

DRAFT AIA® Document B133™ - 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the « » day of « AprilMay » in the year « 2024 »
(In words, indicate day, month and year.)

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

[Iowa Central Community College](#)
[One Triton Circle](#)
[Fort Dodge, Iowa 50501](#)

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

[I & S Group, Inc. \(ISG\)](#)
[115 East Hickory Street, Suite 200](#)
[Mankato, MN 56001](#)

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

» [This Agreement shall serve as Master Agreement with G802 Amendments Added for Specific Projects](#)

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

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; A133-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™-2017 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.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A – Scope of Services

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Exhibit A – Scope of Services

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

(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«Insert via Amendment using AIA G802 »

.2 Construction commencement date:

«Insert via Amendment using AIA G802 »

.3 Substantial Completion date or dates:

«Insert via Amendment using AIA G802.»

.4 Other milestone dates:

«Insert via Amendment using AIA G802.»

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

~~[«»]~~—AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

~~[«»]~~—AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The Project will be bid and constructed in accordance with Iowa Code Chapters 26A and 573 and utilizing using the AIA G802 Amendment for specific Project information.

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

To be determined. If a sustainable objective is determined, it shall be added by amendment before becoming a part of this agreement.

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective. Owner acknowledges that sustainability certifications are subject to various and possibly contradictory interpretations. Sustainability certifications also may involve factors beyond the control of the Architect including the Owner’s use and operation of the completed Project. Architect makes no warranty or representation whatsoever that the Project will achieve any sustainability certifications and Owner acknowledges that this is not Architect’s role or responsibility under this Agreement.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

To be determined. If additional representatives are selected by Owner, the Owner shall provide written notice thereof, which shall constitute a unilateral addendum to this Agreement.

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

« »

- .2 Land Surveyor:

« »

- .3 Geotechnical Engineer:

« »

- .4 Civil Engineer:

« »

- .5 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)

« »

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

- .1 Structural Engineer:
- .2 Mechanical Engineer:
- .3 Electrical Engineer:

§ 1.1.12.2 Consultants retained under Supplemental Services:

To be determined. If one or more are selected, they shall be added to this Agreement by mutual addendum using AIA G802.

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

Unknown at time of execution but to be timely determined and added to this Agreement by addendum using AIA G802.

§ 1.2 The Owner and Architect may reasonably rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall, upon mutual agreement, appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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User Notes:

(1296909165)

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, or a different mutually agreed upon document, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, or a different mutually agreed upon document, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect, as a representative of the Owner, but not as a fiduciary, shall perform its services consistent with the professional skill and care ordinarily provided by architects with experience similar to the Project practicing in the same or similar locality under the same or similar circumstances on projects of similar complexity. The Architect shall perform its services as economically and expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, and will perform the Architect's services in a manner consistent with the interests of the Owner ("Standard of Care").

§ 2.2.1 The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations, and codes, and the Owner's policies that may exist and are provided to the Architect as of the date of this Agreement.

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

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager, except to the extent those actions were caused or directed by the Architect.

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

The Architect, through this representative, shall advise and consult with the Owner during the administration of the Contract for Construction, and shall serve as the "Owner's Authorized Contract Representative" for the purposes and responsibilities outlined under Iowa Code Section 573.28 (2)(c) Iowa law related to any release of retainage funds. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

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

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 1.1.9 for the duration of this Agreement. If any of the requirements

§ 2.6.1 Commercial General Liability with policy limits of not less than «Two mMillion » (\$ «21,000,000 ») for each occurrence and «Two mMillion » (\$ «2,000,000 ») in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «One mMillion » (\$ «1,000,000 ») per-accident combined single limit for bodily injury, death of any

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User Notes: (1296909165)

Commented [CP1]: Rejected. Vague.

Commented [DH2R1]: We will agree to removing "economically" but see no reason why a professional service provide you are paying thousands of dollars to be you representative on the project would not expect to perform their services in a manner that is consistent with the interests of the Owner. This is standard language we recommend be included. Up to College whether they want to allow this to be struck.

Commented [CP3R1]: What is the college's decision?

Commented [KH4R1]: Per discussion with the owner this is approved to be rejected.

Commented [DH5]: Recommend this be kept in and have which language saying that the College must provide to the Architect access to or a copy of any policies they must abide by when performing their services. This is a common requirement for such.

Commented [CP6R5]: Accepted

Commented [CP7]: Rejected. No Iowa law cited.

Commented [DH8R7]: Modified to include specific cost amount. Requested this amount in contract.

Commented [CP9R7]: Accepted.

Commented [DH10]: We recommend the District review this section with its insurance advisor.

Commented [DH11R10]: There are many changes that ISG has made to the insurance language that should be reviewed by your insurance advisor.

Commented [CP12R10]: Any update from the college?

Commented [KH13R10]: Approved by owner as long as amounts required are met

Commented [CP14]: Increased as requested to Two Million based on section 2.6.3

person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, ~~and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.~~ The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than ~~Five Hundred Thousand~~ One Million Dollars (\$1,000,000.00) each accident, ~~One Million Five Hundred Thousand Dollars (\$1,000,000.00)~~ each employee, and ~~Five Hundred Thousand~~ One Million Dollars (\$1,000,000.00) policy limit.

Commented [CP15]: Increased as requested to One Million based on section 2.6.3

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~One Million~~ » (\$ «1,000,000 ») per claim and ~~two Three mMillion~~ » (\$ «32,000,000 ») in the aggregate.

Commented [CP16]: Increased as requested to One Million and Three Million based on section 2.6.3

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6. ~~All deductibles and premiums associated with the above coverages shall be the responsibility of the Architect. The Architect shall require that all Consultants engaged by the Architect carry and maintain sufficient insurance of the types and limits carried by Architect, or as otherwise approved in writing by Owner that is appropriate to the project in the reasonable discretion of the Architect. The Architect and Consultants shall submit proof of such insurance to the Owner before submittal of the first invoice. The Architect's insurer/Architect will provide written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification (10 days for nonpayment of premium) of the policies for a period of three (3) years from the date of this Agreement.~~

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

Commented [CP17]: Can only secure this endorsement for General Liability policy

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

§ 2.6.10 ~~The Certificate of Insurance for the Commercial Liability and Automobile Liability policies~~ should state:

Commented [CP18]: Certificate can only state this for General Liability policy

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, ~~and electrical, and civil, and other~~ engineering services ~~necessary to produce a reasonably complete and accurate set of to produce~~ Construction Documents for the Project consistent with the Standard of Care. Services not set forth in this Article 3 are Supplemental or Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, to the extent made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with ~~the Owner's responsibility~~ the Owner's responsibility for any filings ~~documents~~ required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, ~~or the Owner's approval of the Construction Manager's Control Estimate, as applicable,~~ the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.1.9 All documents produced by the Architect and its consultants pursuant to this Agreement shall, ~~be created with reasonable professional efforts to, consistent with the Standard of Care, comply with applicable laws, statutes, ordinances, codes, rules, regulations, and Owner policies in effect at the time this Agreement is executed, of construction document submission to building authorities.~~ All Construction Documents shall be dated and shall contain a certificate that the work was done by such registered Architect or Engineer or under the registered Architect's or Engineer's direct personal supervision and the Iowa legible seal for such registrant.

§ 3.1.10 The Architect shall review its design for compliance with applicable: (a) technical specifications, (b) building codes, (c) ADA standards, (d) approved Project construction budgets, (e) approved Project schedules, and (f) other applicable contract obligations consistent with the Standard of Care.

§ 3.1.11 The Architect will attend all meetings reasonably requested by the Owner, including, school board meetings, school board subcommittee meetings, and project team meetings, not to exceed _____ in number. Additional meetings shall be compensated as Additional Services.

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

~~§ 3.1.13 The Architect shall identify for Owner whether any information is required that is not included within Architect's scope of services, including, for example, survey services. Intentionally omitted.~~

Commented [CP19]: Redundant to section 3.1.12

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. ~~The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.~~

Commented [CP20]: Rejected. Restore all original AIA language.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment ~~or Control Estimate.~~

Commented [CP21R20]: Original language restored.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall ~~review~~ review work with the Owner to confirm the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations ~~applicable to the Architect's applicable to Architect's services~~ services to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements, schedule, and budget agreed upon ~~with~~ by the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the

Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3.98 The Architect shall not proceed with the Design Development Phase as set forth in Section 3.3 until:

- .1 The Architect has received the Owner's approval of the Schematic Design Documents;
- .2 The Construction Manager has provided the Owner with a written estimate of the Cost of the Work that is within the Owner's Budget for the Cost of the Work, and
- .3 The Architect has received authorization from the Owner to proceed with the Design Development.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements, schedules, and the budget for the Cost of the Work, the Architect shall meet with the Owner to review the designs and discuss options. Based on these discussions and the Architect's review, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

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

- .1 The Architect has received the Owner's approval of the Design Development Documents,
- .2 The Construction Manager has provided the Owner with an estimated bid date and a written estimate for the Cost of the Work that is within the Owner's Budget for the Cost of the Work, and
- .3 The Architect has received written authorization and direction from the Owner to proceed with the Construction Documents Phase.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Schematic Design and Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Schematic Design and Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

Commented [DH22]: To the extent caused by a negligent act or omission of the Architect, the Architect shall be responsible, at its own expense, for making any changes in the Construction Documents necessary to meet such design requirements.

Commented [CP23R22]: Accepted.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified and incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. If the Owner and Construction Manager modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager be incorporated into this Agreement, and to the extent any such modification affects the Architect's services under this Agreement, the Architect's compensation and schedule shall be adjusted pursuant to Article 4. To the extent of any conflict between the terms of this Agreement and the AIA Document A201-2017 General Conditions of the Construction Contract, the interpretation most favorable to the Owner this Agreement shall govern and control.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and only until the completion of the final warranty inspection period. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents to the extent the Architect has performed its own contractual obligations, consistent with the Standard of Care, as they relate to observing and analyzing the Construction Manager's work for conformance with the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, Owner or of any other persons or entities performing or affecting portions of the Work.

§ 3.6.1.4 The Architect shall review and answer reasonable, properly prepared, timely requests by the Construction Manager for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall consult with the Owner and they shall mutually consider such requests and the responses thereto. The Architect shall provide the Owner with a copy of all requests and responses. In no case will Architect's review period on any requests for information be more than fifteen (15) working days after receipt of the request, unless otherwise agreed by all parties. If multiple requests are made at any one time, during the same timeframe, Architect shall be entitled to a reasonable extension of time to respond as determined by Architect.

Commented [CP24]: Need AIA 201 with any revisions.

Commented [DH25R24]: Please attached to the email and explain recommended changes to the AIA Contract version.

Commented [CP26R24]: Received

Commented [DH27]: I am not changing this language but note their changes to our recommended language. This is clearly not favorable to the Owner. Remember, ISG is seeking to do business with you! Not the other way around.

Commented [CP28R27]: That's not the issue or ISG's intent. What is "most favorable" is vague and open to interpretation. One Agreement or the other should govern so both parties have clarity. That is why contracts have orders of priority with the documents.

Commented [CP29R27]: Status?

Commented [KH30R27]: Approved by owner to keep this agreement as the governing agreement

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect, as a representative of the Owner, shall attend all official construction progress meetings and visit the site while Work is in progress not less often than two (2) times per month, or as required or otherwise mutually agreed to by the parties in Section 4.3.2, to observe and evaluate the site and the Work; to become familiar with the progress and quality of the Work; and to determine whether the Work evaluated and observed is proceeding in accordance with the Contract Documents and construction schedule and whether there are visible defects or deficiencies in the Work evaluated and observed. Based on on-site observations and evaluations, the Architect shall keep the Owner informed of the progress and quality of the Work and its conformance with the Construction Documents and the construction schedule and will report to Owner known deviations from the Contract Documents and Construction Schedule. The Architect will provide the Owner with a field observation report within five (5) working days after completion of each site visit and construction update minutes from each construction meeting as the Project progresses.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. If the Architect has knowledge of any Work which does not conform to the Contract Documents which significantly impacts the Owner, the Architect shall promptly notify the Owner. The Architect shall not authorize or direct any Work stoppage, removal of Work in place, or changes in any Work, except for minor issues with no impact to the Construction Schedule or Construction Budget, without prior written approval of the Owner. Wherever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect shall require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect, nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, shall not show partiality to either, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 Upon substantial completion of the Project, the Architect and/or its appropriate consultant shall be present at the initial startup and operation of all systems and equipment, not to exceed one site visit, to help assist in determining that such Work has been completed in accordance with the requirements of the Contract Documents and that the

Commented [DH31]: Strongly suggest this stay deleted as we proposed. ISG is your paid representative and their actions should be partial to you as their client. This could mean recommending to you that you take a certain action that may not be what you want to hear because it is what the contract requires, but ISG should absolutely show partiality to the College in its decision-making and what is in the best interest of the College and the project.

Commented [CP32R31]: Agreeing contractually to show partiality as the decision maker is not in keeping with this provision. It states that Architect is to "secure faithful performance by both Owner and Construction Manager;" it references good faith and the intent expressed in the Contract Documents. This deletion should remain in place.

Commented [CP33R31]: Status?

Commented [KH34R31]: Approved by owner to be left in

Commented [CP35R31]: Added back impartiality

systems and equipment are functioning properly, and fit for the intended purposes. This shall not require or obligate the Architect to perform any on-going "commissioning" services.

§ 3.6.2.7 The Architect shall select and specify materials for the Project that to the best of its knowledge ~~with~~ have no asbestos or asbestos-containing material.

§ 3.6.2.8 Eleven (11) months after substantial completion of the Project, the Architect shall, during a single site visit, participate in a one-year warranty inspection review to determine that the completed Work remains in accordance with the requirements of the Contract Documents and to identify any then required warranty work.

§ 3.6.3 Certificates for Payment to Construction Manager

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

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

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment and shall stamp each such application on the date it was received by the Architect and shall forward copies of same to Owner after being signed by Architect.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall promptly review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Construction Manager's submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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User Notes:

(1296909165)

Commented [CP36]: Rejected. Restore original AIA language.

Commented [CP37R36]: Original language restored.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents. ~~The Architect shall advise the Owner, in writing, if the Architect becomes aware that the Work is proceeding in the absence of shop drawings and submittals that have been reviewed and approved, or are required to be reviewed and approved, in accordance with the Contract Documents. However, the Architect shall have no responsibility to inspect shop drawings and submittals not presented to it.~~

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may, following notice to the Owner, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect must obtain the Owner's written approval for all other changes in the Work. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections-site observations and evaluations to determine the date or dates of Substantial Completion and the date of ~~Final~~ completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; ~~and~~
- .4 issue a final Certificate for Payment based upon a final ~~inspectionobservation and evaluation~~ indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents; ~~and;~~
- .5 notify the Owner in writing when, in the Architect's opinion, construction of the Project has reached Substantial Completionis substantially complete, and then when finally completeupon Final Completion, including all punch list and closeout items.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

~~§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. When the Work reaches Substantial Completionis found to be substantially complete, the Architect, acting as the Owner's authorized contract representative in accordance with the requirements of Iowa Code Chapter 26, subject to the Standard of Care, shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work and/or for Iowa Code Chapter 573 claims filed. The Architect shall promptly notify the Owner if the Construction Manager requests early release of retainage funds upon achieving Substantial Completion and shall provide to the Owner all documentation provided to the Architect by the Construction Manager in relation to request for early release of retainage funds to the Construction Manager.~~

~~§ 3.6.6.4 The Architect Before the Work is found to be finally completed by the Architect to have reached Final Completion, it shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of ~~liens Iowa Code Chapter 573 claims~~, or bonds indemnifying the Owner~~

against ~~the~~ Iowa Code Chapter 573 claims; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, ~~conduct a meeting with the Owner to review the facility operations and performance.~~ (1) ~~inspect-observe and evaluate~~ the Project site, (2) conduct a meeting between the Construction Manager and Owner to review the facility operations and performance, and (3) provide the Owner with assistance in enforcing any Project warranties. The Architect shall promptly inform the Construction Manager, the Owner and Owner's Representative, in writing, of the results of this review and make appropriate recommendations.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, or if subsequently requested and authorized by Owner to be performed by Architect, and, in that case, the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)



| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|--|---|
| § 4.1.1.1 Assistance with Selection of Construction Manager | Architect |
| § 4.1.1.2 Programming | Not Provided Architect |
| § 4.1.1.3 Multiple Preliminary Designs | Not Provided |
| § 4.1.1.4 Measured drawings | Not Provided |
| § 4.1.1.5 Existing facilities surveys | Not Provided |
| § 4.1.1.6 Site evaluation and planning | Not Provided |
| § 4.1.1.7 Building Information Model management responsibilities | Not Provided |
| § 4.1.1.8 Development of Building Information Models for post construction use | Not Provided |
| § 4.1.1.9 Civil engineering | Not Provided Architect |
| § 4.1.1.10 Landscape design | Not Provided Architect |
| § 4.1.1.11 Architectural interior design | Not Provided Architect |
| § 4.1.1.12 Value analysis | Not Provided |
| § 4.1.1.13 Cost estimating | Not Provided |
| § 4.1.1.14 On-site project representation | Not Provided |
| § 4.1.1.15 Conformed documents for construction | Not Provided |
| § 4.1.1.16 As-designed record drawings | Not Provided |
| § 4.1.1.17 As-constructed record drawings | Not Provided |
| § 4.1.1.18 Post-occupancy evaluation | Not Provided |
| § 4.1.1.19 Facility support services | Not Provided |
| § 4.1.1.20 Tenant-related services | Not Provided |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | Not Provided |
| § 4.1.1.22 Telecommunications/data design | Not Provided |
| § 4.1.1.23 Security evaluation and planning | Not Provided |
| § 4.1.1.24 Commissioning | Not Provided |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | Not Provided |
| § 4.1.1.26 Fast-track design services | Not Provided |
| § 4.1.1.27 Multiple bid packages | Architect |
| § 4.1.1.268 Historic preservation | Not Provided |
| § 4.1.1.279 Furniture, furnishings, and equipment design | Not Provided |
| § 4.1.1.2830 Other services provided by specialty Consultants | Not Provided |
| § 4.1.1.2931 Other Supplemental Services | Not Provided |
| § 4.1.32 Food Service Consultant | Architect |
| § 4.1.33 Life Cycle Cost Analysis | Not Provided |
| § 4.1.34 Pre-Referendum Services | Not Provided |
| § 4.1.35 Graphic Design & Marketing Renderings | Not Provided |
| § 4.1.36 Acoustical Consultant | Not Provided Architect |
| § 4.1.37 Audio/Visual Consultant | Not Provided Architect |

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

«Not applicable »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.
(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

«Not applicable »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization following the approval of Owner's governing board in each instance:

1. Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, ~~except as outlined in Section 11.6.1, which shall remain a part of Basic Services~~; approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
2. Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
3. ~~Services, including changing or editing previously prepared Instruments of Service, necessitated by the enactment or revision of codes, laws, or regulations that occur after the Instruments of Service are prepared and could not have been known by the Architect through the exercise of a reasonable standard of care prior to the time the original Instruments of Service were prepared, including changing or editing previously prepared Instruments of Service;~~ Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
4. ~~Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that occur after the Instruments of Service are prepared and could not have been known by the Architect through the exercise of a reasonable standard of care prior to the time the original Instruments of Service were prepared and are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;~~ Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
5. Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

Commented [DH38]: ISG has made material changes throughout this Section. These changes are largely not legal in nature, but will impact how much you pay, when you pay it and the explanation you will get by ISG for additional services and why you are being charged. We obviously prefer our original language throughout which we believe protects the Owner better, but you can review and decide as a business decision whether you are ok with these changes.

Commented [CP39R38]: Status?

Commented [CP40R38]: See resolutions below as addressed between Owner and Architect

Commented [CP41]: Rejected. Restore original AIA language.

Commented [DH42R41]: Strongly suggest our language.

Commented [CP43R41]: Restore original AIA language

Commented [KH44R41]: Approved by owner

Commented [CP45R41]: Added back original language

Commented [CP46]: Rejected. Restore original AIA language

Commented [DH47R46]: Strongly suggest our language.

Commented [CP48R46]: Restore original AIA language

Commented [KH49R46]: Approved by owner restore original

Commented [CP50R46]: Added back original AIA language

- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.2.1 or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness an estimate of the probable cost of such services and probable impact, if any, on the schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall begin providing provide the following Additional Services, but immediately notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need to perform Additional Services. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of more than twoten (102) formal Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.2.2 or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness and (1) explain the basis of the Architect's belief that such services are outside the scope of the Basic Services and Additional Services, and (2) provide an estimate of the probable cost of such services and probable impact, if any, on the Architect's and Construction Manager's schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) deny that the Architect is entitled to additional compensation and direct the Architect to proceed with the services, in which case the Architect may pursue a claim for additional compensation under Article 8. The Owner's determination that the Architect is not entitled to additional compensation for such services shall not relieve the Architect of its responsibilities under this Agreement.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

Commented [CP51]: Reject changes from .5 through .15. Restore original AIA language in all sections

Commented [CP52R51]: Original language from .5 to .15 restored.

Commented [CP53]: Rejected.

Commented [CP54R53]: Restored original AIA language

Commented [CP55]: Rejected. The original AIA language properly addresses Additional Services. Such Services are compensated hourly.

Commented [CP56R55]: Restored original language

Commented [CP57]: Rejected. Restore original AIA language in .1 and .2

Commented [CP58R57]: Restored original AIA language.

Commented [CP59]: Rejected. Restore original AIA language

Commented [CP60R59]: Restored original language

Commented [CP61]: Reject. Restore original AIA language

Commented [CP62R61]: Restored original AIA language.

1. ~~«Two» («2»)~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
2. Two (2) visits per month to the site by the Architect during construction
3. ~~«Two» («2»)~~ inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
4. ~~«Two» («2»)~~ inspections for any portion of the Work to determine final completion
5. At least one (1) observation of the Work to view what is visually observable after the Work has been accepted by the Owner at approximately eleven (11) months after final acceptance.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~«» («»)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall, in consultation with the Architect, establish 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 construction and estimate contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work by greater than ten percent (10%), the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

~~§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.~~

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

§ 5.5 The Owner shall, when needed upon the advice and request of the Architect, 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 other 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.

§ 5.6 Upon the advice and request of the Architect, tThe When needed, the Owner shall furnish services of any necessary geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values,

Commented [CP63]: Rejected. Restore original AIA language.

Commented [CP64R63]: Restored original AIA language

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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.

§ 5.7 The Owner shall provide the necessary Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

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

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall advise the Owner of the requirements of such tests and consult with the Owner in selecting and ordering in selecting and ordering services from consultants who provide such tests, inspections, and reports.

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

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

§ 5.13 Except when direct communications have been authorized or agreed upon in writing by the parties, the Owner shall endeavor to include the Architect in all communications with the Construction Manager that directly relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. The Architect shall promptly provide the Owner with copies of any direct communication with the Construction Manager regarding any performance by the Construction Manager under the Construction Documents, including, but not limited to, requests for information and Change Order proposals that may affect the design or cost of the Project or may require approval or other actions by the Owner.

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

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

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager’s general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner’s budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project only as required under Sections 5.3 and 6.4. Evaluations of the Owner’s budget for the Cost of the Work represent the Architect’s judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to reasonably rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications, or other documents required due to the Construction Manager’s inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager’s estimates solely for the Architect’s guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager’s cost estimates and the Architect’s cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

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

§ 6.5 If the Construction Manager’s 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 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall ~~incorporate the revisions in the~~ modify the Construction Documents ~~Phase~~ as necessary to comply with the Owner’s budget for the Cost of the Work ~~at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.4.~~ The Architect’s revisions in the Construction Documents Phase shall be the limit of the Architect’s responsibility under this Article 6.

§ 6.7 ~~After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service without additional compensation, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager’s subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner’s budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment. After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager’s subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner’s budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~

- Commented [CP67]:** Reject. Restore original AIA language.
- Commented [DH68R67]:** Our language provides any Architect changes necessary from cost estimate changes not be an additional fee, but ISG’s proposal will have those be additional services which will cost the College more money.
- Commented [CP69R67]:** Rejected. Restore original AIA language
- Commented [KH70R67]:** Approved by owner restore original
- Commented [CP71R67]:** Restored original AIA language

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

Commented [CP72]: This language is common because the design is for the location at hand.

Commented [CP73]: Reject. Restore original AIA language.

Commented [DH74R73]: No. Keep Deleted. 7.1 conveys the language you want. The rest of this section should be deleted.

Commented [CP75R73]: Original AIA language is appropriate and should be restored.

Commented [KH76R73]: Approved by owner restore original

Commented [CP77R73]: Restored original AIA language

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Commented [DH79R78]: No. Keep Deleted. 7.1 conveys the language you want. The rest of the section should be deleted.

Commented [CP80R78]: Restore original AIA language.

Commented [KH81R78]: Approved by owner restore original

Commented [CP82R78]: Restored original AIA language

§ 7.25 ~~Except as otherwise stated in Section 7.3,~~ The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein. The Owner's and Architect's obligation under this Section 8.1.2 shall survive completion of Architect's services under this Agreement or termination of this Agreement.

§ 8.1.3 The Architect agrees to the fullest extent permitted by law, to indemnify and hold harmless the Owner including its officers, director, shareholders, employees, contractors, subcontractors and consultants against all claims, damages, liabilities, losses or costs, including reasonable attorneys' fees and defense costs, or costs of any nature whatsoever to the extent caused by the Architect's negligent error or omission in the performance of professional services required under this Agreement, including any plan or specification within the responsibility of the Architect or to any breach of duty or obligation assumed by or required under this Agreement and that of its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies or anyone for whom the Architect is legally liable. The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, 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 Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. The Architect and Owner hereby expressly reserve the right to claim consequential damages against the other for claims, disputes or other matters in question arising out of or relating to this Agreement. This right to claim consequential damages is limited to consequential damages due to either party's termination of this Agreement and shall be limited to One Hundred Thousand Dollars (\$100,000) per party.

§ 8.2 Mediation

§ 8.2.1 The Owner and Architect shall endeavor in good faith to resolve claims, disputes and other matters in question between them by mutual agreement and may, by mutual agreement and in their discretion, submit same to non-binding mediation which shall be in accordance with Iowa Code Chapter 679C. Requests for mediation shall be given in writing to the other party to this Agreement. If the Owner and Architect are unable to mutually agree upon a mediator in writing within sixty (60) days of receiving the written request for mediation, either party may then institute legal or equitable proceedings. Mediation shall be voluntary only and shall not be a prerequisite to litigation or other means of dispute resolution. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement.

Commented [CP83]: Reject. Restore original AIA language.

Commented [CP84R83]: Restored original AIA language.

Commented [CP85]: Reject. Restore original AIA language.

Commented [DH86R85]: Strongly suggest this language remain deleted as we have proposed. If you return to the original language as suggested by ISG it will result in a waiver of consequential damages. You do not want to limit your potential damages.

As a compromise I would suggest a cap on the damages and the following language be inserted as 8.1.4:

The Architect and Owner hereby expressly reserve the right to claim consequential damages against the other for claims, disputes or other matters in question arising out of or relating to this Agreement. This right to claim consequential damages is applicable to all consequential damages due to either party's termination of this Agreement and shall be limited to \$100,000

Commented [CP87R85]: Restore original AIA language. A mutual waiver of consequential damages is both reasonable and appropriate

Commented [KH88R85]: Approved by owner restore original

Commented [CP89R85]: Restored original AIA language

Commented [CP90]: Added but revised some wording.

A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.34 If the parties do not resolve a dispute through non-binding mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: (Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved through litigation in a court of competent jurisdiction. If the Owner is the prevailing party in any litigation arising out of this Agreement, the Architect shall pay the Owner's attorney's fees, expert witness fees, and court costs, including those incurred on appeal. If a suit, action, arbitration or other proceeding is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party a reasonable attorney fees, costs, expert witness fees, and litigation expenses incurred by the prevailing party, including those incurred on appeal.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits

Commented [DH91]: Would propose the following alternative language on attorneys fees. This allows the prevailing party in any litigation to recover attorneys fees (not just the Owner). This is compromise language.

We strongly suggest that there be attorneys fee language included as recoverable.

Commented [CP92R91]: Accepted as revised. Removed reference to arbitration and added reasonable.

Commented [KH93R91]: Approved by owner

Commented [CP94R91]: Resolved per above discussion.

consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.34 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement, except that payment may be withheld from the Architect for the Architect's substantial noncompliance or nonperformance determined in accordance with the terms of this Agreement, without penalty to Owner for such withholding. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. At any time during the term of this Agreement the Owner may terminate the Project entirely or suspend it for an indefinite period of time upon seven (7) days written notice to the Architect. If the Owner terminates or suspends the Project without cause for less than one hundred eighty (180) consecutive days, then the Architect shall be compensated for services performed prior to notice of such termination or suspension. If the Project is resumed, the Architect's fees for the remaining services and the time schedules shall be negotiated.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice. If the Owner suspends the Project for more than one hundred eighty (180) cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than ~~thirtyseven (307)~~fourteen (14) days' written notice.

§ 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 seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, together with documented Reimbursable Expenses incurred prior to the date Architect receives written notice of termination, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. The Architect shall not be entitled to any anticipated profits or consequential damages.

Commented [DH95]: Replace 14 days with 30 days, remove 307 and add 30 days

Commented [CP96R95]: Accepted.

§ 9.7 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7. The termination of this Agreement shall not relieve either the Owner or the Architect of any obligation previously accrued. The following provisions of this Agreement, and any other provisions that by their terms so provide, shall specifically survive any such termination: Article 7, Article 8, and Article 10, and Article 12. In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees: (Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

←→

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Ten Thousand («\$10,000») for Phase 2 »

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion. Upon mutual agreement of both parties, upon receipt and acceptance of not less than thirty (30) days written notice, the Agreement may be terminated on an agreed date before the end of the Agreement period without penalty to either party.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7. The Owner and Architect's rights set forth in this Article 9 are in addition to and without prejudice to their other rights and remedies provided by law.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. Except as otherwise agreed between the parties, all legal and equitable proceedings, controversies or disputes arising from this Agreement shall be venued in the Iowa District Court for Webster County.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

Commented [DH97]: Deleted Article 12.

Commented [CP98R97]: Accepted.

Commented [CP99R97]: Deleted Article 12.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information ~~if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary~~. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project upon request. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, ~~arbitrator's order~~, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

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

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

Compensation shall be a stipulated sum of (TBD per project amendment) plus reimbursable expenses»

- .2 Percentage Basis
(Insert percentage value)

as calculated in accordance with Section 11.6.

- .3 Other
(Describe the method of compensation)

«Not applicable »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«Compensation shall be hourly in accordance with the Standard Hourly Rate Schedule current at the time services are provided. A copy of the Standard Hourly Rate Schedule is attached hereto as Exhibit C and incorporated herein by this reference. »

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

«See Exhibit C – Hourly Rates »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus «five » percent («5 » %), or as follows:
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

« »

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

| | | | | |
|------------------------------|----------------|-----------|-------|----|
| Schematic Design Phase | «Fifteen » | percent (| «15 » | %) |
| Design Development Phase | «Thirty » | percent (| «30 » | %) |
| Construction Documents Phase | «Twenty-Five » | percent (| «25 » | %) |
| Procurement Phase | Five | percent(| 5 | %) |
| Construction Phase | «Twenty» | percent (| «20» | %) |
| Final Acceptance | Three | Percent | 3 | % |
| Warranty Inspection | Two | Percent | 2 | % |
| Total Basic Compensation | one hundred | percent (| 100 | %) |

Commented [KB100]: 15

Commented [CP101R100]: No comment so deemed accepted.

Commented [KB102]: 30

Commented [CP103R102]: No comment so deemed accepted.

Commented [KB104]: 25

Commented [CP105R104]: No comment so deemed accepted.

Commented [KB106]: 20

Commented [CP107R106]: No comment so deemed accepted.

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

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

«See Exhibit C – Hourly Rates »

| Employee or Category | Rate (\$0.00) |
|----------------------|---------------|
| | |

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Owner approved transportation and authorized out-of-town travel and subsistence;

- 2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets ~~Intentionally deleted;~~
- 3 Permitting and other fees required by authorities having jurisdiction over the Project;
- 4 ~~Owner requested p~~Printing, reproductions, plots, and standard form documents;
- 5 Postage, handling, and delivery;
- 6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner~~ ~~Intentionally deleted;~~
- 7 Renderings, physical models, mock-ups, ~~professional photography,~~ and presentation materials requested by the Owner or required for the Project;
- 8 ~~If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants~~ ~~Intentionally deleted;~~
- 9 ~~All taxes levied on professional services and on reimbursable expenses~~ ~~Intentionally deleted;~~
- 10 ~~Site office expenses~~ ~~Intentionally deleted;~~
- 11 ~~Registration fees and any other f~~ees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- 12 Other similar Project-related expenditures approved by the owner in advance.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants with no markup.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Architect shall notify the Owner and the Owner shall elect whether to require the additional insurance. If the Owner elects to require the additional insurance coverage, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below: *(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)*

« »

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of ~~«zero»~~ (\$ ~~«0»~~) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ~~«»~~ (\$ ~~«»~~) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~«sixty»~~ (~~«60»~~) days after the invoice date shall bear interest at the rate equal to one percent (1%) annually or the rate specified in Iowa Code Section 74A.2, whichever is less, entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. *(Insert rate of monthly or annual interest agreed upon.)*

« » % « »

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

Commented [CP108]: Acceptable?

Commented [KB109R108]: Leave this one as-is

Commented [CP110R108]: Accepted

Commented [CP111]: Reject. Restore original AIA language.

Commented [DH112R111]: Disagree. This language should remain deleted. Otherwise, if you restore to the original language you are obligated to continue to pay Architect even if they are found liable or at fault for fear you could be in breach of contract.

Commented [CP113R111]: Rejected. Restore original AIA language.

Commented [KH114R111]: Approved by owner restore original

Commented [CP115R111]: Restored original AIA language

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

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

§ 11.10.2.4 The Owner or its auditors and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Architect's non-confidential (as defined by law), information materials, records or data relating to the Project, other than profit. Such Records shall also include information, materials, records, or data necessary to evaluate and verify direct and indirect costs (including, but not limited to, overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Architect's Records have been generated from computerized data, the Architect agrees to and shall provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ 11.10.2.5 The Architect shall preserve the Records for a period of twelve (12) years after final payment or for such longer period as required by any applicable law, provided, however, that if a Claim is asserted during said twelve (12) year period then the Architect shall retain all such Records until the Claim has been resolved.

§ 11.10.2.6 The Architect shall require all entities to whom it made payments for services provided under this Agreement to comply with the provisions of Section 11.10.2.2 – 11.10.2.5 by insertion of the requirements contained in such section in any written agreement between the Architect and such entity.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

«Not applicable 12.1 LIMITATION OF LIABILITY To the maximum extent permitted by law, Owner agrees to limit Architect's and any of its subconsultants' total aggregate liability for Owner's damages under this Agreement to the Architect's fee. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.»

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- 1 AIA Document B133™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- 2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:
(Insert the date of the E203-2013 incorporated into this agreement.)

« »

- 3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

« »

[] Other Exhibits incorporated into this Agreement:

Commented [DH116]: This is troubling that they include their profit on the project as something they don't want to disclose.

Commented [CP117R116]: Profit is a private a matter not typically disclosed. This should not be troubling, it is normal and reasonable.

Commented [KH118R116]: Approved by owner profit is a private matter

Commented [CP119R116]: Resolved per above discussion.

Commented [DH120]: This is a huge NO! You never know the amount or extent of damages you may need to seek for design defects or other negligence on the part of the Architect. This language would cap your damages to the amount you pay under the Agreement. This should be a deal breaker in my opinion.

Commented [CP121R120]: Restored but revised to add different limits and add more clarity.

Commented [KH122R120]: Approved by owner per approval from their attorney

Commented [CP123R120]: Subject to approval by Owner's attorney

Commented [CP124R120]: Deleted Article 12.

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

«Exhibit A – Scope of Services
Exhibit B A201 2017, General Conditions of Contract for Construction, as modified and attached hereto and incorporated herein by this reference
Exhibit C – Hourly Rates

Commented [CP125]: Need Exhibits.

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

«N/A »



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

Iowa Central Community College

I & S Group, Inc.

OWNER (Signature)

(Printed name and title)

ARCHITECT (Signature)

«»«Kevin Bills, Business Unit Leader »

(Printed name, title, and license number, if required)

LEADER