

AGREEMENT BETWEEN OWNER AND CONSULTANT

Board of Regents, State of Iowa
Special Services
January 2025 Edition

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONSULTANT'S RESPONSIBILITIES
4. SUBCONTRACTS
5. OWNER'S RESPONSIBILITIES
6. INDEMNITY AND INSURANCE
7. COMPENSATION AND PAYMENT
8. DISPUTE MITIGATION AND RESOLUTION
9. TERMINATION
10. MISCELLANEOUS
11. MODIFICATIONS TO THE AGREEMENT

ARTICLE 1 AGREEMENT

- 1.1 This Agreement is made by and between the Owner, Board of Regents, State of Iowa, acting for The University of Iowa and the Consultant for services in connection with the Project entitled and briefly described under Article 11.
- 1.2 The Consultant shall comply with all provisions of the University of Iowa Design Standards and Procedures – 2025 Edition and all amendments (preferments) issued prior to the execution of this agreement.

ARTICLE 2 GENERAL PROVISIONS

- 2.1 **PARTY RELATIONSHIP AND ETHICS** The Parties each agree to proceed with the Project on the basis of trust, good faith, and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and expeditious manner consistent with the Contract Documents. Consultant agrees to procure or furnish, as permitted by the Laws, the Services as set forth below.
 - 2.1.1 Consultant represents that it is an independent contractor and that it is familiar with the type of Services it is undertaking.
 - 2.1.2 Neither the Consultant 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 or the Owner's Representative.
 - 2.1.3 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoid conflicts of interest and promptly disclose any to the other Party; and (b) warrants 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.
- 2.2 **DEFINITIONS**
 - 2.2.1 "Agreement" means the Standard Form of Agreement Between Owner and Consultant as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.
 - 2.2.2 "Business Day" are all Days, except weekends and official federal or state holidays where the Project is located.
 - 2.2.3 The "Consultant" is the person or entity identified as such in Article 1 and includes the Consultant's representative.
 - 2.2.4 "Day" means a calendar day.
 - 2.2.5 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Services and to which the Consultant must comply that are enacted as of the Agreement date.

- 2.2.6 "Others" mean other contractors, and all persons at the Worksite who are not employed by the Consultant, its Subcontractors or material suppliers.
- 2.2.7 "Owner" is the person or entity identified in the Agreement and includes the Owner's Representative.
- 2.2.8 "Parties" mean the Owner and Consultant collectively.
- 2.2.9 The "Project," as identified in the Agreement, is the building, facility, or other improvements in connection with which the Consultant is to perform Services under this Agreement.
- 2.2.10 "Services" mean the services provided by the Consultant as defined in this Agreement.
- 2.2.11 A "Subcontractor" is a person or entity retained by the Consultant as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Services. The term Subcontractor does not include any separate contractor employed by the Owner or any separate contractor's subcontractors.
- 2.2.12 A "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform any portion of the Subcontractor's Work.
- 2.2.13 "Worksite" means the geographical area of the Project location where the Services are to be performed.

ARTICLE 3 CONSULTANT'S RESPONSIBILITIES

- 3.1 SERVICES Consultant shall perform the consulting services required for the Project, as more fully described in Article 11. Consultant shall perform such Services in a timely manner, and, to the extent required by Law, Consultant shall be appropriately licensed and perform such Services under the direction of an appropriately licensed professional or business.
- 3.2 REPORTS
 - 3.2.1 Consultant shall submit the deliverables described in Article 11. To the extent required by Law, such deliverables shall be prepared under the direction of and shall bear the seal of an appropriately licensed professional.
 - 3.2.2 Consultant shall treat such written reports and other documents, including supporting data and field logs, as confidential, and shall distribute copies of them only to Owner and any other party authorized in writing by Owner to receive copies, except Consultant shall be entitled to distribute them as required by local Laws and to provide documents as otherwise required by Law. Reports and other documents created by Consultant are prepared solely for the use of Owner, and the consultants and contractors retained by Owner, for the Worksite, and such reports and other documents are not for the benefit of any third party not expressly identified in this Agreement.
- 3.3 Unless expressly assigned by this Agreement, Consultant does not assume any duties, responsibilities, or obligations with regard to the Project which by custom or contract are vested in governmental authorities or other parties.
- 3.4 Consultant shall not provide supervision of or direction to Owner's or any contractor's personnel, consultants, or contractors, nor assume responsibility for Owner's or any contractor's means, methods, techniques, sequences, or procedures of construction or safety programs.
- 3.5 STANDARD OF CARE
 - 3.5.1 Consultant shall perform all Services in accordance with the standard of professional skill and care required for services of this type for a Project of similar size, scope, and complexity, during the time and locality in which the Services are provided.
 - 3.5.2 Consultant shall not be responsible for: (a) any errors or omissions of any party involved in the design or construction of the Project who are not under the direct control or authority of Consultant, unless such errors or omissions were a direct result of the party's reliance on Services or recommendations of Consultant that did not comport with the standard of care required by subsection immediately above; or (b) any failure of Owner or its consultants, constructors, or contractors, and their respective agents or employees, to comply with the recommendations, written or oral, made by Consultant.

- 3.6 SAFETY Consultant shall have overall responsibility for safety precautions and programs in the performance of the Services. Consultant's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of Laws. Consultant shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Project; and property located at the Worksite and adjacent to Worksite areas, whether or not the property is part of the Project.
- 3.7 RIGHT TO SUBCONTRACT SERVICES. With the prior written approval of Owner, Consultant may subcontract such Services as Consultant deems necessary to meet its obligations under this Agreement, and to the extent required by Law, such Subcontractors shall be appropriately licensed.
- 3.8 AUTHORIZED REPRESENTATIVE Consultant shall designate in writing a person empowered to act as Consultant's representative with respect to its performance under this Agreement. Consultant's representation is identified under Article 11. Such person shall have complete authority to bind Consultant under this Agreement. If Consultant wants to change its representative or the representative's authority, Consultant shall provide written notice to Owner requesting consent to the proposed changes. Owner shall not unreasonably withhold consent to Consultant's proposed changes.
- 3.9 SITE DAMAGE Consultant shall take reasonable precautions to minimize damage to the Site. However, Owner recognizes that, depending upon the types of Services, some damage may occur in the normal course of the Services.
- 3.10 SAMPLES In the event samples are collected, Consultant shall be responsible for the proper delivery, handling, storage, removal, and disposal of all substances and materials brought to the Worksite by Consultant for the performance of its Services. Disposal of samples or sampling process byproducts by Consultant shall be done in accordance with applicable Laws and regulations.
- 3.11 HAZARDOUS MATERIAL
- 3.11.1 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. Consultant shall not be required to perform Services at the Worksite relating to or in the area of the Hazardous Material without written mutual agreement.
- 3.11.2 To the extent permitted under Section 6.1 and to the extent not caused by the negligent acts or omissions of Consultant, its Subcontractors, material suppliers, and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall be responsible for claims, damages, losses, costs, and expenses, incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Services in any area affected by Hazardous Material.
- 3.11.3 Material Safety Data (MSD) sheets as required by Law and pertaining to materials or substances used or consumed in the performance of the Services, whether obtained by Consultant, Subcontractors, Owner, or Others, shall be maintained at the Worksite by Consultant and made available to Owner and Subcontractors.
- 3.11.4 During Consultant's performance of the Services, Consultant shall be responsible for the proper handling of all materials brought to the Worksite by Consultant.
- 3.11.5 Owner represents that it has disclosed in writing to Consultant the existence of any Hazardous Material known by Owner to exist on or near the Worksite. After commencing the Services, if unanticipated Hazardous Material is discovered at the Worksite, Consultant shall be entitled to immediately stop work in the affected area. Consultant shall promptly report the condition to Owner and, if required, the governmental agency with jurisdiction.
- 3.11.6 Consultant shall not be required to perform any Services relating to or in the area of unanticipated Hazardous Material without written mutual agreement.
- 3.11.7 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the unanticipated material encountered and whether it is a Hazardous Material requiring corrective measures or remedial actions. Such measures and actions shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Services of Consultant. Consultant shall resume work in the area affected by any unanticipated Hazardous Material only after the unanticipated Hazardous Material

has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

- 3.11.8 If Consultant incurs additional costs or is delayed due to the presence or remediation of unanticipated Hazardous Material, Consultant shall be entitled to an equitable adjustment in Consultant's Fee.
- 3.12 **BOOK AND RECORDS** Consultant shall maintain a complete set of all books, records, reports, photos, electronic data, and other records, including boring logs, field data, laboratory test data, and calculations prepared or used by Consultant with respect to the Project. Consultant's records shall be current, complete, and accurate. Owner shall be afforded reasonable access during normal business hours to all Consultant's records relating to this Agreement. Consultant's duty of preservation and Owner's right of access to all such records shall extend for the duration of the statute of Limitations that governs when this Agreement was executed or three years, whichever is longer.
- 3.13 **OPINIONS OF COST.** Consultant agrees to use reasonable skill and judgment in the preparation of cost estimates, but does not warrant or guarantee them.
- 3.14 **COMPLIANCE WITH LAWS.** Consultant shall give all notices and comply with all Laws at its own cost. Consultant shall be liable to Owner for all loss, cost, and expense attributable to any acts or omissions by Consultant, its employees, Subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if advance written notice to Owner was given, and advance written approval by appropriate authorities, including Owner, is received.
- 3.15 Consultant shall provide periodic written reports to Owner on the progress of the Services in such detail as is required by Owner and as agreed to by Owner and Consultant.
- 3.16 **OWNERSHIP OF DOCUMENTS**
- 3.16.1 **OWNERSHIP OF TANGIBLE DOCUMENTS** Owner shall receive ownership of all property rights of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Consultant, its Subcontractors and distributed to Owner for this Project, upon the making of final payment to the Consultant, or in the event of termination under Article 9, upon payment for all sums due to Consultant.
- 3.16.2 **COPYRIGHT** The Owner shall own any resulting copyright in the Documents as a work for hire and shall have the right to use, to reproduce, and to make derivative works of the Documents. If for any reason the Work would not be considered a work made for hire under applicable law, the Consultant does hereby sell, assign and transfer to the Owner, its successors and assigns, the entire right, title, and interest in and to the Documents. The Consultant shall not acquire a copyright for Project Documents but shall be permitted to retain copies including reproducible copies or electronic data of the Documents.
- 3.16.3 **USE OF DOCUMENTS IN EVENT OF TERMINATION** In the event of a termination of this Agreement pursuant to Article 9, the Owner shall own any resulting copyright and have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project provided payment has been made pursuant to Article 7.
- 3.16.4 **OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF SERVICES** After completion of the Services, the Owner may reuse, reproduce, or make derivative works from the Documents at the Owner's sole risk, except for the Consultant's indemnification obligations pursuant to Section 6.1.1, 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.
- 3.16.5 **CONSULTANT'S USE OF DOCUMENTS** The Owner hereby grants a limited license to the Consultant to reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.
- 3.16.6 The Consultant shall obtain from its consultants assignment of all copyrights and rights of use that correspond to the rights given by the Consultant to the Owner in this Agreement and the Consultant shall provide evidence that such rights have been secured.
- 3.17 **CONFIDENTIALITY** Certain information disclosed by the Owner to the Consultant pursuant to this Agreement may be confidential consistent with State and Federal law. The Owner will identify in writing any information that is confidential and the reason therefor. The Consultant 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.

- 3.18 ADDITIONAL SERVICES Consultant shall provide or procure additional services, within the general scope of the Services described in Article 11, upon the request of Owner. A written amendment to this agreement between Owner and Consultant shall define the extent of such additional services and the fees to be paid Consultant before they are performed by Consultant.
- 3.19 The Consultant and Subcontractors retained by the Consultant shall comply with any health 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 SUBCONTRACTS

Services not performed by Consultant with its own forces shall be performed by Subcontractors.

- 4.1 RETAINING SUBCONTRACTORS. Consultant shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, provided that Consultant shall be entitled to an equitable adjustment in Consultant's Fees for any additional costs incurred by Consultant as a result of such objection. Owner may propose Subcontractors to be considered by Consultant. Consultant shall not be required to retain any Subcontractor to whom Consultant has a reasonable objection.
- 4.2 MANAGEMENT OF SUBCONTRACTORS. Consultant shall be responsible for the management of the Subcontractors in the performance of their work and for any liability result therefrom.
- 4.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT
 - 4.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by Consultant to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to sections 9.2 or 9.3; and (b) Owner accepts such assignment, after termination by notifying the Subcontractor and Consultant in writing, and assumes all rights and obligations of Consultant pursuant to each subcontract agreement. The Owner does not assume responsibility for any of Consultant's obligations existing prior to the date of assumption unless expressly agreed to in writing.
 - 4.3.2 If Owner accepts such an assignment, and the Services have been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.
- 4.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. Consultant agrees to bind every Subcontractor and material supplier (and require every Subcontractor to so bind its subsubcontractors and material suppliers) to all provisions of this Agreement as they apply to the Subcontractors' or material Suppliers' portions of the Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

- 5.1 ACCESS Owner shall provide Consultant with reasonable access to the Worksite so as to assist Consultant in its performance of all tasks reasonably necessary for the completion of Services under this Agreement.
- 5.2 UTILITIES Consultant, along with any Subcontractors, shall arrange to locate and mark all underground utilities. This work will be performed in accordance with the individual state or local legally-authorized utility locating service known variously as "One Call," "Miss Utility" or other such entitled services. Underground utilities not located and marked by the state or local legally authorized locating services will be located through the use of a private utility locator for which Consultant will be compensated. Underground utilities or subterranean structures owned or installed by Owner shall be located and marked by Owner at his/her expense. No subsurface exploration services will commence until all known underground utilities are located and marked. Consultant shall take reasonable precautions to avoid known underground utilities and subterranean structures.
- 5.3 OWNER'S REPRESENTATIVE Owner's Representative is identified under Article 11. Owner's Representative shall: (a) be fully acquainted with the Project, Services, and Worksite; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) is authorized to act on behalf of the Owner and provide general administration of the Agreement and fulfill the duties, rights and obligations of the Owner under the Agreement. If Owner changes its Representative or the Representative's authority, Owner shall promptly notify Consultant in writing in advance.

- 5.3.1 The Director of Design & Construction or designee shall be the principal representative of the Owner. All communications between the Owner and Consultant shall be made through the Owner's Representative. The Owner's Representative shall be at all meetings with the Consultant and other institutional personnel during the Project.
- 5.3.2 The Owner's Representative shall meet and confer with the Consultant and its Subcontractors as necessary to ensure complete understanding and communication relative to the needs and requirements of the Project. The Owner's Representative shall notify the Consultant in writing of any change in the written program/requirements.
- 5.4 INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.
- 5.5 WORKSITE INFORMATION. To the extent Owner has obtained, or is required by this Agreement to obtain, the following Worksite information, Owner shall provide such information at Owner's expense and with reasonable promptness:
 - 5.5.1 Information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data, notes, maps, or drawings depicting existing surface and/or subsurface conditions, boring logs, site photos, geophysical logs, lab tests, environmental studies, reports and investigation findings, and field observations, and any other data, reports, or information relevant to the Services. 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 Services. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, surface and subsurface information, grades, contours and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by Consultant in planning and/or performing the Services.
 - 5.5.2 Tests, inspections, and other reports dealing with environmental matters, Hazardous Waste, and other existing conditions, required by this Agreement or by Law; and
 - 5.5.3 Any other information or services requested in writing by Consultant which are required for Consultant's performance of the Services and under Owner's control.

ARTICLE 6 INDEMNITY AND INSURANCE

6.1 INDEMNITY

- 6.1.1 To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Owner, its 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 attorneys' fees arising out of a claim for bodily injury 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 Consultants, its Subcontractors 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.
- 6.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Consultant, anyone directly or indirectly employed by the Consultant or anyone for whose acts the Consultant 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 Consultant 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 Consultant in this Agreement, including provisions concerning indemnification.
- 6.1.3 The Owner will require any Constructor performing the Work in connection with the Construction Documents produced under this Agreement to hold harmless and indemnify the Owner and the Consultant, its Subcontractors and each of their officers, agents and employees from any and all claims, losses, damages or expenses, including reasonable attorney's fees, arising out of the Constructor's or its 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 Consultant, their Subcontractors or their officers, agents and employees.

- 6.1.4 To the extent permitted by Iowa Code Chapter 669 and Article VII, Section 1 of the Iowa Constitution, the Owner shall be responsible for all claims, damages, losses and expenses, directly arising out of a claim for bodily injury or property damage, but only to the extent caused by the negligent act or omission of the Owner in the performance of the terms and conditions of this Agreement.

6.2 INSURANCE

- 6.2.1 Before commencing its Services and as a condition of payment, the Consultant 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.

- 6.2.2 The Consultant 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 follows form of the underlying or primary coverages. In addition, the Consultant 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 The University of Iowa as additional insureds. The Consultant and its consultants shall waive subrogation rights against the State of Iowa, and the Board of Regents, State of Iowa, and The University of 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 Consultant.

- 6.2.2.1 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE applicable to cover liability imposed by State statutes having jurisdiction over Consultant's employees. Employers' Liability coverage is required with at least the following limits of liability:
- \$500,000 each accident.
 - \$500,000 disease each employee.
 - \$500,000 disease policy limit.

- 6.2.2.2 COMMERCIAL GENERAL LIABILITY INSURANCE covering all work and operations under the Agreement, including contractual liability insurance for the liability assumed in Subsection 6.1.1, with at least the following limits of liability as a minimum:
- \$2,000,000 per occurrence.
 - \$2,000,000 general aggregate.
 - \$2,000,000 products/completed operations aggregate.
 - \$2,000,000 personal and advertising injury limit.
- The General Liability Insurance must be endorsed with additional insured form CG 2026 or equivalent, and on a primary and non-contributory basis, form CG 20 01 or equivalent.

- 6.2.2.3 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.

- 6.2.2.4 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 coverages.

- 6.2.2.5 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 Consultant 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 Consultant. In the event The Consultant is required to change carriers during the Project or for the required years after the Project, the Consultant 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 Consultant.

6.2.2.6 The Consultant shall furnish to the Owner certificates of insurance evidencing the required coverages and endorsements listed in this Section 6.2, and, if requested by the Owner, a copy of its Professional Liability policy. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to the Owner. The Consultant and its Professional Liability insurance carrier shall notify the Owner immediately or at least within thirty (30) Days of any claims made or loss expenses incurred against the Professional Liability policy. The Owner shall have the right to notify directly the Consultant's Professional Liability insurance carrier of a claim against the policy.

ARTICLE 7 COMPENSATION AND PAYMENTS

7.1 COMPENSATION FOR SERVICES

7.1.1 Compensation for Services as described in Section 3.1 shall be as set forth in Article 11.

7.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

7.2.1 For Additional Services as described in Section 3.18, compensation shall be stipulated at the time of occurrence.

7.2.2 The Consultant shall be compensated for the Reimbursable Expenses at their actual cost. Reimbursable Expenses are in addition to the compensation for Basic Services and include actual expenditures made by the Consultant or its Subcontractors, in the interest of the Project for the expenses listed in Article 11 and the following subparagraphs:

7.2.2.1 Reimbursable travel expenses shall be limited to those incurred in travel on behalf of the Project when authorized by the Owner's Representative.

7.2.2.2 If authorized by the Owner, expenses for reproduction and distribution of documents shall be considered to be reimbursable expenses.

7.2.2.3 The Consultant shall have the right under this article to claim reimbursable expenses for any items not specifically covered herein, provided that such reimbursable expenses are identified as such and are authorized in writing by the Owner's Representative prior to being incurred.

7.3 PAYMENTS

7.3.1 The Consultant shall submit to the Owner for its approval monthly applications for payment for Services, if any, with reasonable supporting detail summarizing the activities of the previous month (and outstanding issues or planned activities for the following month.) The Owner shall pay approved amounts no later than thirty (30) Days after the Consultant has submitted its applications for payment. No matter how computed payments for Services shall not exceed the amounts identified in Article 11 for Services.

7.3.2 Preparation of Invoices. Invoices for 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 Consultant shall promptly make payment to Its Subcontractors as appropriate.

7.3.3 Acceptance of final payment shall constitute a waiver of all claims by the Consultant and Its Subcontractors for compensation for its Services.

7.3.4 Should there be any claim or obligation asserted before or after final payment is made that arises from the Consultant's Services, the Consultant shall reimburse the Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by the Owner in satisfying or discharging any such claim or obligation, including any action brought or judgment recovered.

7.3.5 Should the Consultant or its Subcontractors 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.

- 7.3.6 The Consultant'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 or for three years, whichever is longer, 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.

ARTICLE 8 DISPUTE MITIGATION AND RESOLUTION

- 8.1 **SERVICES CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, the Consultant shall continue to perform its Services during any dispute mitigation or resolution proceeding. If the Consultant continues to perform, the Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.
- 8.2 **DIRECT DISCUSSIONS** Any dispute between the Consultant and the Owner relating to or arising out of this Agreement 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 matter and who shall record the date of first discussions. If not resolved by the Owner's Representative within ten (10) days, then the Consultant may submit in writing the issues(s) in dispute to the University Senior Vice President for Finance & Operations as the University President's designee. The determination of the University Senior Vice President for Finance & Operations is the final institutional decision.

ARTICLE 9 TERMINATION

- 9.1 **TERMINATION BY EITHER PARTY FOR BREACH** 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.
- 9.2 **TERMINATION BY OWNER FOR CONVENIENCE** Upon seven (7) Days' written notice, the Owner may, without cause, terminate this Agreement with the Consultant. If this Agreement is terminated pursuant to this section, the Consultant may recover from the Owner payment for Services performed to the date of termination, in accordance with this Agreement.
- 9.3 This Agreement shall terminate upon acceptance of the services outlined under Article 3 and Article 11 of this Agreement.

ARTICLE 10 MISCELLANEOUS

- 10.1 **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 Consultant 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 Consultant and not for the benefit of any third party.
- 10.2 **ASSIGNMENT** Except as to the assignment of proceeds, neither the Owner nor the Consultant shall assign their interest in this Agreement without the written consent of the other.
- 10.3 **GOVERNING LAW AND VENUE** This Agreement shall be governed by the law in State of Iowa, and any action or suit arising out of or related to this Agreement shall be initiated in the courts in the county in which the project is located.
- 10.4 **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.
- 10.5 **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.
- 10.6 **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.
- 10.7 **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly drafted, 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.

10.8 ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS.

10.8.1 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 purposes 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 party governmental agency or entity.

10.8.2 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 executed copy of this Agreement or such Ancillary Agreement.

10.9 RIGHTS AND REMEDIES Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed of available by law.

10.10 EQUAL EMPLOYMENT OPPORTUNITY

10.10.1 The Consultant 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 Consultant 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 Consultant 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.

10.10.2 The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, 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.

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

10.10.4 The Consultant shall comply with all relevant provisions of state and federal laws and regulations. The Consultant 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.

10.10.5 In the event of the Consultant'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 Consultant 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.

10.10.6 The Consultant shall include the provisions of this Article 6 hereof in every agreement with Subcontractors 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 Subcontractor. The Consultant shall take such action with respect to any Subcontractor 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 Consultant becomes involved in, or is threatened with, litigation by a Subcontractor as a result of such direction by the Board of Regents, State of Iowa or its institutions, the Consultant 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:

These modifications and clarifications are made within the University of Iowa electronic project management system, BuildUI.

END OF DOCUMENT.