

Woodbury County Iowa

Project Inclusion Approval

To:

Indefinite Scope for Professional Services AIA Document C132 – 2009 as approved by a Board Motion on December 13, 2016.

Between the Owner: Woodbury County Board of Supervisors

And the Construction Manage: Baker Group

In accordance with paragraph 1.1.1 of said agreement, both parties agree that the following project will be added to this agreement:

Add Project Name: Siouxland District Health – Boiler Replacement

Approved CIP Budget: \$60,000 CIP Project # E1 - 17

Anticipated Budget for this Project: \$60,000

Anticipated Construction Management Fee based on this budget: \$7,826.

Subject to final approval of project details and bid costs which will be brought to the Board of Supervisors on approximately: January 17, 2017

Final Installation Cost:

Installation Contractor: Plains Boiler

Fifty-Five Thousand Six Hundred Dollars \$55,600

Baker Group CM Fee on Project: \$8,340

Resource Consulting Engineers design fee: \$3,500.

Total Cost of Project: \$67,440

Project Inclusion Accepted on this date: 1-10-17

Construction Manager: Baker Group, Inc. by Shane Albrecht DAVE JOHNSON Dale Johnson

Final Board Approval of project detail and bid costs is hereby approved by the Woodbury

County Board of Supervisors: Name: M. M. [Signature] Title: Chairman

Date: 2-03-2017

 **AIA**® Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

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

BETWEEN the Owner:

Woodbury County Board of Supervisors
620 Douglas Street – Room 104
Sioux City, IA 51101

and the Construction Manager:

Baker Group
4224 Hubbell
Des Moines, IA 50317

for the following Project:

Woodbury County
Indefinite Scope for Professional Services
Sioux City, IA

The Professional Engineer is:

To be selected as needed for specific projects by the Owner

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A132™–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.

(Paragraph deleted)

§ 1.1.1 The Owner's program for the Project:

(Paragraph deleted)

The Construction Manager shall provide professional service for Owner's projects on an as-needed basis at various Woodbury County locations. **These various projects may include projects where the construction costs are between ten thousand dollars (\$10,000) and one-hundred-thousand dollars (\$100,000) for this Contract and have been included in the Capital Improvement Plan for the current year or otherwise approved by the Board of Supervisors.** The Professional Services Contract will be referenced on all Project correspondence and documents. The Construction Manager is not to provide any professional services or incur expenses until Woodbury County Projects are assigned to the Contract.

§ 1.1.2 The Project's physical characteristics:

(Paragraph deleted)

This Contract is for Professional Construction Management Services for an unspecified number of Woodbury County projects. The scope of work for each assigned project will be defined by the owner and sent to the Construction Manager. The professional services required for each of these assigned projects requested by the Owner may include any or all of the tasks included in Article 2, 3 or 4 of the Professional Services Contract.

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

As approved by the Board of Supervisors for each project assigned

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

(Paragraph deleted)

.1 To be determined on an individual project bases.

.2 Commencement of construction may begin upon approval and execution of the A132 Agreement between the Contractor and the Owner, and as approved by Woodbury County Board of Supervisor.

.3 Substantial Completion will be established for each project assigned.

(Paragraph deleted)

.4 Final Completion of work shall be established for each project assigned.

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

(Paragraph deleted)

Competitive bid as required.

§ 1.1.6

(Paragraphs deleted)

Deleted

(Paragraphs deleted)

§ 1.1.7.1 The Work will be performed in actively occupied buildings, and the Construction Manager will be required to plan activities so that they will minimize interference with County activities.

§ 1.1.7.2 Deleted

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

Kenny Schmitz, Facility Services Manager

§ 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 Professional Engineer or Architect as selected by Owner

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

(Paragraph deleted)

.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

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

Project Manager
Site Foreman as needed

§ 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: This Contract will remain in effect for three (3) years from the date this Contract is executed by the Owner, but may be unilaterally terminated by the Owner at any time, for cause or its convenience, by written notification to the Construction Manager. Furthermore, this Contract may be extended for two additional one (1) year terms, at the sole discretion of the owner, for a maximum contract period of five (5) years from the date of the original contract. Owner must provide written notice to the Construction Manager prior to expiration of the original Contract period expiration. Any such time extension shall be subject to the terms and conditions of the Contract including, but not limited to, the existing hourly billing rates included in the Contract for the Construction Manager, their Consultants, and their employees or agents.

§ 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.

(Paragraph deleted)

§ 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

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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 Professional Engineer as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Professional Engineer, Construction Manager as Adviser Edition, as modified. The Construction Manager shall not be responsible for actions taken by the Professional Engineer.

§ 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 Professional Engineer, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Professional Engineer.

§ 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 Professional Engineer, 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 Professional Engineer's review and Owner's approval. If the Professional Engineer 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 Professional Engineer 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 Professional Engineer 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 Professional Engineer's review and the Owner's acceptance. The Construction Manager shall obtain the Professional Engineer's approval for the portion of the Project schedule relating to the performance of the Professional Engineer's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Professional Engineer'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 Professional Engineer 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 Professional Engineer, 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 Professional Engineer's review and the Owner's approval. The Construction Manager shall advise the Owner and Professional Engineer 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 Professional Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Professional Engineer 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 Professional Engineer 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

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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 Professional Engineer's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit a list of prospective bidders for the Professional Engineer'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 Professional Engineer, 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 Professional Engineer 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 Professional Engineer'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

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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 Professional Engineer 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 Professional Engineer. 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, Professional Engineer, 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 Professional Engineer.

§ 3.3.6 The Construction Manager shall schedule and conduct weekly meetings with all 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, Professional Engineer 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 Professional Engineer.

§ 3.3.9 The Construction Manager shall accept work only in conformance with the Contract Documents and shall have authority, upon consultation with the Professional Engineer 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 at least on a monthly basis or more frequently if requested by the 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 Professional Engineer 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 Professional Engineer as to variances between actual and budgeted or estimated costs.

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§ 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:

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 Professional Engineer 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.

§ 3.3.12.4 The issuance of a Certificate for Payment shall further constitute a recommendation to the Professional Engineer 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 Professional Engineer, 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 Professional Engineer 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 Professional Engineer of when and where the tests and inspections are to be made so that the Professional Engineer may be present for such procedures.

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§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Professional Engineer 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 Professional Engineer 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 Professional Engineer and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Professional Engineer'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 Professional Engineer.

§ 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 Professional Engineer for approval. The Construction Manager shall review and approve and then submit the shop drawings, product data, samples and other submittals to the Professional Engineer 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 Professional Engineer) 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 Professional Engineer 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 Professional Engineer, 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 Professional Engineer, 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 Professional Engineer.

§ 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 a every two week basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Professional Engineer:

- .1 Project schedule status based on percent of completion;
- .2 Submittal schedule and status report;

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- .3 Request for information, Change Order, and Construction Change Directive logs;
- .4 Tests and inspection reports;
- .5 Status report of nonconforming and rejected Work;

(Paragraphs deleted)

§ 3.3.20.2

(Paragraphs deleted)

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 Professional Engineer and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 With the Professional Engineer 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 Professional Engineer a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Professional Engineer 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 Professional Engineer 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 Professional Engineer 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 Professional Engineer when Work is ready for final inspection. The Construction Manager shall assist the Professional Engineer in conducting final inspections.

§ 3.3.25 The Construction Manager shall forward to the Owner, with a copy to the Professional Engineer, 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 Professional Engineer 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 Professional Engineer 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 Professional Engineer, 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

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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 Professional Engineer 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.

(Paragraph deleted)

§ 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 <i>(Construction Manager, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
----------	--	---

(Rows deleted)

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.

§ 4.2 Not used.

§ 4.3 Not used.

§ 4.3.1

(Paragraphs deleted)

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Not used.

§ 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 Professional Engineer would only be rendered if the Owner makes additional payments to the Professional Engineer, 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 Professional Engineer 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.

(Paragraph deleted)

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 Professional Engineer 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 Professional Engineer. The Owner, Professional Engineer, 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 Professional Engineer to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Professional Engineer, 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 Professional Engineer, 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 Professional Engineer if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Professional Engineer'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 Professional Engineer'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.

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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 Professional Engineer 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 Professional Engineer, 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.

(Paragraph deleted)

§ 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 One Million, Two Hundred Thousand Dollars (\$1,200,000.) The Construction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Professional Engineer 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 Professional Engineer is providing detailed cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Professional Engineer's cost estimates, the Professional Engineer 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 Professional Engineer, 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 Professional Engineer 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 Professional Engineer, 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 Professional Engineer 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.

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

§ 8.1.2 The Construction Manager shall indemnify and hold the Owner and the Owner's officers, directors and employees harmless from and against damages, losses and judgments arising from claims by third parties, regardless of the nature, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage or \$1,000,000.00, whichever is greater.

(Paragraphs deleted)

§ 8.3 Arbitration – NOT APPLICABLE

(Paragraphs deleted)

§ 8.3.4 Consolidation or Joinder – NOT APPLICABLE

(Paragraphs deleted)

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.

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§ 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.

(Paragraphs deleted)

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

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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:

(Paragraph deleted)

The Construction Management fee will be based on a percentage of the total costs of the Project by using a multiplier of Fifteen percent (15%) or as otherwise negotiated with Woodbury County for a specific project and will be billed monthly. Professional Engineering 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.

(Paragraphs deleted)

§ 11.3 Additional Services or for Projects where a flat fee is determined by both parties to not be appropriate for a specific project; 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 (0 %), 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)

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§ 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 and the Construction Manager's consultants directly related to the Project, as follows:

.1

(Paragraphs deleted)

Fees paid for securing approval of authorities having jurisdiction over the Project;

.2 Printing, reproductions, plots, standard form documents;

(Paragraphs deleted)

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants 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. Invoices shall be accompanied by appropriate lien waivers (see **Exhibits "A" and "B"**).

§ 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

(Paragraphs deleted)

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.

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User Notes:

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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

(Paragraphs deleted)

- Exhibit "D" – Construction Manager Billing Rates

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

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Exhibit "A"

CONDITIONAL PARTIAL RELEASE OF LIEN AND WAIVER OF CLAIMS

To: _____, the Owner of the real estate (the "Property") identified below, any Lender(s) having any loans secured by the Property, the Applicant's Contractor (if not the General Contractor) and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives lien rights, bond rights and all other claims.

Payment Request Amount: \$ _____

Date of last work covered by payment request: _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the sum stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full, less retainage and other claims documented as required by the Contract (if any), has been made by the undersigned through the period covered by all prior payments (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, except as identified below:

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract. Specifically, the undersigned has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Partial Waiver and Release of Claims

NOW, THEREFORE, contingent upon the issuance, final clearance and payment of \$_____, the undersigned irrevocably and unconditionally releases and waives any and all mechanic's liens or other liens or right to claim any and all mechanic's liens or other liens against the Property, except as pertains to unpaid retainage and claims identified above, and documented as required by the Contract, through the date of last work covered by the payment application stated above. The undersigned waives and releases any other claims against the Owner or its sureties on any bonds, or any other claims of any kind whatsoever in connection with the Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with the Contract for which payment has been made.

Dated _____, 20__.

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

Exhibit "B"

CONDITIONAL FINAL WAIVER OF LIEN AND RELEASE OF CLAIMS

To: _____, the Owner of the real estate (the "Property") identified below, any Lender(s) having any loans secured by the Property, the Applicant's Contractor (if not the General Contractor) and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives lien rights, bond rights and all other claims.

Payment Request Amount: \$ _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the amount stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full has been made, or with the funds requested hereby will be made, by the undersigned (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, and that the payments that have

been or will be made out of this final payment to such persons or firms will fully and completely compensate them for all work in connection with the Project.

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Final Waiver and Release of Claims

NOW, THEREFORE, the undersigned, contingent upon the issuance, final clearance and payment of \$_____, which the undersigned irrevocably and unconditionally releases and waives any and all mechanic's liens or other liens or right to claim any and all mechanic's liens or other liens against the Property. Additionally, the undersigned waives and releases any other claims against the Owner, its sureties or on any bonds, or any other claims of any kind whatsoever in connection with the Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with the Contract.

Dated _____, 20__.

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

Exhibit "C"

INSURANCE REQUIREMENTS

1. The Construction Manager shall secure and maintain through the duration of the Contract and all applicable warranty periods insurance (on an occurrence basis unless stated below) of such types and in such amounts stated below, but in no case less than as may be necessary to protect the Construction Manager and the Owner and agents of the Owner against all hazards or risks of loss as hereinafter specified. The Owner will only accept coverage from an insurance carrier who offers proof that it:
 - 1) Is authorized to do business in the state where the project is located;
 - 2) Carries a Best's policy holder rating of A or better and at least a Class X financial rating.
 - 3) Is a company mutually agreed upon by the Owner and the Construction Manager.
2. The form of such insurance, together with the underwriter thereof in each case, shall be approved by the Owner, but regardless of such approval it shall be the responsibility of the Construction Manager to maintain adequate insurance coverage at all times. Owner reserves the right to review certified copies of any and all insurance policies to which this Contract is applicable. Failure of the Construction Manager to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
3. The cost of defense of claims shall not erode the limits of coverage furnished. (This does not apply to Professional Liability, see Article 11.)
4. The insurance policies shall require that Owner shall be given at least thirty (30) days written notice from the insurer(s) before cancellation (except for non-payment of premium, for which at least ten (10) days advance notice shall be given to Owner) of such insurance and shall contain an endorsement stating the insurers agreement to provide such notice, using CNA form G-140327-B (Ed. 07/11), Travelers Form IL T4 00 (12/09) or other equivalent carrier forms, such as ACORD forms. **A copy of the Notice of Cancellation Endorsement must be furnished to the Owner prior to commencement of Work.** The Construction Manager shall notify the Owner of any reduction in limits of protection under any policy listed in the Certificate in excess of \$10,000.00 at least ten (10) days prior to such change, whether or not such impairment came about as a result of the Contract. If the Owner determines the Construction Manager's aggregate limits of protection has been impaired or reduced to such an extent that the Owner shall determine such limits inadequate for the balance of the project, the Construction Manager shall, upon notice from the Owner, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the Owner. Cancellation, non-renewal or material modification of coverage of any such insurance shall be the basis for the Owner's exercising its right to terminate the Contract.
5. Satisfactory certificates of insurance, written on a standard AIA Document G705 or ACORD form 25-S, Accord Form 27, as applicable, shall be filed with the Owner prior to Construction Manager's entry on to the Project site. The Certificate shall specify the date when such insurance expires. A renewal certificate shall be furnished to Owner prior to the expiration date of any coverage.
6. Severability of Interest. All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.
7. Construction Manager shall include the Indemnitees as identified in the Contract as additional insureds on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance policies described above. Indemnitees shall be included as additional insureds under Construction Manager's furnished insurance (except Workers' Compensation Insurance and Professional Liability Insurance), for ongoing and completed operations. General Liability shall provide the additional insured status by using ISO Additional Insured Endorsement (CG 20 10), edition date 11/85, or an equivalent (e.g., CG 20 10, edition date 10/93, plus CG 20 37, edition date 04/13 or other carrier form per Article 5). Said insurance

shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING and shall not be deemed to limit Construction Manager's liability under the Contract.

8. Construction Manager agrees to procure and carry, at its sole cost, until completion of the Contract all insurance, with identical limits of liability and scope of coverages, as set forth below:
 - 8.1 Commercial Automobile Liability Insurance. Construction Manager shall maintain commercial automobile insurance, including contractual liabilities insuring the Indemnities set forth in the Contract, subject to standard ISO CA0001 coverage terms and conditions, covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder and shall have minimum bodily injury and property damage limits of \$1,000,000.00 combined single limit each accident. An MCS-90 endorsement shall be procured when applicable.
 - 8.2 Workers' Compensation and Employer's Liability Insurance. Construction Manager shall maintain Worker's Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, Voluntary Compensation and Employer's Liability (including occupational disease) coverage with limits not less than \$500,000.00 per occurrence. The Construction Manager shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include "all states" coverage.
 - 8.3 Commercial General Liability Insurance. Construction Manager shall obtain and maintain Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operation, (ii) subConstruction Managers (iii) independent Construction Managers, (iv) products and completed operations (with completed operations to remain in force for as long as Construction Manager or those included as Additional Insureds bear exposure under all applicable statutes of limitation following project completion), (v) explosion, collapse and underground, (vi) pollution liability, and (vii) contractual liability insuring the indemnities set forth in the Contract subject to standard ISO CG0001 coverage terms and conditions. Each Project shall have minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 products/completed operations aggregate coverage.
 - 8.4 Excess Liability. Construction Manager shall maintain Excess Liability coverage on an umbrella form with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
9. Waiver of Subrogation. All insurance policies supplied shall include a waiver of any right of subrogation of the insurers thereunder against Owner and all its assigns, affiliates, employees, insurers and underwriters.
10. No Limitation of Liability. The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Construction Manager's liability with respect to its performance of this Contract.
11. Professional Liability coverage. If the scope of Construction Manager's Work includes design services, the Construction Manager shall procure and maintain Professional Liability Insurance if any design services are included in Construction Manager's Scope of Work, in an aggregate amount of not less than Two Million Dollars (\$2,000,000.00), with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00). Such insurance shall be issued by companies reasonably acceptable to Owner, and shall not be canceled, without thirty (30) days' prior written notice to the Owner, except for non-payment of premium, (for which at least ten (10) days advance notice shall be given to Owner). The policy shall be at least as broad as the coverage provided in Construction Managers Design Liability Policy, Member Companies of CNA Insurance, Form G-115692-A (Ed 02/96), with a minimum policy limit of \$2,000,000. Certificates of insurance for such coverage will be provided to Owner within ten (10) days of the execution of the Contract.

12. Minimum Requirements. The insurance specified herein is the minimum requirement. In the event Construction Manager or any SubConstruction Manager has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the Owner.

13. **Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by Owner. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.**

EXHIBIT "D"

Construction Manager Billing Rates