VENUE This Agreement shall be governed by the laws of the State of Iowa. The venue for any dispute resolution proceeding shall be Des Moines, Iowa.

10.5 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.6 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

10.7 TITLES AND GROUPINGS The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in the Agreement under the various headings is solely for the purpose of convenient organization and in no event shall the groupings of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

10.8 JOINT DRAFTING The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in



favor of either Party, but shall be construed in a neutral manner.

10.9 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

10.10 OTHER PROVISIONS:

10.11 COMPLIANCE WITH LAW AND REGULATIONS The Design Professional shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing services under this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Design Professional declares that it has complied with all federal, state and local laws regarding business permits and licenses that may be required to provide the services and work required by this Agreement. The Design Professional further acknowledges that if this Project is a recipient of Federal financial assistance that it may be subject to requirements of Federal Acts and Executive Orders as mandated by Federal agencies having authority and jurisdiction to enforce and ensure compliance with such laws and regulations including, but not necessarily limited to, the Davis Bacon Act and other Federal Acts and Executive Orders.

10.12 CONFIDENTIAL INFORMATION OF OWNER

1. **Access to Confidential Information.** The Design Professional's employees, agents and subcontractors may have access to Confidential Information maintained by the Owner to the extent necessary to carry out its responsibilities under the Agreement. The Owner shall designate in writing any information that it seeks to protect from disclosure, and such information shall be considered "Confidential Information." Confidential information shall not include information that (a) is previously known to Design Professional, (b) is generally known in the public domain, (c) becomes known to Design Professional through disclosure by sources other than the Owner having the right to disclose such information, (d) is generally disclosed to third parties by the Owner, without similar restriction on such third parties, or (f) is authorized to be disclosed by the Owner. The Design Professional shall provide to the Owner a written description of its policies and procedures to safeguard Confidential Information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Design Professional must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Design Professional in connection with the performance of the Agreement. The Design Professional shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Agreement. The Confidential Information shall remain the property of the Owner at all times.

2. **No Dissemination of Confidential information.** No Confidential Information collected, maintained, or used in the course of performance of the Agreement shall be disseminated by Design Professional except as authorized by law and only with the prior written consent of the Owner either during the period of the Agreement or thereafter. Any data supplied by the Owner to the Design Professional in the course of the performance of this Agreement shall be considered the property of the Owner. The Design Professional must return any and all data supplied by the Owner in whatever form it is maintained promptly at the request of the Owner. The Design Professional may be held civilly or criminally liable for improper disclosure of Confidential Information.

3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Design Professional for records containing Confidential Information, the Design Professional shall promptly notify the Owner and cooperate with the Owner in any lawful effort to protect the Confidential Information.



4. Reporting of Unauthorized Disclosure. The Design Professional shall immediately report to the Owner any unauthorized disclosure of Confidential Information.

5. Survives Termination. The Design Professional's obligations under this section shall survive termination or expiration of this Agreement.

10.13 PROCUREMENT. The Design Professional shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

10.14 NON-EXCLUSIVE RIGHTS. This Agreement is not exclusive. The Owner reserves the right to select other vendors to provide services similar or identical to those described in this Agreement.

10.15 AUTHORIZATION. Design Professional represents and warrants that: i. It has the right, power and authority to enter into and perform its obligations under this Agreement. ii. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

10.16 SUCCESSORS IN INTEREST. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

10.17 RECORDS RETENTION AND ACCESS. The Design Professional shall maintain accurate, current, and complete records of the financial activity of this Agreement which sufficiently and properly document and calculate all charges billed to the Owner throughout the term of this Agreement and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Design Professional shall permit the Owner, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Design Professional relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Design Professional shall not impose a charge for audit or examination of the Design Professional's books and records. Based on the audit findings, the Owner reserves the right to address the Design Professional's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Design Professional shall comply with these additional records retention and access requirements:

i. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement require matching funds, cash contributions made by the Design Professional and third party in-kind (property or service) contributions must be verifiable from the Design Professional's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.

ii. The Design Professional shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

iii. The Design Professional, in maintaining project expenditure accounts, records and reports, shall



make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Owner.

iv. The Design Professional shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

v. The Design Professional shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are nonmedical, must be maintained for a period of five (5) years.

10.18 SOLICITATION. The Design Professional represents and warrants that no person or selling agency has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

10.19 COUNTERPARTS. The Parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

10.20 SUSPENSION AND DEBARMENT. The Design Professional certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal agency. The Design Professional certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

10.21 CONFLICTS OF INTEREST. Design Professional represents, warrants, and covenants that no relationship exists or will exist during the Agreement period between the Design Professional and the Owner that is a conflict of interest. No employee, officer or agent of the Design Professional or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code Chapter 68B shall apply to this Agreement. If a conflict of interest is proven to the Owner, the Owner may terminate this Agreement, and the Design Professional shall be liable for any excess costs to the Owner as a result of the conflict of interest. The Design Professional shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Design Professional shall report any potential, real, or apparent conflict of interest to the Owner.

10.22 CERTIFICATION REGARDING SALES AND USE TAX. By executing this Design Professional, the Design Professional certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) and (43). The Design Professional also acknowledges that the Owner may declare the Agreement void if the above certification is false. The Design Professional also understands that fraudulent certification may result in the Owner or its representative filing for damages for breach of contract.

10.23 RIGHT TO ADDRESS THE BOARD OF DIRECTORS OR OTHER MANAGING ENTITY. The Owner reserves the right to address the Design Professional's board of directors or other managing entity of the Design Professional regarding performance, expenditures and any other issue as appropriate. The Owner determines appropriateness.

10.24 REPAYMENT OBLIGATION. In the event that any State and/or federal funds are deferred and/or



disallowed as a result of any expenditure by the Design Professional in violation of the laws or regulations applicable to such funds, the Design Professional shall be liable to the Owner for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Design Professional as well as any of its subcontractors.

10.25 FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS. The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

10.26 PUBLIC RECORDS. The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

10.27 USE OF NAME OR INTELLECTUAL PROPERTY. The Design Professional agrees it will not use the Owner and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Owner and/or the State.

10.28 TAXES. The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Design Professional's employee's wages. The State is exempt from State and local sales and use taxes on the services.

10.29 NO MINIMUMS GUARANTEED. The Agreement does not guarantee any minimum level of purchases or any minimum amount of compensation.

10.30 INDEPENDENT CONTRACTOR The Design Professional is an independent contractor. The Design Professional is responsible for its office space, support staff, and equipment or tools. The Design Professional and its staff are not eligible for any State of Iowa employee benefits. The Design Professional is responsible for paying any income tax it owes as a result of this Agreement and the payment received for Services provided hereunder.

10.31 NO THIRD PARTY BENEFICIARY There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the Owner and the Design Professional.

10.32 EMPLOYMENT PRACTICES: It is the intent of the Iowa Department of Administrative Services to assure equal employment opportunity in all contract work as required by law. Service providers to the State of Iowa, including the Design Professional, are required to take affirmative action to ensure that applicants employed or seeking employment with them are treated equally as required by law. Service providers to the State of Iowa, including the Design Professional, shall not illegally discriminate against any employee. During the course of the Project, the Service provider may be required to show compliance with the EEO and Affirmative Action requirements. Noncompliance with the provisions set forth at the time of contract award may result in termination or suspension of the Agreement in whole or in part. All Service providers to the State of Iowa, including the Design Professional, are prohibited from engaging in discriminatory employment practices forbidden by Iowa law. Service providers to the State of Iowa, including the Design Professional, shall complete and submit the Nondiscrimination Clause form for the Owner's approval.

10.33 LABOR RELATIONS In accordance with Executive Order Number 69, issued on or about January 14, 2011, no project labor agreement (also known as a PLA), or similar, will be used on this Project. Iowa is a right to work state. No consultant, contractor, or employee shall be obligated to contract with or join any labor organization as a condition of performing work on this Project. The Design Professional shall comply with all Iowa and Federal labor laws.

10.34 LEGISLATIVE CHANGES The Design Professional expressly acknowledges that the contracted



services are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the Project, the Owner shall use best efforts to provide written notice to the Design Professional of any legislative change. The Parties shall meet and make a good faith effort to agree upon changes to the Agreement to address the legislative change.

10.35 SURVIVAL The provisions of this Agreement, which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any indemnities or any expressed limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

ARTICLE 11 SCHEDULE OF EXHIBITS

RFP # _____

Addenda # __, __, __

This agreement entered into as of the date entered in ARTICLE 1.

OWNER State of Iowa - DAS Department of Administrative Services

Design Professional: Example Contractor

By: _____

(Authorized Representative)

Name: _____

Title: _____

Date: _____

Owner: State of Iowa - DAS

By: _____

(Authorized Representative)

Name: _____

Title: _____

Date: _____

END OF DOCUMENT.

