

AIA[®] Document C132[™] - 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the 17th day of July in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:

Woodbury County Law Enforcement Center Authority
c/o Woodbury County Courthouse
620 Douglas Street
Sioux City, IA 51101

and the Construction Manager:

Baker Mechanical, Inc. dba Baker Group
1600 SE Corporate Woods Dr.
Ankeny, IA 50021

for the following Project:

Woodbury County Law Enforcement Center
TBD
Sioux City, IA 51101

The Architect is:

Goldberg Group Architects, PC (GGA)
1520 Francis St. Suite 200C
St. Joseph, MO 64501

The Owner and Construction Manager agree as follows.



ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A132[™]-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132[™]-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232[™]-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

§ 1.1.1 The Owner's program for the Project:

The Owner's Program shall be a joint effort of Baker Group and GGA as the Architect to design and construct a new Law Enforcement Center that shall include the Sheriff's Department, County Jail and Courtrooms. »

§ 1.1.2 The Project's physical characteristics:

«TBD by Design team and budget»

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

«Fifty Million Three Hundred Thousand Dollars (\$50,300,000) plus Two Million Eight Hundred Thousand Dollars (\$2,800,000)» Final figure will be determined by bids received and Owner's approval.

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

«TBD by mutual agreement»

.2 Commencement of construction:

«TBD by mutual agreement»

.3 Substantial Completion date or milestone dates: «TBD by mutual agreement »

.4 Other:

Final Completion of work shall occur: «Final Acceptance Date: TBD by mutual agreement »

§ 1.1.5 The Owner intends the following procurement method for the Project:

[] One Contractor

[] Multiple Prime Contractors

[] Unknown at time of execution

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

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

«§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)»

§ 1.1.7.2 intentionally blank

»

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

«Ron Wieck, Chairman »
« Woodbury County Law Enforcement Center Authority »
«c/o Woodbury County Courthouse »
«620 Douglas Street »
«Sioux City, IA 51101 »

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

The Architect and the Authority Board, if requested or required by Iowa law »

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:

.1 Land Surveyor:

«N/A»« »

.2 Geotechnical Engineer:

«N/A»« »

.3 Civil Engineer:

«N/A»« »

.4 Other:

«N/A»



§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:

Shane Albrecht, CDCMP
Baker Group

1600 SE Corporate Woods Drive
Ankeny, IA 50021

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:

See Exhibit "E" Project Team

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:

«N/A»« »

.2 Other consultants:

«N/A»

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

«N/A»

§ 1.1.15 Other Initial Information on which the Agreement is based:

In addition to Construction Management services outlined in this agreement, Baker Group will also coordinate the work on 28E agreement between Woodbury County and City of Sioux City for off-site improvements to 28th street.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Construction Manager shall adjust its services and the Owner and the Construction Manager shall appropriately adjust the schedules, and the Construction Manager's compensation, as necessary, and as mutually agreed upon by the parties.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement and other services as may be necessary to provide a complete and accurate performance of services. The Construction Manager shall exercise reasonable care, in the event it engages engineers, consultants, subcontractors, agents, employees and/or officers (collectively the "Consultants"), to engage only such persons and entities who possess the experience, skill, knowledge and character necessary to qualify them individually for the particular duties they perform and who shall perform all work in conformity with the standards of reasonable care and skill with respect to professional services they are rendering. Said consultants shall carry professional liability insurance. The Construction Manager assumes responsibility and liability for the acts, errors and omissions of its Consultants.

§ 2.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience and qualifications in dealing with projects of similar scope, The Construction Manager shall exercise skill and care consistent with the expertise, experience and qualifications of construction management professionals necessary for the successful performance of this Project.

§ 2.2.2 The Construction Manager shall provide professional construction management services on this Project. Such professional services include substantial discretion and authority to plan, schedule, estimate, approve, coordinate, manage and direct phases of the Project, within the parameters of the Contract Documents. Owner hereby finds and Construction Manager hereby represents and concurs that professional construction management services require a high degree of professional skill and experience in the construction management industry, and that Construction Manager possesses such requisite skill and experience to manage a public construction project of this size and type. The Construction Manager represents that it is knowledgeable in public construction and shall exercise reasonable care and skill to comply with all applicable federal and state laws as well as rules, regulations and specifications adopted by any agency with authority over the construction and renovation of this Project.

§ 2.2.3 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of a Architect as described in AIA Document B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified. The Construction Manager shall not be responsible for actions taken by the Architect.

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

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

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) in the aggregate for bodily injury and property damage.

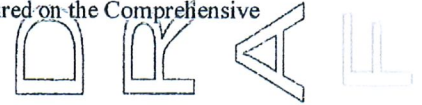
§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000.00) combined single limit and two million dollars (\$2,000,000.00) aggregate for bodily injury and property damage.

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

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability as regulated by law.

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than two million dollars (\$ 2,000,000.00) per claim and in the aggregate. The Construction Manager shall maintain this coverage until completion of the Project and for a period of one (1) years thereafter.

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



ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project, unless additional updates are reasonably requested by the Owner.

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

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and routinely update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities with anticipated construction schedules and highlighted critical and long lead-time items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall collect, review and maintain safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings, Specifications and any other Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall prepare and update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall provide the Owner with information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi-governmental authorities for inclusion in the Contract Documents. Owner shall provide Construction Manager with any specific EEO requirements which it desires to have incorporated in to the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings, Specifications and other Construction documents, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit a list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager and Architect shall work together to answer questions with regard to questions from bidders and with the issuance of addenda. The Construction Manager will assure compliance with all the requirements of Iowa law related to procurement and competitive bidding for public improvements, including but not limited to Chapter 26 and 573 of the Iowa Code.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall prepare for the Owner's review and approval Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall ensure that all required permits, licenses and other regulatory agency approvals have been obtained before beginning work on each phase of the project. The Construction Manager shall advise the Owner in writing that such permits, licenses and other approvals have been obtained. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall file documents required for the approvals of government authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.1, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on thirty (30) days after the Owner accepts the Architect's final Certificate for Payment. Construction Manager will manage any repair or correction issues, as outlined in Section 12.2.2 of the A232-2009 General Conditions for the Contract of Construction as modified, with all contractors and equipment suppliers for a period of one year after substantial completion and will provide a one-year correction period inspection on the Work.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site, full time, whenever the Work is being performed and when otherwise necessary, even when work is not being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified and as amended and approved by Owner.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct weekly meetings with the Prime Contractors, Owner and Design Team to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Consistent with various bidding documents and utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall accept work only in conformance with the Contract Documents and shall have authority, upon consultation with the Architect and Owner, to reject work which does not conform to the Contract Documents. The Construction Manager shall work solely for the benefit of the Owner.

§ 3.3.10 The Construction Manager shall prepare a detailed estimate of Construction cost to include all phases and costs associated with the Project. The Construction cost estimate shall be accompanied by a report to the Owner identifying variances from the Owner's Project and Construction Budget. Such report shall be updated on at least a monthly basis as more frequently if requested by owner. The Construction Manager shall make suggestions of alternative construction as necessary to maintain the construction budget and shall facilitate decisions by the Owner and Architect when changes to the design are required to remain within the Owner's Project and Construction Budget.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project if requested by Owner and advise the Owner and the Architect as to variances between actual and budgeted or estimated costs.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) forward the Contractors' Applications for Payment to the Architect for approval.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

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

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall work to guard the Owner against defects and deficiencies in the Work by only accepting work performed in accordance with the Contract Documents, unless non-conforming work is expressly approved by the Owner. The Construction Manager, in consultation with the Architect, shall reject Work that does not conform to the Contract Documents and shall notify the Owner prior to the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.17.1 The Construction Manager shall receive certificates of insurance and bond documents from the Contractors and forward them to the Owner with a copy to the Architect.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall review and approve and then submit the shop drawings, product data, samples and other submittals to the Architect for approval with copies to the Owner. It is the Construction Manager's responsibility to ascertain that the drawings, plans and specifications (except for those designed by the Architect) are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Construction Manager recognizes the portions of the drawings, plans and specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing. By approving and submitting shop drawings, product data, samples and other submittals, the Construction Manager thereby represents that it used its best professional judgment and effort to assure that the trade contractors have verified all field measurements, field construction criteria, dimensions, elevations, quantities, materials, catalog numbers, and similar data as shown on the Construction Documents furnished by the Architect, or will do so, and that the trade contractors have checked and coordinated each shop drawing, product data, samples and other submittals with the requirements of the work and of the Construction Documents. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require or request.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On an every two week basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect:

- .1 Project schedule status based on percent of completion;
- .2 Submittal schedule and status report;
- .3 Request for information, Change Order, and Construction Change Directive logs;
- .4 Tests and inspection reports;
- .5 Status report of nonconforming and rejected Work;



§ 3.3.20.2 NOT APPLICABLE .

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the Project site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order, and in addition, approved Project Shop Drawings, Product Data, samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.23 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete. Upon achievement of substantial completion, the Construction Manager shall assist the Architect in performing its responsibilities in accordance with procedures for the review and processing of applications by contractors for progress payments and final payments as the Owner's Designated Contract Representative for purposes of evaluating the release of retainage.

§ 3.3.24 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.25 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance and bond documents received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens and/or Iowa Code Chapter 573 claim or bonds indemnifying the Owner against liens; and/or Iowa Code Chapter 573 claims; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.26 The Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents. The Construction Manager shall also secure and transmit to the Owner required affidavits, releases, bonds and waivers and shall deliver to the Owner all keys and other information. In consultation with the Architect, the Construction Manager shall determine when the Project and

the Contractor's work is finally completed, and shall provide to the Owner a written recommendation regarding payment to the Contractor and shall issue a final Project Application for payment upon compliance with the requirements of the Contract Documents. At the conclusion of the Project, the Construction Manager shall prepare and deliver to the Owner final project account and close-out reports. The Construction Manager shall collect and submit the as-built drawings to the Owner within a reasonable period of time following final completion. The Construction Manager shall also observe commissioning work and be responsible for requiring the Contractor to check all equipment and verify that all Project systems are working properly at the end of the Project and prior to Final Acceptance.



§ 3.3.27 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, and Construction Manager. Consent shall not be unreasonably withheld. The Architect shall be informed of any modifications made to the Construction Manager's contractual duties or responsibilities.

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

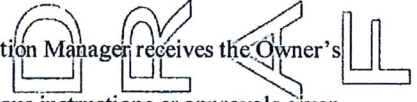
§ 3.3.29 The Construction Manager shall, by visits to the site and by adequate and necessary observations and inspections, required or otherwise appropriate to the stage and nature of the construction activities, exercise due diligence to safeguard the Owner from defects and deficiencies in the Work performed and materials provided by the Contractor and from the trade contractor's failure to carry out the work in accordance with the Contract Documents and the Project schedule. These provisions shall require a representative of the Construction Manager to be available in Sioux City for communication with the site supervisors and/or managers of each Contractor while Construction is being performed. A representative shall also be available at all times, whether on site or not, by cellular phone.

§ 3.3.30 During the one (1) year correction period following the date of Substantial Completion, the Construction Manager shall oversee, monitor and coordinate the remedial work of the Contractors, including but not limited to, making certain that the respective Contractors are notified of the extent and nature of the remedial work which needs to be done; and that such work is done in a timely and satisfactory manner.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)



Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material or substantial change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement that could not have been reasonably known by the Construction Manager prior to entering into this Agreement;
- .3 Preparation of documentation for alternate bid requests proposed by the Owner;
- .4 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .5 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or
- .6 Service as the Initial Decision Maker.

§ 4.3.2 Unless in the Construction Manager's opinion an emergency exists which requires immediate action to avoid damage to property or injury to persons, to avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services at no additional charge, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need, and advise the Owner if continued services by the Architect would only be rendered if the Owner makes additional payments to the Architect, and also advise Owner of the anticipate cost of such services.

- .1 Services in evaluating more than five (5) formal Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements.

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

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain a Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition as modified and as amended and approved by the Owner. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services. The Board of Supervisors or its authorized designee, to the extent such designation is permitted by law, shall be solely authorized to act on

the Owner's behalf with respect to the Project, Change Order Approvals and the Approved Construction Budget. The Owner's administrative representative or Board designee shall be available during working hours as often as may be necessary to render decisions which can be made without the Board of Supervisor approval and to furnish information in a timely manner. The Owner shall provide to the Construction Manager the contact information for the Owner's contact person(s). If it becomes necessary to appoint a new representative, such appointment shall be communicated to the Construction Manager in writing within three (3) days of such appointment.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services required to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the trade contractors have used the money paid by or on behalf of the Owner, as may be reasonably necessary at any time for the Project. Construction Manager shall collect from trade contractors, and where appropriate, their subcontractors or suppliers, evidence of payment of debts associated with the Project and a final release of all claims prior to final payment. Construction Manager shall further review and verify entitlement to release of retainage, and review and make recommendations to Owner as to the validity of any claims asserted under Iowa Code Chapter 573.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services, however, Owner shall have no affirmative obligation or duty under the Agreement to inspect for defects or errors in the Project or the Architect's instruments of services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.



§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

ARTICLE 6 COST OF THE WORK

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


§ 6.2.1 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's professional judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.2.2 The total aggregate cost of the Project including management and professional services fees shall not exceed Fifty-three Million, One Hundred Thousand Dollars (\$53,100,000.) The Construction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Architect to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction.

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

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

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.2 and the Architect and Construction Manager incorporate the required modifications to the Construction Documents to reduce the Cost of Work, yet the sum of the lowest responsive, responsible bid on the Project exceeds the Owner's budget for the Cost of Work, the Owner may

- .1 give written approval to increase the budget for the Cost of the Work;
- .2 authorize rebidding of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Section 9.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the budget for the Cost of Work.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the bids within the budget of the Cost of Work.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Drawings, Specifications and other documents prepared by the Architect for this Project are deemed Instruments of Service for use with this Project and shall become the property of the Owner, whether or not the Project is completed.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within 10 (ten) years after the date of Final Acceptance of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of

the Contract for Construction, as modified. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. The Architect's obligation under this Section 8.1.2 shall survive completion of Architect's services under this Agreement or termination of this Agreement.

§ 8.1.3 Indemnification: The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner against all damages or liabilities, including reasonable attorney's fees, to the extent caused by the Architect's negligent error or omission in the performance of professional services required for the Project, including any plan or specification within the responsibility of the Architect or to any breach of duty or obligation assumed by or required under this Agreement and that of its subconsultants or anyone for whom the Architect is legally liable. If a suit, action, arbitration or other legal proceeding is instituted in connection with or arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all attorney fees, costs, expert witness fees and litigation expenses incurred by the prevailing party, including those incurred on appeal.

§ 8.2 Mediation The Owner and Architect shall endeavor in good faith to resolve claims, disputes and other matters in question between them by direct negotiation and, if unsuccessful, may, by mutual agreement and in their discretion, submit same to non-binding mediation which shall be in accordance with Iowa Code Chapter 679C. Requests for mediation shall be given in writing to the other party to this Agreement. If the Owner and Architect are unable to mutually agree upon a mediator in writing within sixty (60) days of receiving the written request for mediation, either party may then institute legal or equitable proceedings. Mediation shall be voluntary only and shall not be a prerequisite to litigation or other means of dispute resolution.

8.2.2 The Architect or Owner, as appropriate, shall include a similar mediation provision in all its agreements with contractors and consultants retained for the Project and shall require all contractors and consultants to also include a similar mediation provision in all agreements with their subcontractors and sub-consultants so retained for the Project, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

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

§ 8.2.4 If the parties do not resolve a dispute through direct negotiations or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

-] Arbitration pursuant to Section 8.3 of this Agreement
] Litigation in a court of competent jurisdiction

§ 8.3 Arbitration – NOT APPLICABLE

§ 8.3.4 Consolidation or Joinder – NOT APPLICABLE

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement, except that payment may be withheld from the Construction Manager for the Construction Manager's substantial non-compliance or non-performance formally claimed and/or determined in accordance with the terms of this Agreement without penalty to the Owner for such

withholding. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services due to substantial nonperformance, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.

§ 9.3 This Agreement may be terminated by either party upon not less than seven days' written notice in the event that the Project is abandoned by the Owner for more than 180 consecutive days for reasons other than the fault of the Construction Manager.

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

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

§ 9.5.1 Notwithstanding any other provisions of this Agreement, if funds anticipated for the continued fulfillment of the Agreement are at any time not forthcoming or insufficient, either through the failure of the State or the Owner to appropriate funds or through discontinuance or material alteration of the program for which funds were provided, the Owner shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days written notice documenting the lack of funding.

§ 9.5.2 With the mutual agreement of both parties upon receipt and acceptance of not less than thirty (30) days' written notice, this Agreement may be terminated on any agreed date before the end of the term without penalty to either party.

§ 9.6 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed through the effective date of termination.

§ 9.7 Construction Manager shall be responsible for providing Owner with all requested documentation necessary to support the payment requested by Construction Manager for services performed prior to the date of termination.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Iowa.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction as modified and as amended and agreed by Construction Manager and Owner, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

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

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of

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

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

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Construction Manager shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Construction Manager discovers that such substances as described herein have been used or do exist in the Project, the Construction Manager shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action.

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

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) comply with any public records request under the Iowa Open Records law, as applicable.

ARTICLE 11 COMPENSATION

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

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

All Pre-Construction services are considered to be part of the overall fee.

§ 11.1.2 For Construction Phase Services in Section 3.3:

The Construction Management fee shall be 3% of the direct job costs plus direct job costs of 28E agreement. Architect services will not be considered a direct job cost and will not be included in the total project cost when determining Construction Manager's fee.

§ 11.3 Additional Services shall be billed on an hourly basis as outlined in Exhibit D - Construction Manager billing rates.

« »

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus «0» percent («zero» %), or as otherwise stated below:

« »

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

«See Exhibit "D"»

Employee or Category

Rate (\$0.00)

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include

expenses incurred by the Construction Manager directly related to the Project. Any Reimbursable Expenses must receive prior approval of the Owner which shall not be unreasonably withheld. Reimbursable Expenses are, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

The Construction Manager shall provide complete documentation, including copies of all invoices paid by the Construction Manager, for those expenses that are to be reimbursed.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager plus ~~zero~~ percent (~~0~~ %) of the expenses incurred.

§ 11.7 Payments to the Construction Manager

§ 11.7.1 No initial payment shall be required.

§ 11.7.1.1 Subsequent payment for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.1.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly by the last day of each month in proportion to services proven to have been performed. Amounts unpaid «sixty» («60») days after the invoice date shall bear interest at the rate established by Section 74A.2 of the Code of Iowa. All pay requests must be received by the County seven days prior to the Board of Supervisors meeting which is held every Tuesday of each month.

§ 11.7.3 The Owner shall not permanently withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding. However, the Owner may, upon the filing of or in anticipation of the imminent filing of a formal claim against the Construction Manager, withhold amounts in dispute from the Construction Manager pending the outcome of the claim.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

«§ 12.1 Payment to the Construction Manager will be made by the Owner from cash on hand from such sources as may be legally available to the County.»

§12.2 Construction Manager shall provide the insurance specified in Exhibit "C" hereto.

§ 12.3 The Construction Manager shall not be owned, operated, or managed by a registered sex offender who has been convicted of a sex offense against a minor in accordance with Iowa Code 692A.113. In addition, the Construction Manager shall not permit an employee, a subconsultant owned, operated, or managed by, or subconsultant employee who is a registered sex offender convicted of a sex offense against a minor on real property of the Owner's properties in accordance with Iowa Code 692A.113, and shall fully executed and deliver a copy of 'Acknowledgement and Certification' form within ten (10) days of the execution of the Agreement or before any such workers are on the Project site.

§12.4 The Construction Manager, with regard to work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the regulations promulgated thereunder.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below and is effective after execution by all parties of this document and all documents listed below:

- .1 AIA Document C132™-2009, Standard Form Agreement Between Owner and Construction Manager as Adviser, as modified.
- .2 Other documents:

Exhibit "A" – Partial Lien Waiver
Exhibit "B" – Final Lien Waiver
Exhibit "C" – Insurance Requirements
Exhibit "D" – Construction Manager Billing Rates
Exhibit "E" – Project Team
Exhibit "F" – Scope of Service

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



OWNER (Signature)



CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

«Mark Zimmerman, VP Finance »« »

(Printed name and title)