

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

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

AGREEMENT made as of the \_\_\_\_\_ day of March in the year 2020  
(In words, indicate day, month and year.)

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

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

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

Goldberg Group Architects, PC »« »  
«805 N. 36th Street – Suite B »  
«St. Joseph, MO 64506

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

Woodbury County Law Enforcement Center  
TBD  
Sioux City, IA

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

TBD

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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 C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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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AGREEMENT ARTICLE 1

INITIAL INFORMATION

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

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

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

« »

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

«Forty-three Million One Hundred Eighty-four Thousand Dollars (\$43,184,000.00)»

§ 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 Acceptance Date: TBD by mutual agreement »

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

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

[  ] One Contractor

[  ] Multiple Prime Contractors

[  ] Unknown at time of execution

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

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

«N/A »

§ 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.)*

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

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

«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 Architect's submittals to the Owner are as follows:

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



«Construction Manager and the Authority Board, if requested or required by Iowa law »

§ 1.1.10 The Owner will retain the following consultants:

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

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

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:

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

«Kevin Rost, AIA »

«Goldberg Group Architects, PC »

«805 N. 36<sup>th</sup> Street – Suite B »

«St. Joseph, MO 64506 »

« »

« »

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

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

§ 1.1.12.1 Consultants retained under Basic Services: None

§ 1.1.12.2 Consultants retained under Additional Services:

«N/A »

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

«N/A »

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect, as a representative of the Owner, shall perform its services consistent with the professional skill and care ordinarily provided by Architects with experience in projects similar to the Project practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and will perform the Architect's services in a manner consistent with the interests of the Owner.

§ 2.2.1 The Architect accepts the relationship of trust and confidence established with the Owner by this Agreement and will exercise the Architect's skill and judgment in furthering the interests of the Owner and will perform the Architect services in an expeditious and economical manner consistent with the interests of the Owner and consistent with appropriate professional standards.

§ 2.2.2 The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations, codes and the Owner's policies that may exist as of the date of this Agreement. The Architect shall review its design for compliance with applicable: (a) technical specifications, (b) long-term Projects Plan, (c) building codes, (d) ADA standards, (e) approved Project schedules and (f) other contract obligations.



§ 2.2.3 Whenever this Agreement provides that the Architect may rely on information provided by the Owner, from any source, such reliance shall be reasonably based on the Architect's standard of care contained in Section 2.2.

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

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project, which such representative shall be acceptable to the Owner. The Architect may not change such representative without the Owner's consent.

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

§ 2.6 The Architect shall maintain insurance as specified in Exhibit "C".

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing insurance as specified in Exhibit "C". All deductibles and premiums associated with the insurance coverages in Exhibit "C" shall be the responsibility of the Architect. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. The Architect shall require that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project in the reasonable discretion of the Architect. The Architect and Consultants shall submit proof of such insurance to the Owner before submittal of the first invoice. The Architect will provide written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies for a period of two (2) years from the date of final completion of the Project under this Agreement.

§ 2.6.7 Commercial Liability and Automobile Liability policies cited above should be endorsed as follows:

"The insurance company and the insured expressly agree and state that the purchase of this policy of insurance by the insured does not waive any of the defense of governmental immunity available to the insured under Iowa Code Section 670 as it now exists or may be amended from time to time. The company and the insured further agree that this policy of insurance shall cover only its claims and not subject to the defense of governmental immunity under Iowa Code Section 670."

§ 2.6.8 The Certificate of Insurance Commercial Liability and Automobile Liability policies should state:

"The insurance company and the insured expressly agree and state that granting additional insured status on this policy of insurance does not waive any of the defenses of governmental immunity available to the Woodbury County Law Enforcement Center Authority under Iowa Code Section 670 as it now exists or may be amended from time to time."

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

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services and any other engineering services necessary to produce a reasonably complete and accurate set of Construction Documents and other consulting services as described in Article 3. Services not set forth in this Article 3 are Additional Services.

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



3.1.2 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction and shall serve, in conjunction with the Construction Manager, as the "Owner's Authorized Contract Representative" for all designated purposes and/or responsibilities under Iowa Code Chapter 26. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this agreement, unless otherwise modified by written amendment.

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

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

3.1.4.1 The Construction Manager shall provide the estimating services to establish the Project construction budget. However, the Architect is responsible for designing the Project within the Owner-approved Project construction budget. The "Project construction budget" means the estimate of cost of the Work developed or to be developed for the project by the Construction Manager and approved by the Owner, as such may be amended or updated from time to time. The Architect and Construction Manager shall coordinate and cooperate with each other in the development of the design in order to facilitate the achievement of the Owner's Project construction budget.

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

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

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

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

§ 3.1.9 The Architect shall work with the Construction Manager to file on behalf of the Owner documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.10 The Architect will attend review or approval meetings such as: authority board, or public hearings as necessary and/or reasonably requested by the Owner at no additional cost.

§ 3.1.11 All documents produced by the Architect and its consultants pursuant to this Agreement shall be created with reasonable professional efforts to comply with applicable laws, statutes, ordinances, codes, rules, and regulations in effect at the time of construction document submission to building authorities. Design changes made necessary by newly enacted laws, codes and/or regulations after the date of submission of the documents to the building authorities shall entitle the Architect and its consultants to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement. All Construction Documents shall be dated and shall contain, and/or be adopted by a statement referring to each specific document covered by the signature of the



registered architect and/or engineer in responsible charge, a certificate that the work was done by such registered architect and/or engineer or under the registered architect's and/or engineer's responsible charge and the Iowa legible seal for such registrant.

§ 3.1.12 The Architect shall notify the Owner, in writing, of any other information needed for the Project that is not included in or to be provided under this Agreement.

§ 3.1.13 The Owner is not responsible for identifying what information, survey services, or reports are required or needed for the Project.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on preliminary discussions between the Owner, the Construction Manager and the Architect, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager and Owner, as necessary, to review the Design Development Documents. Architect shall also provide drawings and other documents which depict the current status of design development for the Owner's review and the Construction Manager's information.

§ 3.3.3 Upon receipt of the Owner's comments and the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall provide the completed Design Development Documents to the Owner for approval. If necessary, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of said actions.

§ 3.3.4 The Architect shall not proceed with the Construction Documents Phase until:

1. The Architect has received the Owner's acceptance of the Design Development Documents,
2. The Architect has received written authorization and direction from the Owner to proceed with the Construction Documents Phase.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. It is Architect's responsibility to ascertain that the drawings, plans and specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. The Architect shall review laws, codes and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction of the Project. All documents produced by the Architect pursuant to this Agreement shall comply with applicable laws, statutes, ordinances, codes, rules, and regulations in effect at the time of construction document submission to building authorities. All architectural documents shall be dated and shall contain the signature of the registered architect in responsible charge, a certificate that the work was done by such registered architect or under the registered architect's direct personal supervision, and the Iowa legible seal for such registrant. The Owner and Architect acknowledge that, in order to construct the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in



accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents, and the Architect shall assist the Construction Manager in filing the documents in the Owner's name, if necessary, required for the approval of governmental authorities having jurisdiction over the Project. To the extent caused by a negligent act, error or omission of the Architect, the Architect shall be responsible, at its own expense, for making any changes in the Construction Documents necessary to meet such design requirements.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include, among other things, scope of work, Construction Documents, bidding requirements and sample forms. Any and all sample forms and contracts provided by the Architect shall to the best of its knowledge conform to applicable requirements of Iowa Code Chapter 26 and Iowa Code Chapter 573 and other applicable statutes at the time of issuance of bidding documents. Owner's legal counsel shall be contacted by the Owner to review the Architect's provided forms and contracts for legal and statutory compliance and legal counsel shall notify the Owner and Architect of any needed changes to ensure statutory compliance.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents and advise the Construction Manager and Owner of any adjustments to the Project budget.

§ 3.4.5 Upon completion of the Construction Documents phase of the Project, the Architect shall provide Construction Documents, including drawings and specifications, for the Owner's approval and the Construction Manager's information. Prior to bid, the Construction Manager shall prepare a final estimate of the budget for the Cost of the Work based on said Construction Documents. The Architect shall make revisions to the Construction Documents when requested by the Owner if the final estimate of the Cost of the Work exceeds the Project construction budget.

### § 3.5 Bidding Services

#### § 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining competitive bids; (2) confirming responsiveness of bids; (3) evaluating and validating the bids to determine the successful bid; and (4) awarding and preparing contracts for construction.

#### § 3.5.2 Competitive Bidding

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

§ 3.5.2.2 The Architect shall not proceed with the competitive bidding phase until:

1. The Architect has received the Owner's written acceptance of the Construction Documents;
2. The Architect has received written authorization and direction from the Owner to proceed with the competitive bidding phase.

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

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders, in compliance with Iowa's Competitive Bidding Laws,



- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of prepared and issued addenda, and
- .4 reviewing and making recommendations of lowest responsive, responsible bids.

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

3.5.2.5 The Architect shall include in the Specifications requirements that the Contractors provide operation manuals and adequate training for the Owner in the operation and maintenance of mechanical, electrical, heating and ventilation, air-conditioning, and other building systems installed by the contractors, and provide all warranty information pertaining to such systems.

3.5.2.6 The Architect shall work with the Construction Manager to file documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be mandated by said governmental authorities at its own expense if determined to be originally drawn in error.

### § 3.5.3 Negotiated Proposals – NOT APPLICABLE

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified and as amended and approved by the parties. If the Owner and Contractor modify AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, those modifications shall be incorporated into this Agreement, and to the extent any such modification affects the Architect's services under this Agreement, the Architect's compensation and schedule shall be adjusted pursuant to Article 4. To the extent of any conflict between the terms of this Agreement and the AIA Document A232-2009 General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, the interpretation most favorable to the Owner shall control.

§ 3.6.1.2 The Architect shall be a representative of and shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect, as a hired representative of the Owner, shall provide Construction Phase Services in a manner consistent with that degree of skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement, and until the final correction period is complete. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents to the extent the Architect has performed its own contractual obligations as they related to priorities and updating the Project Schedule, and observing and approving the Contractor's work. However, Architect shall report to the Owner known deviations from the Contract Documents from the most recent Construction Schedule. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. Provided, however, the Architect shall not issue the final Certificate of Payment until the Owner confirms, in writing, that the Contractor has satisfied all of the conditions under Section 9.10 of the AIA A232 General Conditions of the Construction Contract, Construction Manager as Adviser Edition and the Work has been



fully completed in accordance with the Contract Documents.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to by Owner and Architect and/or as otherwise required in Section 4.3.3, to observe and evaluate the work in order to become familiar with the progress and quality of the Work; and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents. As needed, the Architect shall attend all construction progress meetings in conjunction with or in addition to visiting the site in satisfaction of other responsibilities. The Architect shall use reasonable care to guard the Owner against defects and deficiencies in the work and the Contractor's failure to carry out the work in accordance with the Contract Documents and the construction schedule. On the basis of his on-site observations as a professional Architect, the Architect shall keep the Owner and the Construction Manager reasonably informed of the progress and quality of the work, and shall guard the Owner against defects and deficiencies in the Work and against the Contractor's failure to carry out the Work in accordance with the Construction Documents and construction schedule. In doing so, the Architect shall report to the Owner and the Construction Manager, in writing, any (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the work. The Architect shall provide architectural services made necessary by major defects or deficiencies in the work of the Contractor which, through reasonable care, should have been discovered by the Architect and promptly reported to the Owner and Contractor(s), but which the Architect failed to discover and/or report.

§ 3.6.2.2 The Architect has the authority to reject minor Work that does not conform to the Contract Documents, upon notice to Owner and Construction Manager, and shall advise the Owner in writing regarding a recommendation of rejection of Work that does not conform to the Contract Documents. If the Architect has knowledge of any Work which does not conform to the Contract Documents which significantly impacts the Owner, the Architect shall promptly notify the Owner and Construction Manager. The Architect shall not authorize or direct any Work stoppage, removal of Work in place, or changes in any Work without prior written approval of the Owner. Wherever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect shall require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect, nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employee or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager or Owner, or Contractor through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon by the Architect, Owner and Construction Manager or otherwise within fifteen (15) days of such request. The Owner shall not be bound by the Architect's interpretation or decision.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, and shall not be liable for results of interpretations or decisions rendered in good faith.

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

§ 3.6.2.6 The Architect shall select and specify materials for the Project with no asbestos or asbestos-containing material.



### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify an application for payment not more frequently than monthly. Within seven (7) days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

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

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

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall be a representation that the Architect has confirmed that the Contractor has submitted all required data and information with its Application for Payment, but shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. However, the issuance of a Certificate of Payment shall constitute a representation to the Owner that to the best of the Architect's knowledge, information, and belief, the Contractors are entitled to payment in the amount certified.

§ 3.6.3.4 The Architect shall maintain a record of the applications and certificates for payment and stamp each application on the date it was received. Copies of the Applications and Certificates for payment shall be sent to the Owner with certification of each signed by the Architect.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise



specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents. The Architect shall advise the Owner, in writing, if the Architect becomes aware that the Work is proceeding in the absence of shop drawings and submittals that have been reviewed and approved, or are required to be reviewed and approved, in accordance with the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager before the Owner's approval and execution in accordance with the Contract Documents. The Architect shall provide services to assist the Construction Manager in evaluating Contractor claims, including requests for supplemental instructions and change orders.

§ 3.6.5.2 The Architect may authorize minor changes in the Work, upon notice to the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. For all other changes in the Work the Architect must obtain the Owner's written approval. Such changes shall be effected by written order issued by the Architect through the Construction Manager, to the Owner and Contractor.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work and shall produce said records upon request from the Owner.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. The Architect shall notify the Owner and Construction Manager in writing when, in the Architect's opinion, construction of the Project is substantially complete, and then when fully completed including all punch list and closeout items.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect, acting as the Owner's authorized contract representative in accordance with the requirements of Iowa law related to early release of retainage, shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, in addition to retainage, if necessary, for final completion or correction of the Work or to cover filed Iowa Code Chapter 573 claims. The Architect shall promptly provide to the Owner any written request for early release of retainage funds received by the Architect from the Contractor upon Substantial Completion, and shall provide to the Owner all documentation provided to the Architect by the Contractor in relation to such request for early release of retainage funds to the Contractor.

§ 3.6.6.3.1 Upon substantial completion of the Project, the Architect and/or its appropriate consultant shall be present at and participate in the initial startup and operation of all systems and equipment to help determine that such Work has been completed in accordance with the requirements of the Contract Documents and that the systems and equipment are functioning properly and fit for the intended purposes.

3.6.6.3.2 Upon Substantial Completion of the Project, the Architect shall prepare a set of reproducible record drawings showing changes in the Work made during construction based on marked-up print, drawings and other data furnished by the Contractors.

§ 3.6.6.4 Upon Final completion of the Project, the Architect shall attest that no asbestos or asbestos-containing material was specified as a building material in any Construction Documents for the Project and that, to the best of the Architect's knowledge, no asbestos or asbestos-containing materials were used as a building material on the Project, to comply with 40 C.F.R. Section 763.99(a)(7).

3.6.6.5 Eleven (11) months after the date of Substantial Completion, the Architect shall, without additional compensation, contact Owner and schedule and conduct a meeting with the Owner to review the facility operations and performance and to conduct a one-year correction period review to determine that the completed work remains in accordance with the requirements of the Contract Documents and to identify any then-required correction period work. The Architect shall provide assistance in enforcing any warranty issued by the Contractors.

### 3.7 SPECIAL FACILITY TRAINING AND TRANSITION SERVICES:

3.7.1 The Architect's Criminal Justice Consultant, Weber & Associates Inc., will serve as the Sheriff's Transition Coordinator, Transition planning services to be provided include:

- (a) Assist the Sheriff in writing:
  - Facility Policy and Procedure Manual
  - Inmate Handbook
  - Facility Bonding Regulations
  - POST Orders and POST Assignment
  - Descriptions Objective Inmate Classification system
- (b) Development of the Facility Emergency Protocol

3.7.2 Training: Weber and Associates, Inc. will provide orientation training to jail staff to include:

- (a) New Policy and Procedures Manual
- (b) Inmate Classification
- (c) POST Orders and Assignments









avoid damage to property or injury to persons, to avoid delay in the Construction Phase, the Architect 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 anticipated cost of such services. If the Owner subsequently determines that all or parts of those services are required, the Owner shall give prompt written notice to the Architect and the Owner shall compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Evaluating more than five (5) formal Claims as the Initial Decision Maker;
- .4 Evaluating more than ten (10) substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom unless such substitutions are required because of Architect's errors or omissions; or
- .5 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 90 days after the date of Substantial Completion of the Work.

§ 4.2.3 If the services covered by this Agreement have not been completed within «thirty-six » ( «36 » ) months from the date of commencement of construction, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

§ 5.4 The Owner shall consult with the Architect and Construction Manager to assist in establishing and periodically updating and overall budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager.

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

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



§ 5.6 Upon written request and to the extent necessary to allow Architect to perform its services under this Agreement, 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 The Owner shall furnish services of geotechnical engineers, when such services are requested by the Architect to the extent necessary to allow Architect to perform its service under this Agreement. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.9 The Owner shall furnish tests, inspections, and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect, as authorized by the Owner, shall provide to the Owner for the Owner's approval, a list of tests, inspections or reports that are required or anticipated in the Contract Documents and shall consult with the Owner in selecting and ordering services from consultants who provide such tests, inspections and reports.

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

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Architect's Instruments of Service. However, Owner shall have no obligation or responsibility to inspect the Project, Contract Documents, or Instruments of Service for defects.

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

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

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



5.15 When asbestos-related materials are suspected or found in the course of the Project, the Owner shall immediately provide the services of an asbestos-related expert or consultant to determine the proper course of action.

## ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments, at no additional cost to the Owner.

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1.

§ 6.7 If, after incorporating the modifications under Section 6.6, the lowest responsive, responsible bids received under the completed Construction Documents prepared by the Architect for the Project are in excess of the approved budget for the Cost of the Work, then the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;



- .2 if the lowest responsive, responsible bid exceeds the Owner's budget for the Cost of the Work by consult with Architect to revise the Project program, scope or quality as required to reduce the Cost of the Work;
- .3 authorize rebidding or renegotiation of the Project within a reasonable time;
- .4 terminate in accordance with Section 9.5; or
- .5 implement any other mutually acceptable alternative.

If the Owner chooses to proceed under Section 6.7.2 and/or 6.7.3, the Architect will, as an Additional Service and in cooperation with the Construction Manager and Owner, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

**§ 6.8** The Architect shall make the Instruments of Service and the Construction Documents conform to this approved construction budget prior to bid opening. To this end, Owner shall provide to Architect a confirmed budget/list of funds available for the project that cannot be changed or reduced without discussion with Architect. If the Architect develops knowledge during the progress of the Architect's work on the Project of any conditions which, in the opinion of the Architect, would be sufficient reason for revision of the budget for the Cost of the Work, the Architect shall so inform the Owner in writing. Upon receipt of such notification, the Owner, the Construction Manager and the Architect shall review the conditions and the budget for the Cost of the Work, and the Owner shall determine whether or not the conditions shall be removed or changed and whether or not the budget for the Cost of the Work amount shall be increased.

#### **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Owner acknowledges the Architect's construction documents, regardless of the media or format, are Instruments of Service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Owner upon completion of the services or termination of this Agreement, whether the Work for which they are made is executed or not, if payment in full of all monies then due to the Architect prior to completion or termination have been made by the Owner. The Owner reserves the right to use the Construction Documents developed for the Project in such a manner as the Owner may desire, subject to the provisions herein. The Architect shall be permitted to retain copies, including reproducible copies or electronic data, of the Instruments of Service for the Project. The Owner shall notify Architect in writing prior to Owner's modifications and/or reuse of the instruments of service for the Project. The Owner's or its retained agent's or representative's modification and/or reuse of the Instruments of Service for the Project without written authorization of the Architect will be at the Owner's and/or other retained entities sole risk and without liability or legal exposure to the Architect. Unless otherwise provided in this Agreement, nothing contained herein shall be construed as in derogation of the Architect's copyright rights.

#### **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 Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension



of performance of services under this Agreement, except that payment may be withheld from the Architect for the Architect's substantial non-compliance or non-performance formally claimed and/or determined in accordance with the terms of this Agreement, without penalty to Owner for such withholding. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

§ 9.3 The Owner may terminate this Agreement upon no less than seven (7) days' written notice to the Architect, in the event the Project is permanently abandoned. If the Owner abandons the Project for more than one Hundred eighty (180) consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven (7) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect 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 County 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 Upon any termination, the Owner shall be obligated to compensate the Architect for only those services rendered and acceptable before the effective date of termination, less any fees or damages that may be assessed or in dispute for non-performance which shall be held by Owner pending a final dispute resolution proceeding regarding the nonperformance.

9.7 The termination of this Agreement shall not relieve either the Owner or the Architect of any obligation previously accrued. The following provisions of this Agreement, and any other provisions that by their terms so provide, shall specifically survive any such termination; Article 7, Article 8, Article 10, and Article 12.

§ 9.8 The Owner and Architect's rights set forth in this Article 9 are in addition to and without prejudice to their other rights and remedies provided by law.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Iowa. Except as otherwise provided in this Agreement, all legal and equitable proceedings, controversies or disputes arising from this Agreement shall be enued in the Iowa District Court for Woodbury County.

§ 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.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other.

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect 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 Architect discovers that such substances as described herein have been used or do exist in the Project. The Architect 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 Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential an to any other person except to (1) its employees, (2) those who need to know the content of such to perform services or construction solely and exclusively for the Project, or (3) its consultant whose contracts include similar restrictions on the use of confidential information, or (4) comply with any public records requests under Iowa's Open Records Law, as applicable.

§ 10.9 Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

§ 10.10 The Architect understands and agrees that any written correspondence or communication (including emails) between itself and the Owner or any other entity as it relates to its work on this Project are subject to Iowa's Open Records Law (Iowa Code Chapter 22) and may be subject to public disclosure at any time upon valid request, except if otherwise deemed a confidential record by law.

## ARTICLE 11 COMPENSATION

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

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

« Stipulated percentage of Seven-and-35/100 Percent (7.35%) of final aggregate construction costs, including



Furnishings and Owner-approved changes and additions to the work. »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

«N/A »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation.)*

«Hourly Rates per Section 11.7 »

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

« »

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

Schematic Design Phase	«Fifteen »	percent (	«15 »	%)
Design Development Phase	«Twenty »	percent (	«20 »	%)
Construction Documents Phase	«Forty Five »	percent (	«45 »	%)
Construction Phase	«Twenty »	percent (	«20 »	%)
Total Basic Compensation	one hundred	percent (	100	%)

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

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«Hourly billing rates are listed below: »

Employee or Category

Rate (\$0.00)

Senior Principal	\$235.00
Project Manager / Principal	\$195.00
Project Architect	\$150.00
Project Designer	\$120.00
Interior Designer	\$110.00
BIM/CADD Technician	\$100.00
Administrative Staff	\$65.00
Criminologist	\$210.00

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project. 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 Architect shall provide complete documentation, including copies of all invoices paid by the Architect, for those expenses that are to be reimbursed.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus «zero » percent ( « 0 » %) of the expenses incurred.

**§ 11.9 Payments to the Architect**

§ 11.9.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services proven to have been performed. Payments are due and payable within thirty (30) days upon presentation of the Architect’s invoice to the Owner. Amounts unpaid « sixty » ( « 60 ») days after the invoice date shall bear interest at the rate equal to one percent (1%) annually or the rate established by Section 74A.2 of the Code of Iowa, whichever is less. All pay requests must be received by the County fourteen days prior to the County Board of Supervisors meeting at which the invoice will be approved.

§ 11.9.2 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.

§ 11.9.3 The Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement.

§ 11.9.3.1 The Architect shall preserve the Records for a period of ten (10) years after final payment or for such longer period as required by any applicable law, provided, however, that if a Claim is asserted during said ten (10) year period then the Architect shall retain all such Records until the Claim has been resolved.

§ 11.9.3.2 The Architect shall require all entities to whom it made payments for services provided under this Agreement to comply with the provisions of Section 11.9.3 by insertion of the requirements contained in such section in any written agreement between the Architect and such entity.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

12.1 The Architect shall be required to meet the requirements of Exhibit “C”, Insurance



12.2 The Project is tax exempt. The Owner will provide a certificate of tax exemption

12.3 The Architect (Company) 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. In addition, the Architect shall not permit an employee, subconsultant (Company) 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 County. The Architect shall further acknowledge and certify services provided under this Contract comply with Iowa Code 692A, 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 Company workers are on the Project site.

12.4 Fee Credit – At such time as the Project proceeds and the architect is retained, the first invoice shall credit the Owner with Twenty Thousand Dollars (\$20,000) as stipulated in the Pre-Design / Planning Agreement with the Owner.

§ 12.5 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B132™–2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition
- .2 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

*R.W.*  
*BW*

- ~~Exhibit "A" – Partial Waiver of Lien and Release of Claims~~
- ~~Exhibit "B" – Final Waiver of Lien and Release of Claims~~
- ~~Exhibit "C" – Insurance Requirements~~
- ~~Exhibit "D" – Original proposal from Architect to Owner~~

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

Woodbury County Law Enforcement Center Authority

Goldberg Group Architects, PC (GGA-PC)

*Ron Wieck*  
OWNER (Signature)

*Lawrence T. Goldberg*  
ARCHITECT (Signature)

Ron Wieck, Chairman  
(Printed name and title)

Lawrence T. Goldberg, AIA, NCARB, ASC  
(Printed name and title)