

AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL

Board of Regents, State of Iowa
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ARTICLE 1 AGREEMENT

This Agreement is made by and between the Owner, Board of Regents, State of Iowa, acting for University of Northern Iowa and the Design Professional **[Enter Firm's Name, Address, City, State]**, for services in connection with the following Project entitled and briefly described as follows:

Project Title: **[Enter Project Title Here]**.

This Project includes: **[Enter Description Here]**.

The budgeted cost of construction for the Project included in this Agreement is **[\$Amount in numbers]**.

A strikethrough of paragraph(s) represents deleted or modified language – See Article 11 for deletions, modifications and additions to the Agreement.

ARTICLE 2 GENERAL PROVISIONS

The Owner and the Design Professional agree as set forth below:

- 2.1 **STANDARD OF CARE** The Design Professional shall furnish or provide the architectural and engineering services necessary to design the Project in accordance with the Owner's program requirements as defined in the Design Professional's proposal which is dated _____ and **revised** _____ and is attached as Exhibit A. The architectural and engineering services shall include Basic Services plus Additional Services as may be authorized by the Owner. Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity.
- 2.2 **RELATIONSHIP OF THE PARTIES** The Design Professional accepts a relationship of trust and confidence with the Owner for this Agreement and will cooperate and exercise the skill and judgment required above in furthering the interests of the Owner. The Design Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Owner and Design Professional agree to work together on the basis of mutual

trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. The Owner and Design Professional shall endeavor to promote harmony and cooperation among all Project participants. Section 2.2 is not intended to create a fiduciary relationship between the Owner and the Design Professional.

2.3 Neither the Design Professional nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement or unless authorized in writing by the Owner.

2.4 The Owner and the Design Professional shall perform their obligations with integrity, ensuring at a minimum to: (a) each avoid conflicts of interest and disclose any promptly to the other Party; and (b) each warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others for whom they may be liable, to secure preferential treatment.

2.5 DEFINITIONS

2.5.1 “Addendum” is a written or graphic instrument issued by the Design Professional before execution of the construction contract(s) that modifies or interprets the Construction Documents by additions, deletions, clarifications, or corrections.

2.5.2 “Agreement” means the Agreement between Owner and Design Professional as modified, and exhibits and attachments made part of this Agreement upon its execution.

2.5.2.1. The following exhibits are part of the Agreement:

EXHIBIT A: Design Professional’s Proposal Letter
EXHIBIT B: Schedule of Hourly Fee

2.5.3 “Business Day” are all Days, except weekends and official federal or state holidays where the Project is located.

2.5.4 “Construction Documents” are written and graphic documents prepared or assembled by the Design Professional for communicating the design of the Project and administering the contract for its construction.

2.5.5 “Constructor” means the person or entity retained by the Owner to perform Work for the Project and includes the Constructor’s Representative.

2.5.6 “Cost of Construction” means the total cost to Owner of those portions of the entire Project designed or specified by the Design Professional. Cost of Construction does not include the Design Professional’s compensation and expenses and Owner’s expenses associated with the Project or the cost of other services to be provided by others to the Owner.

2.5.7 “Day” means a calendar day.

2.5.8 “Design Professional” is the person or entity identified in Article 1 and includes the Design Professional’s representative.

- 2.5.9 The “Drawings” are the graphic and pictorial portions of the Construction Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Drawings are intended to show general arrangements, design, and dimensions of Work and are partly diagrammation.
- 2.5.10 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Services and to which the Design Professional must comply that are enacted as of the Agreement date.
- 2.5.11 “Others” mean other Constructors, material suppliers, and persons at the Worksite who are not employed by the Constructor or Subcontractors.
- 2.5.12 “Owner” is the person or entity identified in the Agreement and includes the Owner’s Representative.
- 2.5.13 “Parties” mean the Owner and Design Professional collectively.
- 2.5.14 The “Project”, as identified in the Agreement, is the building, facility, or other improvements to be designed by the Design Professional for which the Constructor is to perform Work under the Agreement between the Owner and Constructor. It may also include construction by the Owner or Others.
- 2.5.15 The “Schedule of the Work” is the document prepared by the Constructor that specifies the dates on which the Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.
- 2.5.16 “Services” mean the services provided by the Design Professional or by consultants retained by the Design Professional for the Project.
- 2.5.17 The “Specifications” are that portion of the Construction Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 2.5.18 A “Subcontractor” is a person or entity retained by the Constructor as an independent Constructor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.
- 2.5.19 A “Subsubcontractor” is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor’s Work.
- 2.5.20 “Work” means the construction and services necessary or incidental to fulfill the Constructor’s obligations for the Project in conformance with the Agreement between the Owner and Constructor. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.
- 2.5.21 “Worksite means the geographical area of the Project location where the Work is to be performed.

ARTICLE 3 DESIGN PROFESSIONAL’S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

- 3.1.1 PROJECT REQUIREMENTS The Design Professional, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information provided by the Owner. The Design Professional shall confirm its understanding of such requirements with the Owner and shall assist the Owner to refine or make clarifications in writing, if applicable, to the Owner's program for the Project.
- 3.1.2 The Design Professional shall not proceed with the development of successive Construction Documents until receiving written approval from the Owner. The Design Professional shall promptly revise without additional compensation:
- 3.1.2.1 Those documents which have not been previously approved by the Owner and to which the Owner has reasonable objections;
- 3.1.2.2 Those documents identified by the Constructor and reasonably accepted by the Owner as presenting constructability problems; and
- 3.1.2.3 Those documents needing revisions to reflect clarifications and assumptions and allowances on which the Cost of Construction is based.
- 3.1.3 The Design Professional shall have reasonable access to the Worksite at all times.
- 3.1.4 The Design Professional shall assist the Owner with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.
- 3.1.5 The Design Professional shall not be responsible for the acts or omissions of the Owner, the Constructor, and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of the Design Professional except as provided in this Agreement.
- 3.1.6 Services to be provided by the Design Professional shall be rendered in a timely manner.
- 3.2 BASIC SERVICES The Design Professional's Basic Services consist of any Services provided pursuant to Sections 3.1 and 3.2. The Design Professional shall identify in its Proposal Letter, Exhibit A: (a) other Services included in Basic Services; (b) the specific design disciplines included in Basic Services; and (c) those portions of the Project design to be furnished by the Owner, Constructor, or Others. If professional design services are to be furnished by the Owner, Constructor, or Others, the Design Professional shall indicate all performance and design criteria to be satisfied in accordance with the Owner's program, and the Owner, Constructor or Others shall not be responsible for the adequacy of such performance and design criteria. Design services furnished by a Party other than the Design Professional shall be obtained from licensed design professionals, who shall affix their signature and seal on all Drawings, Specifications, calculations, and submittals prepared by them, and the Design Professional shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services.

The Design Professional shall make all modifications to the Construction Documents necessitated by errors, omissions or inadequacies identified in reviews by Owner Representatives during any and all phases of Services.

The Design Professional shall utilize the Board of Regents, State of Iowa, documents that comprise Division 00, which contain the Bidding Requirements, Contract Forms and Conditions of the construction contract as furnished by the Owner.

3.2.1 COST ESTIMATES The Design Professional shall prepare for the Owner's review and approval (a) a preliminary estimate of the Cost of Construction utilizing area, volume, or similar conceptual estimating techniques and based upon the Owner's Program and (b) updated estimates of the Cost of Construction at the completion of the Schematic Design Documents, the Design Development Documents, and the construction Documents.

3.2.1.1 The Design Professional shall make every reasonable effort to design the Project so that actual Cost of Construction does not exceed the budgeted cost for construction contained in this Agreement. The Design Professional shall promptly notify the Owner's Representative in writing when the Design Professional believes that the budgeted Cost of Construction might be exceeded.

3.2.1.2 If the statement of probable Construction Cost required in Section 3.2 exceeds the budgeted Cost of Construction, the Owner may choose to revise the Project scope and/or quality as required to reduce the probable Construction Cost. If the Owner chooses to proceed in this manner, the Design Professional shall be responsible for all costs associated with modifying the design.

3.2.2 PROJECT SCHEDULE The Design Professional shall prepare for the Owner's review and approval a preliminary Project Schedule that shall show the timing and sequencing of the design and construction required to meet the time criteria set forth in the Owner's program. The Project Schedule shall be updated for the Owner's review and approval at the completion of Schematic Design Documents, Design Development Documents, and Construction Documents. If the Constructor has been retained to provide preconstruction services as part of the Work, the Design Professional shall coordinate and update the Project Schedule with the Schedule of the Work prepared by the Constructor. The Design Professional shall make appropriate recommendations if any Project Schedule shows a deviation from previously approved Project Schedules.

3.2.3 SCHEMATIC DESIGN DOCUMENTS Based on the Owner's program, including any approved refinements or clarifications, the Design Professional shall prepare for the Owner's review and approval, Schematic Design Documents consisting of Drawings, outline Specifications and other documents illustrating the Project's basic elements, and their relationship to the Worksite, Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; tabulation of areas showing the net assignable and gross square foot areas, volumes, and dimensions; and submit the designated quantity of the Schematic Design Documents as identified in Article 11. When the Design Professional submits the Schematic Design Documents, the Design Professional shall identify in writing for the Owner's approval all material changes and deviations that have taken place from the Design Professional's approved preliminary estimate of the Cost of Construction and Project Schedule.

3.2.4 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, the Design Professional shall prepare, for the Owner's review and approval, Design Development Documents. The Design Development Documents shall further define the Project, including Drawings and outline Specifications fixing and describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems. Design Development Documents shall include, as applicable, plans, sections, and elevations; revised tabulation of areas; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When the Design Professional submits the Design Development Documents, the Design Professional shall identify in writing for the Owner's approval all material changes and deviations that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Design Professional shall submit the designated quantity of the Design Development Documents as identified in Article 11.

3.2.5 CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, the Design Professional shall prepare, for the Owner's review and approval and the approval of governmental authorities, including any revisions necessary to secure such approvals, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of Drawings and Specifications that comply with Laws. When the Design Professional submits the Construction Documents, the Design Professional shall identify in writing for the Owner's approval all material changes and deviations that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall describe all Work necessary to bid and construct the Project. The Design Professional shall submit the designated quantity of the Construction Documents and copies of the tabulation of areas as identified in Article 11.

3.2.5.1 The Design Professional shall consult with the Owner's Representative to identify bidding strategies including alternates required to protect the integrity of the budgeted Cost of Construction.

3.2.5.2 The Construction Documents shall comply with all applicable Laws and regulations pertinent to the Project. The Design Professional shall obtain and forward to the Owner letters of approval from all applicable agencies prior to receipt of bids.

3.2.5.3 The Design Professional of record and appropriate Consultants shall place their individual information blocks with certifications, seals, signatures and dates on the original title page of the Construction Documents. The information block shall include the numbers of the pages or sheets, which are covered by certification. The Design Professional shall deliver one set of Construction Documents (Drawings

and Specifications) to the Owner with certifications required prior to the bid date of the Project.

- 3.2.6 DESIGN COORDINATION The Design Professional shall coordinate the services of all design consultants for the Project. The Design Professional shall promptly report any known errors or omissions to the Owner. However, the Design Professional does not assume an affirmative responsibility to detect errors, omissions, or inconsistencies in the design consultant's services that are not retained by the Design Professional.
- 3.2.7 BIDDING OR NEGOTIATION ASSISTANCE The Design Professional shall assist the Owner in obtaining bids or negotiated proposals from Constructors by providing electronic files of Drawings, Specifications, and any Addendum, attending pre-bid or pre-award meetings, clarifying the scope and intent of the Construction Documents, and, if appropriate, evaluating proposed Constructor's Subcontractor and Material Suppliers for portions of the Work. The Design Professional shall issue any addenda or clarifications promptly in writing.
- 3.2.7.1 The Design Professional of Record shall affix professional's certification to the Addendum as required in Article 3, Subparagraph 3.2.5.3. The Design Professional shall deliver one copy of all Addenda to the Owner with certifications required prior to the bid date of the Project.
- 3.2.7.2 If the lowest bona fide bid exceeds the budgeted Construction Cost for construction, the Owner may choose to revise the Project scope and/or quality as required to reduce projected construction costs. If the Owner chooses to proceed in this manner, the Design Professional shall be responsible for all costs associated with modifying, printing and issuing the Construction Documents as necessary to obtain new bids.
- 3.2.8 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the issuance of a written Notice of Award from the Owner to the Constructor with simultaneous notification to the Design Professional. The Design Professional shall (a) review and advise the Owner as to the sufficiency of the schedule of values submitted by the Constructor for the Work, (b) review and advise the Owner as to the sufficiency of the Project Schedule with the Schedule of the Work submitted by the Constructor and approved by the Owner, (c) prepare design documents, including instructions to Constructors, in connection with change orders, and (d) respond to Constructor requests for information (RFI). The Design Professional shall furnish to the Owner and, if directed, to the Constructor interpretations and clarifications of the Drawings and Specifications, by means of additional Drawings, Addenda, instructions to Constructor or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.
- 3.2.8.1 The Design Professional shall review the Constructor's submittals, including shop drawings, product data, and samples, and make approvals of or recommendations about such submittals to the Owner within ten (10) Business Days of receiving the submittals from the Constructor, unless mutually agreed otherwise by the Design

Professional, Constructor, and Owner. The Design Professional shall check the Constructor's submittals for conformance with the design and the scope of the Project and for compliance with the Construction Documents. The Design Professional's review shall not extend to the Constructor's means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by the Construction Documents.

- 3.2.8.2 The Design Professional shall assist the Owner in the evaluation and processing of requests for changes in the Work. Based on its evaluation, the Design Professional shall make appropriate recommendations to the Owner by:

Reviewing Change Order proposals and making a recommendation to the Owner's Representative in writing within five (5) working Days of a receipt of proposal.

- 3.2.8.3 The Design Professional shall visit the Worksite at appropriate intervals to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. After each Worksite visit, the Design Professional shall promptly provide the Owner with a written report. If the Design Professional becomes aware of any defects or deficiencies in the Work, the Design Professional shall provide prompt notice followed by written confirmation to the Owner. If, in the Design Professional's opinion, special testing or inspection of the Work is needed, the Design Professional shall recommend to the Owner such testing or inspection procedures and appropriate consultants. The Design Professional shall not be responsible for construction means, methods, techniques, sequences, and procedures, unless they are specified by the Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

- 3.2.8.4 The Design Professional shall not be responsible for the Constructor's safety precautions and programs. However, if the Design Professional has actual knowledge of safety violations, the Design Professional shall give prompt written notice to the Owner.

- 3.2.8.5 The Design Professional shall assist the Owner in processing the Constructor's applications for payment. Based on its on-site observations and other relevant information, the Design Professional shall recommend and certify upon request to the Owner the amounts due the Constructor and that the Work has progressed to the point indicated in the payment application based on the schedule of values submitted by the Constructor. The Design Professional will interpret the Construction Documents and judge the performance thereunder by both the Owner and the Constructor as follows:

The Design Professional will render interpretations necessary for the proper execution or progress of the Work with reasonable promptness

and in accordance with any time limit agreed upon. Either party to the contract may make a written request to the Design Professional for such interpretations.

- 3.2.8.6 The Design Professional's certification for payment shall not be a representation that the Design Professional has: (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) reviewed construction means, methods, techniques, sequences, or procedures for the Constructor's Work; (c) reviewed copies of requisitions received from Subcontractors and Material Suppliers and other data requested by the Owner to substantiate the Constructor's right to payment; or (d) ascertained how or for what purpose the Constructor has used money previously paid. The Design Professional shall be entitled to rely on the Constructor's certification as to the application of moneys previously paid.
- 3.2.8.7 The Design Professional shall attend meetings with the Owner and the Constructor upon reasonable request of the Owner:

The Design Professional shall keep meeting minutes, prepare a report of each meeting and distribute copies to the Owner's Representative, Design Professional Representative and Constructor for distribution.
- 3.2.8.8 The Design Professional shall assist the Owner in conducting inspections to determine the date or dates of the Constructor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that the Owner may occupy or utilize the Work or a designated portion for its intended use, without unscheduled disruption.

The Design Professional shall assist the Owner in conducting inspections to determine the Constructor's final completion of the Work.
- 3.2.8.9 In the course of conducting on-site observations to determine the dates of substantial completion and final completion, the Design Professional, along with appropriate Consultants, shall develop and submit to the Owner, a list of contract items to be completed or corrected (punch list). The Design Professional shall assist the Owner in establishing appropriate warranty and guarantee commencement dates for various items of mechanical, electrical and conveying equipment.
- 3.2.8.10 COMMISSIONING The Design Professional shall assist with the implementation of formal commissioning including the start-up and/or operation of all building systems that are part of the Work.
- 3.2.8.11 If requested by the Owner, the Design Professional shall visit the Worksite during the Constructor's one-year correction period to assist the Owner in evaluating the need for any corrective measures.
- 3.2.8.12 The Design Professional will interpret the Construction Documents and judge the performance thereunder by both the Owner and the Constructor as follows:

3.2.8.12.1 Claims, disputes and other matters in question between the Constructor and the Owner relating to the execution or progress of the Work or the interpretations of the Construction Documents may be referred initially to the Design Professional for recommendation, which the Design Professional will render in writing within a reasonable time.

3.2.8.12.2 All interpretations and recommendations of the Design Professional shall be consistent with the intent of and reasonably inferable from the Construction Documents and will be in writing or in the form of Drawings. In the Design Professional's interpretations and judgments, the Design Professional will endeavor to secure faithful performance by both the Owner and the Constructor, will not show partiality to either, and will not be liable for the result of any interpretation or judgment rendered in good faith.

3.2.8.13 Within thirty (30) Days after the Owner accepts the Constructor's construction contract or the Design Professional receives the Constructor's as-builts whichever is later, the Design Professional shall furnish the Owner with record documents.

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

To the extent permitted by Section 7.1.4 and to the extent not caused by the wrongful or negligent acts or omissions of the Design Professional, its agents, successors and assigns, the Owner shall indemnify and hold harmless the Design Professional, its agents, successors and assigns from and against all claims, damages, losses, costs and expenses incurred in connection with any dispute resolution process arising out of or relating to the performance of Services at the Worksite in an area affected by Hazardous Material.

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

3.3.1 assistance with the preparation of the Owner's program and planning surveys;

3.3.2 surveys, site evaluations, legal descriptions, and aerial photographs;

3.3.3 soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;

- 3.3.4 artistic renderings, models, and mockups of the Project or any part of the Project;
 - 3.3.5 inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;
 - 3.3.6 interior design and related services, including procurement and placement of furniture, furnishings, artwork, and decorations;
 - 3.3.7 making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by the Owner, and which are due to causes beyond the control of the Design Professional;
 - 3.3.8 design coordination, management, expediting, and other services supporting the procurement of materials to be obtained or work to be performed by the Owner, including but not limited to telephone systems, computer wiring networks, and other specialty systems which are not otherwise required by this Agreement;
 - 3.3.9 estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss;
 - 3.3.10 the premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Design Professional to maintain the Project Schedule for causes that are the responsibility of the Design Professional;
 - 3.3.11 serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which the Design Professional is not a Party;
 - 3.3.12 providing Services relating to Hazardous Material discovered at the Worksite;
 - 3.3.13 out-of-town travel by the Design Professional in connection with any proceeding, legal or otherwise, regarding the Project in which the Design Professional is not a Party;
 - 3.3.14 services requested by the Owner or required by the Work that are not normally part of generally accepted design and construction practice and not otherwise required by this Agreement;
 - 3.3.15 furnishing services related to the suspension of construction work;
 - 3.3.16 performing formal commissioning services;
 - 3.3.17 interior building signage;
 - 3.3.18 audio/visual equipment;
 - 3.3.19 other additional services as agreed to by the Parties and identified in Article 11.
- 3.4 **QUALIFICATIONS** The Design Professional warrants and represents that the Design Professional and its consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.
- 3.5 **CONSULTANTS** The Design Professional shall not engage the services of any consultant without first obtaining the Owner's written approval, which approval shall not be unreasonably withheld. Such approval by the Owner shall not be deemed to create any contractual relationship between the Owner and any such consultant, except that the Owner shall be

considered the intended beneficiary of the performance of their services. The Design Professional shall not include any limits of liability in its agreements with any consultants without the prior written approval of the Owner. The Design Professional shall bind its consultants in the same manner as the Design Professional is bound to the Owner under this Agreement. Consultants retained by the Design Professional for the services covered by this Agreement are identified under Article 11.

- 3.6 **DESIGN PROFESSIONAL'S REPRESENTATIVE** The Design Professional's representative shall possess full authority to receive and act on instructions from the Owner. If the Design Professional changes its representative or his/her authority, the Design Professional shall immediately notify the Owner in writing. The Design Professional's representation is identified under Article 11.
- 3.7 **KEY PROJECT PERSONNEL** The key Project personnel whom the Design Professional shall assign are as set forth in Article 11. Such personnel shall not be changed without the written approval of the Owner, which approval shall not be unreasonably withheld.
- 3.8 **ROYALTIES, PENALTIES, AND COPYRIGHTS** The Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems required by the Owner or selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional shall indemnify and hold the Owner, the Constructor, and Subcontractors harmless from all suits or claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees, for infringement of any patent rights or copyrights arising out of such selection.
- 3.9 **CONFIDENTIALITY** Certain information disclosed by the Owner to the Design Professional pursuant to this Agreement may be considered confidential consistent with State and Federal law. The Owner will identify in writing any information that is confidential and the reason therefor. The Design Professional shall treat as confidential and not disclose to third parties, except as necessary for the performance of this Agreement or as required by law, any information designated by the Owner in writing as confidential.
- 3.10 The Design Professional and Consultants retained by the Design Professional shall comply with health and safety measures required by the Owner. Such requirements may change from time to time at the discretion of the Owner. The Owner's Representative shall provide the Design Professional with reasonable notice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

- 4.1.1 To the extent the Owner has obtained the information and services identified below, the Owner shall provide them to the Design Professional in a timely manner. The Design Professional shall be entitled to rely on the completeness and accuracy of such information and services:
 - 4.1.1.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing

conditions, subsurface and environmental studies, reports, and investigations;

4.1.1.2 Inspection and testing services during construction as required by law or as mutually agreed;

4.1.1.3 Unless otherwise provided in this Agreement, necessary approvals, rezoning, easements and assessments, fees, and charges required for the use, occupancy, or renovation of permanent structures, including legal and other required services. The information required by Subsection 4.1.1.1 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out the Work.

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

Services required to correct design errors, omissions, or deficiencies that become apparent during construction or after completion of the Project shall be provided by the Design Professional at no additional compensation.

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

4.2 **OWNER'S REPRESENTATIVE** The Owner's Representative shall be fully acquainted with the Project, agrees to furnish the information and services required of the Owner pursuant to Section 4.1 in a timely manner, and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or his/her authority, the Owner shall immediately notify the Design Professional in writing.

4.2.1 The Director of Facilities Management, or designee, shall be the principal representative of the Owner. All communications between the Owner and Design Professional shall be made through the Owner's Representative. The Owner's Representative shall be at all meetings with the Design Professional and other institutional personnel during the Project.

4.2.2 The Owner's Representative shall meet and confer with the Design Professional and the Design Professional's Consultants as necessary to ensure complete

understanding and communication relative to the needs and requirements of the Project. The Owner's Representative shall notify the Design Professional in writing of any change in the written program/requirements.

ARTICLE 5 TIME

- 5.1 **TIME FOR SERVICES** Time is of the essence. The Design Professional shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by the Owner.
- 5.2 **DELAYS BY DESIGN PROFESSIONAL** If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of the Design Professional which violates its standard of care, the Design Professional shall compensate the Owner for and indemnify it against all damages that may accrue as a result of such delay. In addition, the Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to the Owner because of such delay. The Owner shall provide prompt written notice to the Design Professional of such delay after the Owner first recognizes the delay.
- 5.3 **DELAYS BY OWNER** If the Design Professional is delayed in the performance of its Services by any act or omission of the Owner, or by changes ordered by the Owner which are due to causes beyond the Design Professional's control, or by a delay authorized by the Owner pending dispute resolution, then the time allotted in the Project Schedule for the Design Professional's Services shall be extended for the period of such delay or the Owner shall authorize the Design Professional to work overtime to make up such lost time, and the Design Professional's compensation shall be equitably adjusted. The Design Professional shall provide prompt written notice to the Owner of such delay after the Design Professional first recognizes such delay.

ARTICLE 6 COMPENSATION AND PAYMENTS

- 6.1 **COMPENSATION FOR BASIC SERVICES**
- 6.1.1 Compensation for Basic Services as described in Section 3.1 and 3.2 shall be as set forth in Article 11.
- 6.2 **ADDITIONAL SERVICES**
- 6.2.1 For Additional Services as described in Section 3.3, compensation shall be stipulated at the time of occurrence.
- 6.3 **PAYMENTS**
- 6.3.1 The Design Professional shall submit to the Owner for its approval monthly applications for payment for Basic and Additional Services. The Owner shall pay approved amounts no later than thirty (30) Days after the Design Professional has submitted its applications for payment. No matter how computed in Section 6.1, payments for Basic Services shall not exceed the amounts identified in Article 11 for Basic Services at the completion of each Phase of the Design Professional's Services.
- 6.3.2 Preparation of Invoices, Invoices for Basic and Additional Services shall be prepared in accordance with the Owner's standard invoice and shall be accompanied with

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

- 6.3.2.1 Acceptance of final payment shall constitute a waiver of all claims by the Design Professional and its Consultants for compensation for its Services.
- 6.3.3 Should there be any claim or obligation asserted before or after final payment is made that arises from the Design Professional's Services, the Design Professional shall reimburse the Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by the Owner in satisfying, discharging, or defending against any such claim or obligation, including any action brought or judgment recovered.
- 6.3.4 Should the Design Professional or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.
- 6.3.5 The Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles. Records shall be kept for the duration of the Statute of Limitations that governs when this Agreement was executed and made available to the Owner on request or shall be made available for examination by the Owner's authorized representative at mutually convenient times at no expense to the Owner.
- 6.3.6 Termination of the Project. In the event the Owner decides for any reason to terminate the Project, the Design Professional shall be paid for services satisfactorily performed and unpaid Reimbursable Expenses incurred prior to receipt of written notice from the Owner.
- 6.3.7 Deferral of the Project. If action on the Project is deferred for more than one year, the Design Professional's compensation shall be subject to renegotiation for the uncompleted portion of the Project.
- 6.3.8 Termination of the Agreement. In the event the Agreement is terminated for any reason, the Design Professional shall be paid for services satisfactorily performed and unpaid Reimbursable Expenses incurred prior to receipt of written notice of termination.

ARTICLE 7 INDEMNITY AND INSURANCE

7.1 INDEMNITY

- 7.1.1 To the full extent permitted by law, the Design Professional shall indemnify and hold harmless the Owner, the Owner's officers, directors, members consultants, agents, employees, successors and assigns (the Indemnitees) from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees arising out of a claim for bodily injury and/or property damage but only to the extent caused by any wrongful or negligent act or omission in the performance of the terms and conditions of this Agreement of the Design Professional, its consultants or

anyone employed by any of them or anyone for whose acts or omissions any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person.

- 7.1.2 NO LIMITATIONS ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design Professional, anyone directly or indirectly employed by the Design Professional or anyone for whose acts the Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design Professional under workers' compensation acts, disability benefit acts, or other employment benefit acts. The requirements for insurance are not intended to limit, qualify or restrict the liabilities and obligations otherwise assumed by the Design Professional in this Agreement, including provisions concerning indemnification.
- 7.1.3 The Owner will require any Constructor or Subcontractor performing the Work in connection with the Construction Documents produced under this Agreement to hold harmless and indemnify the Owner and the Design Professional, its consultants and each of their officers, agents and employees from any and all claims, losses, damages or expenses arising out of the Constructor's or Subcontractor's wrongful or negligent acts or omissions in the performance of the Work described in the Construction Documents, but not including liability that may be due to the wrongful or negligent acts or omissions of the Owner, the Design Professional, their consultants or their officers, agents and employees.
- 7.1.4 To the extent permitted by Iowa Code Chapter 669 and Article VII, Section 1 of the Iowa Constitution the Owner shall indemnify and hold harmless the Design Professional, its officers, directors, members, consultants, agents, employees, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees arising out of a claim for bodily injury and property damage but only to the extent caused by any wrongful or negligent act or omission of the Owner in the performance of the terms and conditions of this Agreement.

7.2 INSURANCE

- 7.2.1 Before commencing its Services and as a condition of payment, the Design Professional and its consultants shall purchase all required insurance at the time of the execution of this Agreement and maintain such insurance for the duration of the Project or to meet statute of limitations, whichever is longer, as will protect it from claims arising out of the performance of its Services under this Agreement.
- 7.2.2 The Design Professional shall maintain in effect all insurance coverage required under the subsections immediately below with insurance companies lawfully authorized to do business in the state of Iowa and hold a current financial rating from A. M. Best of no less than A-, financial size VII. Total limit requirements can be met through individual primary policies or in combination with an umbrella or excess policy that follow form of the underlying or primary coverage. In addition, the Design Professional shall require its consultants to maintain insurance limits and endorsements listed below.

The below insurance policies, with the exception of Professional and Workers Compensation coverage, shall name three entities, State of Iowa; Board of Regents, State of Iowa; and University of Northern Iowa as additional insureds on a primary and non-contributory basis.

The Design Professional and its consultants shall waive subrogation rights against the State of Iowa, and the Board of Regents, State of Iowa, and University of Northern Iowa for any claim paid or payable by any of the below required insurance policies.

Neither the Owner, nor any additional insured required to be so named under this Agreement shall participate in any policy deductible or retention for claims. Any such deductible or retention shall be the sole responsibility of the Design Professional.

7.2.2.1 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE applicable to cover liability imposed by State statutes having jurisdiction over Design Professional's employees. Employers' Liability coverage is required with at least the following limits of liability:

- a. \$500,000 each accident.
- b. \$500,000 disease each employee.
- c. \$500,000 disease policy limit.

Business entities that are sole proprietors, partnerships, or LLC's must show proof that the properties, partnerships and LLC members have elected to be included in the workers compensation coverage. This coverage election applies to individuals working in any capacity on University of Northern Iowa projects whether on site or off site. The form of proof required shall be a statement in the description box on the certificate of insurance, or an applicable endorsement form.

Business entities that are sub S or C corporations must not have elected to exclude any officers. This applies to officers who are working in any capacity on University of Northern Iowa projects regardless of whether they are on site or off site.

7.2.2.2 COMMERCIAL GENERAL LIABILITY INSURANCE covering all work and operations under the Agreement, including contractual liability insurance for the liability assumed in subsection 7.2.2 with at least the following limits of liability as a minimum:

- a. \$1,000,000 per occurrence.
- b. \$2,000,000 general aggregate.
- c. \$2,000,000 products/completed operations aggregate.
- d. \$1,000,000 personal and advertising injury limit.

The General Liability Insurance must be endorsed with additional insured form CG2026 or equivalent and on a primary and non-contributory basis, form CG20 01 04 13 or equivalent.

- 7.2.2.3 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE with a combined single limit for bodily injury and property damage of not less than \$1,000,000 with respect to owned, leased, hired, and non-owned vehicles assigned to or used in performance of this Agreement.
- 7.2.2.4 UMBRELLA OR EXCESS LIABILITY INSURANCE of no less than \$2,000,000 per occurrence providing excess of the General Liability, Automobile Liability and Employers Liability. Insurance coverage must follow form of the underlying or primary coverage.
- 7.2.3 PROFESSIONAL LIABILITY INSURANCE for claims arising from the negligent performance of services under this Agreement, which shall be written for not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. The Professional Liability Insurance shall contain coverage sufficient to cover all Services performed by the Design Professional for this Project. These requirements shall be continued in effect for the entire term of the Agreement plus five (5) years following final payment to the Design Professional. In the event the Design Professional is required to change carriers during the Project or for the required years after the Project, the Design Professional must notify the Owner immediately and procure coverage that includes all prior acts for the Project's full scope of Work. The deductible or retention shall be paid by the Design Professional.
- 7.2.4 The Design Professional shall furnish to the Owner certificates of insurance evidencing the required coverage and endorsements listed in this Section 7.2, and, if requested by the Owner, a copy of its Professional Liability policy. No policy shall be cancelled without thirty (30) Days' prior written notice to the Owner.

ARTICLE 8 TERMINATION

- 8.1 TERMINATION BY EITHER PARTY Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for default absent appropriate corrective action upon seven (7) Days from receipt. Upon such time and absent appropriate corrective action, the non-breaching Party may terminate this Agreement in writing.
- 8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, the Owner may, without cause, terminate this Agreement with the Design Professional. If this Agreement is terminated pursuant to this section, the Design Professional may recover from the Owner payment for Services performed to the date of termination, in accordance with this Agreement.
- 8.3 This Agreement shall terminate upon final acceptance of the Work of the Project and acceptance of the scope outlined in Article 3, Paragraph 3.2.8.13 of this Agreement.

ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

- 9.1 CONTINUANCE OF SERVICES AND PAYMENT Unless otherwise agreed in writing, the Design Professional shall continue to perform its Services during any dispute mitigation or resolution proceeding. If the Design Professional continues to perform, the Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

- 9.2 **DIRECT DISCUSSIONS** Any dispute between the Design Professional and the Owner regarding, but not limited to Project budget, Project scope, Project layout, or types and quality of materials, shall be submitted in writing within twenty-one (21) Days after occurrence of the event giving rise to the claim. The Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives who shall possess the necessary authority to resolve such matters and who shall record the date of first discussions. If not resolved by the Owner's Representative within ten (10) Days, then the Design Professional may submit in writing the issue(s) in dispute to the Senior Vice President, Finance and Operations as the University President's designee. The determination of the Senior Vice President, Finance and Operations is the final institutional decision.

ARTICLE 10 MISCELLANEOUS

- 10.1 **OWNERSHIP OF TANGIBLE DOCUMENTS** The Owner shall receive Ownership of all documents, Drawings, Specifications, electronic data, and information prepared, provided, or procured by the Design Professional or by consultants retained by the Design Professional and distributed to the Owner for this Project, upon the making of final payment to the Design Professional or in the event of termination under Article 8, upon payment for all sums due to the Design Professional under Sections 8.1 and 8.2.
- 10.1.1 **COPYRIGHT** The Owner shall own any resulting copyright in the Construction Documents as a work for hire and shall have the right to use, to reproduce, and to make derivative works of the Construction Documents. The Design Professional shall not acquire a copyright for Project Construction Documents but shall be permitted to retain copies including reproducible copies or electronic data of the Drawings, Specifications and other Project documents.
- 10.1.2 **USE OF DOCUMENTS IN EVENT OF TERMINATION** In the event of a termination of this Agreement pursuant to Article 8, the Owner shall own any resulting copyright and have the right to use, to reproduce, and to make derivative works of the Construction Documents to complete the Project provided payment has been made pursuant to Article 6.
- 10.1.3 **OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT** After completion of the Project, the Owner may reuse, reproduce, or make derivative works from the Documents at the Owner's sole risk, except for the Design Professional's indemnification obligations pursuant to Section 3.9, and the Owner shall be responsible for any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.
- 10.1.4 **DESIGN PROFESSIONAL'S USE OF DOCUMENTS** Where the Design Professional has transferred its copyright interest in the Construction Documents under Subsection 10.1.1, the Design Professional may reuse Construction Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.
- 10.1.5 The Design Professional shall obtain from its consultants rights and rights of use that correspond to the rights given by the Design Professional to the Owner in this Agreement and the Design Professional shall provide evidence that such rights have been secured.

- 10.2 **EXTENT OF AGREEMENT** Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated Agreement between the Owner and the Design Professional and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design Professional and not for the benefit of any third party.
- 10.3 **DOCUMENTS IN ELECTRONIC FORM** If the Owner requires that the Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Constructor shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements, and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. Notwithstanding other provisions in this Agreement, printed documents and sets shall not be required if such documents are required to be prepared and transmitted in electronic form.
- 10.4 **ASSIGNMENT** Except as to the assignment of proceeds, neither the Owner nor the Design Professional shall assign their interest in the Agreement without the written consent of the other.
- 10.5 **GOVERNING LAW AND VENUE** This Agreement shall be governed by the law in the State of Iowa.
- 10.6 **SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 10.7 **NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.
- 10.8 **TITLES** The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 10.9 **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly reviewed and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.
- 10.10 **ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS**
- 10.10.1 To the fullest extent permitted by Iowa Code Chapter 554D, the parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The parties agree that electronic signatures are the same as handwritten signatures for the purpose of validity,

enforceability, and admissibility. The parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

In the event the laws, rules or regulations of a third party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third part governmental agency or entity.

10.10.2 This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original copy of this Agreement or such Ancillary Agreement.

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

10.12 EQUAL EMPLOYMENT OPPORTUNITY

10.12.1 The Design Professional shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, physical or mental disability or status as a U.S. veteran. The Design Professional shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification. Such action shall include, but not be limited in the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. The Design Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

10.12.2 The Design Professional shall, in all solicitations or advertisements for employees placed by or on behalf of the Design Professional, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification.

10.12.3 The Design Professional shall send to each labor union or representative of workers with which the Design Professional has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Design Professional's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 10.12.4 The Design Professional shall comply with all relevant provisions of state and federal laws and regulations. The Design Professional shall furnish all information and reports requested by the Owner or required by or pursuant to the rules and regulations herein and shall permit access to payroll and employment records by the Owner or the Owner's Representatives for the purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.
- 10.12.5 In the event of the Design Professional's noncompliance with the nondiscrimination clauses of the Agreement or with any of the aforesaid rules, regulations or requests, this Agreement may be canceled, terminated or suspended in whole or in part and the Design Professional may be declared ineligible for further Agreements with the Owner. In addition, the Owner may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Code of Iowa as heretofore and hereafter amended, or by the rules and regulations of the Owner or as otherwise provided by law.
- 10.12.6 The Design Professional shall include the provisions of this Article 10 hereof in every agreement with Professional Consultants unless specifically exempted by approval of the Owner, in accordance with the rules and regulations of said Owner, so that such provisions shall be binding on each Professional Consultant. The Design Professional shall take such action with respect to any Professional Consultant as the Owner or the Owner's authorized representative may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Design Professional becomes involved in, or is threatened with, litigation by a Professional Consultant as a result of such direction by the Board of Regents, State of Iowa or its institutions, the Design Professional may request the State of Iowa to enter into such litigation to protect the interests of the State of Iowa.

ARTICLE 11 MODIFICATIONS TO THE AGREEMENT

11.1 The following Paragraphs have been deleted from this Agreement:

11.2 The following Paragraphs have been modified in this Agreement:

11.3 The following Paragraphs have been added to this Agreement:

11.3.1 PROJECT REPRESENTATIVES

11.3.1.1 Owner's Representative Designee is: **Enter Owner's Representative's Name**

11.3.1.2 Design Professional's Representative is: **Enter Design Professional's Representative's Name**

11.3.1.3 Consultant's retained by the Design Professional for the services covered by this Agreement are: **Enter Consultant's Firm Name, Representative and Discipline OR type "None"**

11.3.2 The Design Professional's Basic Services also include:

11.3.2.1 Securing reviews and approvals, on behalf of the Owner, of authorities having jurisdiction over the Project, when applicable and furnishing Drawings, Specifications, and applications for such reviews as may be required.

11.3.2.2 Making a presentation to the Board of Regents, State of Iowa; planning committee and any other appropriate committee when requested by the Owner.

11.3.3 INTERNET BASE PROJECT COMMUNICATION AND MANAGEMENT REQUIREMENTS: Using UNI's Submittal Exchange.

11.3.4 DOCUMENT SUBMITTAL SCHEDULE:

11.3.5 The Design Professional shall provide the Owner with the appropriate quantities identified in the following schedule for distribution. Cost shall be included in Basic Services Subsection 11.3.6.1. Hardcopies (HC) and the electronic files (E) of the documents identified below.

	Pre-Design	Schematic Design	Design Development	95% Documents	Bid Documents	Construction Documents	As-Builts
Building Programs	4 HC, E						
Schematic Design Booklets		4 HC, E					
Drawings		3 HC, E	3 HC, E	4 HC, E	4 HC, E	4 HC, E	1 HC, E
Drawings Certified		N/A	N/A	N/A	N/A	2 HC, E	
Project Manuals		N/A	3 HC, E	4 HC, E	4 HC, E	4 HC, E	1 HC, E
Project Manuals Certified		N/A	N/A	N/A	N/A	1 HC, E	
Project Manuals & Drawings to Constructor						10/20 HC	
Probable Construction Costs		2 HC, E	2 HC, E	2 HC, E	2 HC, E	N/A	
Life Cycle Costs		2 HC, E		2 HC, E	1 HC, E	1 HC, E	
Design Calculations						1 HC, E	

11.3.6 COMPENSATION AND PAYMENTS: The Owner shall compensate the Design Professional in accordance with the Articles of this Agreement.

11.3.6.1 For Basic Services, compensation shall be a stipulated sum of **Amount in Agreement in Words and No/100 Dollars (\$x,xxx,xxx.xx)**. Said schedule shall govern for the duration of this Agreement. The Design Professional shall be compensated for Consultants services that are included in the Basic Services at a multiple of 1.0 times the amount invoiced.

11.3.6.2 For Additional Services, compensation shall be stipulated at the time of occurrence. (See Exhibit B).

11.3.6.3 During the course of the Project, payments to the Design Professional shall not exceed the following percentages of the total compensation due under the Agreement:

	Percentage
PROGRAMMING / PREDESIGN	5%
SCHEMATIC DESIGN	15%
DESIGN DEVELOPMENT	40%
CONSTRUCTION DOCUMENT	75%
BIDDING / NEGOTIATION	80%
CONSTRUCTION PHASE	90%
RECORD DOCUMENTS	100%

11.3.7 The project schedule shall be as follows:

Submit Project Program Document

Submit Schematic Design Documents with Design Analysis,
Model Rendering if required and Life Cycle Costs

Submit Design Development Documents with Design Analysis, Life Cycle Costs,
and
Tabulation of Areas and Estimate

Submit 95% Complete Construction Documents with Design Analysis,
Tabulation of Areas

Submit Bidding Document

Submit Written Approval by Applicable Authorities

Pre-bid Meeting

Owner Receive and Open Bids

Submit Final Construction Documents with Design Analysis and Estimate

Construction Contract Period

Submit Record Documents

- 11.3.8 DRAWING NUMBERS: The Owner's Drawing Numbers begin with **XXX-XX-XXX**. For this particular Project, these numbers shall be placed in the lower, right-hand corner of each drawing. Upon completion of construction the XXX's will become numbers on the record drawings and represent the total number of drawings.
- 11.3.9 The Design Professional shall provide a project team. Team members shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless the member(s) proves to be unsatisfactory to the Design Professional or ceases to be in the employ of the Design Professional.
- 11.3.10 The Design Professional shall not assign design or drafting responsibilities for custom-designed elements of the Project to the Constructor, Subcontractors, or Suppliers through the Construction Documents or any other means, without the express written consent of the Owner. Any items agreed to by the Owner will be listed in this section of the Contract.
- 11.3.11 The Design Professional shall respond in writing to all formal design review comments with regard to the disposition of, or actions taken on such comments.
- 11.3.12 Bid documents shall be updated and revised to reflect all addenda, accepted alternates and negotiated scope changes and reissued as "Construction Set Documents" within ten (10) Days after receiving a copy of the Constructor's Notice of Award.
- 11.3.13 The Design Professional shall include in Division I of the Construction Documents, a list of required shop drawings and other submittals including controls software and training programs, which the Constructor must submit and shall stipulate that the Constructor shall be required to submit a schedule of the submittals within thirty (30) Days after receipt of the Constructor's Notice of Award. The Design Professional shall review and return shop drawings and submittals to the Constructor within fourteen (14) Days of receipt.
- 11.3.14 The Owner will include stipulations in the Project Requirements of the Construction Documents that the Constructor shall complete the Project within the contract time or be liable for additional professional services and administrative costs associated with the incomplete Project. The Design Professional shall use a calendar-day concept for the construction period and document the field operations. The Design Professional shall keep the documentation current and share the information with the Owner and Constructor on a monthly basis. Additional construction phase services after expiration of the construction contract period shall not exceed \$1,000/day. The Design Professional shall process a change order to adjust the construction contract amount and time accordingly, if necessary.
- 11.3.15 The Design Professional shall provide the probable construction costs in the uniform format for construction work recommended by the Construction Specifications Institute (CSI) as required by Article 11.3.5.
- 11.3.15.1 Probable costs of items in the Form of Bid (i.e., base proposal, alternates, unit prices) shall be provided prior to receipt of bids.

- 11.3.15.2 The Design Professional shall provide, during the Construction Documents Phase a probable project cost, which includes, but is not limited to, construction, testing, contingencies, design and construction services and other project related costs.
- 11.3.16 The Design Professional shall utilize the Owner’s Division I document located at <https://fm.uni.edu/design-professional-information>. The Design Professional shall meet and review this document with the Owner prior to issuing.
- 11.3.17 The Design Professional shall send completed “Division 0 Information Request” documents to the Owner fourteen (14) calendar days in advance of when the Owner’s Uniform Documents for the Bidding Documents are needed for printing. The Owner will forward a hard copy and an electronic copy of the documents to the Design Professional within seven (7) calendar days after receipt of the completed document. <https://fm.uni.edu/design-professional-information>
- 11.3.18 The Design Professional shall encourage bidding of prospective Constructors during the bidding phase. Copies of the project advertisement and/or a letter describing the Project shall be sent to Constructors and phone calls (if necessary) shall be made to Constructors to encourage the competitive bidding process and improve the probability of receiving a minimum of three (3) bids. If bids are not received and a good faith effort to obtain bids is not shown, the Design Professional, without additional charge, shall revise and issue the Construction/Bid Documents as necessary to obtain bids if deemed appropriate by the Owner.
- 11.3.19 The Design Professional shall attend a preconstruction meeting to exchange project information with the Owner, Constructor and Subcontractors. The Owner Representative shall prepare the agenda and conduct the meeting. The meeting minutes shall be taken and distributed by the Design Professional. The Design Professional shall attend subsequent construction meetings every two weeks, or when otherwise required to stay current with the Project. Construction meetings (every two weeks) shall be conducted by the Constructor with the Design Professional preparing and distributing minutes within 48 hours of the meeting.
- 11.3.20 The Design Professional shall follow design guidelines and procedures established for the design and construction phases of projects and outlined on Facilities Management’s website. <https://fm.uni.edu/design-professional-information>
- 11.3.21 The Design Professional shall submit at Substantial Completion the as-built floor plans with the room numbers in AutoCAD.
- 11.3.22 The Design Professional shall submit the following documents to the Owner within ninety (90) Days after substantial completion in well-organized, bound forms. The documents shall be provided in the number of copies and on media as required herein before.
- 11.3.22.1 Approvals of authorities having jurisdiction over the Project.
- 11.3.22.2 Design analysis (i.e., electrical, mechanical, structural, life-cycle cost analysis, etc.).
- 11.3.22.3 Record Project Manual.

- 11.3.22.4 Specifications of furnishing and interior finishes when applicable.
 - 11.3.22.5 Constructor's marked-up Construction Documents.
 - 11.3.22.6 Record Drawings, including changes reflected on Constructor's marked-up set of Construction Documents and all information in ASIs, RFIs, PRs, CCDs and other changes.
 - 11.3.22.7 Status Report of allowance items.
 - 11.3.22.8 Operation and Maintenance Manuals.
 - 11.3.22.9 Warranties and guarantees with Final Status Report of Warranties and Guarantees.
 - 11.3.22.10 Final change order status report.
 - 11.3.22.11 Substantial Completion Certificate with punch list for Construction Contract.
 - 11.3.22.12 Letter of recommendation for Construction Contract Final Acceptance.
- 11.3.23 All printing of the hard copies of the plans and specifications will be paid directly by the University of Northern Iowa to the reproduction company approved by the University of Northern Iowa.

PROJECT: **ENTER PROJECT TITLE**

PROJECT #: **ENTER #**

This Agreement becomes effective the day and year signed by the Owner below:
[Use if Project budget is LESS than \$999,999]

Design Professional:
[Enter Firm Name]

By: _____
(Title)

Date: _____

Owner:
UNIVERSITY OF NORTHERN IOWA

By: _____
Michael Hager, Senior Vice President for
Finance and Operations
University of Northern Iowa

Date: _____

PROJECT: **ENTER PROJECT TITLE**

PROJECT #: **ENTER #**

This Agreement becomes effective the day and year signed by the Owner below:
[Use if Project budget is MORE than \$999,999]

Design Professional:
[Enter Firm Name]

By: _____

Date: _____

Recommended by:
UNIVERSITY OF NORTHERN IOWA

By: _____

Michael Hager, Senior Vice President for
Finance and Operations
University of Northern Iowa

Date: _____

Owner:
Board of Regents, State of Iowa

By: _____

Mark Braun
Executive Director

Dated: _____

EXHIBIT A
PROGRAM
REQUIREMENTS / PROPOSAL LETTER
(Attach proposal letter on DP letterhead)

EXHIBIT B
SCHEDULE OF HOURLY FEES

POSITION
CLASSIFICATION

HOURLY
BILLING RATE