

 **AIA**[®] Document C132[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the 6th day of December in the year 2018.
(In words, indicate day, month and year.)

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

Clarinda Community School District
Attn: Deron Stender, Superintendent/Greg Jones, Board President
423 Nodaway
Clarinda, IA 51632

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

Estes Company, dba Estes Construction
131 W 2nd Street, Suite 400
PO Box 3608
Davenport, IA 52808

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

To be determined. This document will act as a Master Agreement with individual projects added by amendment after approval by the Board of Directors. No work shall be performed under this Master Agreement without prior Board approval of an executed amendment outlining the specific work.

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

To be determined

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A132[™]–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132[™]–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. ^AIA Document A232[™]–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Project(s) to be determined and mutually agreed upon by all parties. This document will act as a Master Agreement with individual projects added by amendment after approval by the Board of Directors. No work shall be performed under this Master Agreement without prior Board approval of an executed amendment outlining the specific work.

§ 1.1.2 The Project's physical characteristics:

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

To be determined later and mutually agreed upon by all parties.

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

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

To be determined by the Owner after consultation with the Architect and Construction Manager.

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

.1 Design phase milestone dates, if any:

To be determined later and mutually agreed upon by all parties.

Init.

.2 Commencement of construction:

To be determined later and mutually agreed upon by all parties.

.3 Substantial Completion date or milestone dates:

To be determined later and mutually agreed upon by all parties.

.4 Other:

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

(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Competitively bid multiple prime contracts. The number of prime contracts to be recommended by the Construction Manager but final approval of the number and types of Prime Contracts shall be determined and approved by Owner.

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

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

To be determined later and mutually agreed upon by all parties.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

To be determined, if applicable.

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

(List name, address and other information.)

Deron Stender, Superintendent
Clarinda Community School District
423 Nodaway
Clarinda, IA 51632 7

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other information.)

Not Applicable

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

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

.1 Land Surveyor:

To be determined and incorporated into this Agreement at a later date, if required.

.2 Geotechnical Engineer:

To be determined and incorporated into this Agreement at a later date, if required.

.3 Civil Engineer:

To be determined and incorporated into this Agreement at a later date, if required.

.4 Other:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)

To be determined and incorporated into this Agreement at a later date, if required.

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

Paul Neuharth, Vice President
Estes Company, LLC., dba Estes Construction
131 West 2nd Street, Suite 400
P.O. Box 3608
Davenport, Iowa 52808
Phone: 563-322-7301

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

To be determined and mutually agreed upon by all parties.

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:

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

N/A

.2 Other consultants:

To be determined later by mutual agreement, if required.

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

To be determined later by mutual agreement, if required.

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

To be determined later by mutual agreement, if required.

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The

Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience and qualifications in dealing with public projects of similar scope. The Construction Manager shall exercise skill and care consistent with the expertise, experience and qualifications of construction management professionals necessary for the successful performance of this educational Project.

§ 2.2.2 Construction Manager shall provide professional construction management services on this Project. Such professional services include substantial discretion and authority to plan, schedule, estimate, approve, coordinate, manage and direct phases of the Project, within the parameters of the Contract Documents. Owner hereby finds and Construction Manager hereby represents and concurs that professional construction management services require a high degree of professional skill and experience in the construction management industry, and that Construction Manager possesses such requisite skill and experience to manage a public construction project of this size and type. The Construction Manager represents that he is knowledgeable in public construction and shall exercise reasonable care and skill to comply with all applicable federal and state laws as well as rules, regulations and specifications adopted by any agency with authority over the construction of this Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. The Owner may modify the requirements set forth below by requesting quotes from the Construction Manager to provide the additional coverage and issue an amendment for the additional cost, if any, for any specific Project.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000.00) combined single limit and Two Million Dollars (\$2,000,000.00) aggregate for bodily injury and property damage.

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$ 1,000,000.00).

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) per claim and in the aggregate. The Construction Manager shall maintain this coverage until final completion of the Project and for a period of two (2) years thereafter.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies, and will show the workers' compensation policy with a waiver of subrogation.

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

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

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

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors and other services as may be necessary to provide a complete and accurate performance of services. The Construction Manager shall exercise reasonable care in the event it engages engineers, consultants, subcontractors, agents, employees and/or officers (collectively the Consultants) to engage only such persons and entities who possess the experience, skill, knowledge and character necessary to qualify them individually for the particular duties they perform and who shall perform all work in conformity with the standards of reasonable care and skill with respect to professional services they are rendering. The Construction Manager assumes responsibility and liability for the acts, errors and omissions of its Consultants. Said consultants shall carry professional liability insurance. The Construction Manager will provide written contracts with the Consultants requiring proof of professional liability insurance and will only contract with Consultants licensed in the State of Iowa.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall update the Construction Management Plan over the course of the Project, unless additional updates are requested by the Owner.

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment and methods of Project delivery. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The

Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities with anticipated construction schedules and highlighted critical and long lead-time items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's last-approved construction budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings, Specifications, and any other Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall provide the Owner with information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings, Specifications and other Construction Documents, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit a list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager and the Architect shall work together to answer questions from bidders and issue addenda. The Construction Manager shall work with the Owner and its legal counsel, as necessary, to ensure compliance with all Iowa Competitive Bidding Laws as outlined in Iowa Code Chapters 26 and 573, as amended from time to time.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall prepare for the Owner's review, Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall obtain, on the Owner's behalf, building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates thirty (30) days after the Owner accepts the Architect issued final Certificate for Payment, except for the continuing duty to provide a one-year warranty inspection.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance during the construction phase, provide full-time attendance at the Project site whenever the Work is being performed, and when otherwise necessary even when work is not being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as amended. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents. Owner and Construction Manager agree that Construction Manager will provide full-time (or some other amount of time as agreed between the parties) administration at the Project site during the Construction Phase.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Consistent with various bidding documents and utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 If the Construction Manager identifies that Work is not in conformance with the Contract Documents the Construction Manager will immediately stop the Work (unless the non-conformance is of a very minor nature and will not impact the continuation of Work on the Project) and recommend to the Owner and Architect a course of corrective or other action. The Construction Manager shall work solely for the benefit of the Owner.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project. Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's observations evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The

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issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors for purposes of coordinating the safety program with those of the other Contractors and for making recommendations to the owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall work to guard the Owner against defects and deficiencies in the Work by only accepting work performed in accordance with the Contract Documents, unless non-conforming work is expressly approved by the Owner. The Construction Manager, in consultation with the Architect, as it deems necessary, shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Owner prior to the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.17.1 The Construction Manager shall receive certificates of insurance and bond documents from the Contractors and forward them to the Owner with a copy to the Architect.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the process and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractors for general compliance with the Contract Documents and applicable laws, ordinances, building codes and regulations. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect, with copies to the Owner, of those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require or request.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a bi-weekly basis, or as otherwise necessary due to a status change in the project schedule, etc., the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require or request.

§ 3.3.20.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

Not applicable

§ 3.3.21 The Contractor, the Construction Manager shall maintain at the Project site one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.24.1 Upon achievement of substantial completion, the Construction Manager shall assist the Architect in performing its responsibilities in accordance with procedures for the review and processing of applications by contractors for progress payments and final payments as the Owner's Designated Representative under Iowa law for purposes of evaluating the release of retainage.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens and/or Iowa Code Chapter 573 claims (the equivalent of mechanic's liens for public projects in Iowa) or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents. Prior to final completion of the Project, the Construction Manager shall compile manufacturers' operations and maintenance manuals, warranties, and guarantees, and certificates, and index and bind such documents in an organized manner and provide the binder to the Owner. The Construction Manager shall also secure and transmit to the Owner required affidavits, releases, bonds and waivers and shall deliver to the Owner all keys and other information. In consultation with the Architect, the Construction Manager shall determine when the Project and the Contractor's work is finally completed, and shall provide to the Owner a written recommendation regarding payment to the Contractor and shall issue a final Project Application for payment upon compliance with the requirements of the Contract Documents. At the conclusion of the Project, the Construction Manager shall prepare and deliver to the Owner final project account and close-out reports. The Construction Manager shall collect and submit the as-built drawings to the Owner within four (4) weeks of the date of final completion. The Construction Manager shall also perform commissioning work and be responsible for checking all equipment and verifying that all Project systems are working properly at the end of the Project and prior to Final Completion and Acceptance.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, and Construction Manager. Consent shall not be unreasonably withheld. The Architect shall be informed of any modifications made to the Construction Manager's contractual duties or responsibilities.

§ 3.3.28.1 The Construction Manager shall, by visits to the site and by adequate and necessary observations and inspections, required or otherwise appropriate to the stage and nature of the construction activities, exercise due diligence to safeguard the Owner from defects and deficiencies in the Work performed and materials provided by the Multiple Prime Contractors and from the Multiple Prime Contractors' failure to carry out the Work in accordance with

the Contract Documents and the Project schedule. These provisions shall require a representative of the Construction Manager to be on site at all times construction is being performed on the Project. This individual shall also be available at all times, whether on site or not, by cellular phone.

§ 3.3.28.2 During the one (1) year warranty and correction period following the date of Substantial Completion, the Construction Manager shall oversee, monitor and coordinate the remedial work of the Contractors, including but not limited to, making certain that the respective Contractors are notified of the extent and nature of the remedial work which needs to be done, and that such work is done in a timely and satisfactory manner.

§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager’s responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Any additional service for which the Owner is to compensate the Construction Manager must be authorized in writing by the Owner before such additional services is commenced, and an estimate of the cost or a method of determining the cost shall be submitted by the Construction Manager prior to the authority being granted for said service by the Owner.

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility <i>(Construction Manager, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Measured drawings	Not provided	Section 4.2
§ 4.1.2 Architectural interior design (B252™–2007)	Not provided	Section 4.2
§ 4.1.3 Tenant-related services	Not provided	Section 4.2
§ 4.1.4 Commissioning (B211™–2007)	Not provided	Section 4.2
§ 4.1.5 LEED® certification (B214™–2012)	Not provided	Section 4.2
§ 4.1.6 Furniture, furnishings, and equipment design (B253™–2007)	Not provided	Section 4.2

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

To be determined by mutual agreement, if required.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner’s written authorization:

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- .1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work.
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement that could not have been reasonably known by the Construction Manager prior to entering into the Agreement;
- .3 Preparation of documentation for alternate bid requests proposed by the Owner;
- .4 Intentionally left blank;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Intentionally left blank
- .8 Intentionally left blank

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner promptly in writing of the Additional Services performed, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating more than ten (10) formal Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 Intentionally left blank.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within a time frame to be determined, and inserted into this Agreement prior to the start of any Work, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner, in consultation with the Architect and Construction Manager, shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner, Architect, and Construction, shall thereafter make a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.5.1 The Board of Directors or its authorized designee, to the extent such designation is permitted by law, shall be solely authorized to act on the Owner's behalf with respect to the Project, Change Order Approvals and the Approved Construction Budget. The Owner's administrative representative or Board designee shall be available during working hours as often as may be necessary to render decisions which can be made without the Board of Directors' approval and to furnish information in a timely manner. The Owner shall provide to the Construction Manager the contact information for the Owner's contact person(s). If it becomes necessary to appoint a new representative, such appointment shall be communicated to the Construction Manager in writing within three (3) days of such appointment.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services required to verify the Multiple Prime Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner, as may be necessary at any time for the Project. Construction Manager shall collect from the Multiple Prime Contractors, and where appropriate, their subcontractors or suppliers, evidence of payment of debts associated with the Project and a final release of all claims prior to final payment. The Construction Manager shall further review and verify entitlement to release of retainage and review and make recommendations to Owner as to the validity of any claims asserted under Iowa Code Chapter 573.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services, however, Owner shall have no affirmative obligation or duty under the Agreement to inspect for defects or errors in the Project or the Architect's instruments of service.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The

Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's best professional judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions.

§ 6.3 Intentionally left blank.

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

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.2 and the Architect and Construction Manager incorporate the required modifications to the Construction Documents to reduce the Cost of Work, yet the sum of the lowest responsive, responsible bid on the Project exceeds the Owner's budget for the Cost of Work, the Owner may

- .1 give written approval to increase the budget for the Cost of the Work;
- .2 authorize rebidding of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Section 9.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the budget for the Cost of Work.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the bids within the budget of the Cost of Work.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Drawings, Specifications and other documents prepared by the Architect for this Project are deemed Instruments of Service for use with this Project and shall become the property of the Owner,

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whether or not the Project is completed. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

(Paragraph deleted)

§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with Iowa Code Chapter 679C. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

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Litigation in a court of competent jurisdiction

Other: *(Specify)*

Intentionally Left Blank

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project for more than ninety (90) days for reasons other than the fault of the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for actual, documented expenses (not lost profit) incurred as a direct result of the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted for the suspension, as mutually agreed upon by the parties.

§ 9.3 If the Owner suspends or abandons the Project for more than one hundred eighty (180) cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven (7) days' written notice.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.5.1 Notwithstanding any other provisions of this Agreement, if funds anticipated for the continued fulfillment of the Agreement are at any time not forthcoming or insufficient, either through the failure of the state or the Owner to appropriate funds or through discontinuance or material alteration of the program for which funds were provided, the Owner shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days written notice documenting the lack of funding.

§ 9.5.2 With the mutual agreement of both parties upon receipt and acceptance of not less than thirty (30) days' written notice, this Agreement may be terminated on any agreed date before the end of the term without penalty to either party.

§ 9.6 Upon any termination, the Owner shall be obligated to pay for only those services rendered and acceptable before the date of notice of termination, less any damages that may be assessed for non-performance.

§ 9.7 Intentionally Left Blank.

(Paragraph deleted)

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§ 9.7.1 Intentionally Left Blank.

§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Iowa .

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, as may be amended, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

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

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

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

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) comply with any public records requests under the Iowa Public Records law, as applicable.

ARTICLE 11 COMPENSATION

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

The Construction Manager's Fee shall be based on the cost of the construction work value, by the following Fee Schedule, which fee shall be converted to a lump sum fixed fee following award of the bids, and included in the appropriate amendment per Project:

Less than \$1 million the CM fee is six percent (6%).

Greater than \$1 million to \$2.5 million the CM Fee is five and one-half percent (5.5%).

Greater than \$2.5 million to \$5 million the CM Fee is five percent (5%).

Greater than \$5 million to \$7.5 million the CM Fee is four and one-half percent (4.5%).

Greater than \$7.5 million to \$10 million the CM Fee is four percent (4%).

Greater than \$10 million to \$15 million the CM Fee is three and one-half percent (3.5%).

Greater than \$15 million the CM Fee is three percent (3.0%).

The Construction Manager's Fee is fixed when bids are received and contracts are awarded.

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

- 1) Schematic Design Phase 15% of the fee
This Phase includes development of the project budget, preliminary value management, schedule and overall project plan.
- 2) Design Development thru Construction Documents 5% of the fee
This Phase includes updating and monitoring the initial documents prepared in the SD Phase.
- 3) Bidding and Award Phase 10% of the fee
This Phase includes preparing the scopes of work, general requirements, solicitation of bids, receiving bids, conducting all pre-award meetings, investigating bid responsiveness and bidder responsibility, recommending bid award, and preparing contracts.

§ 11.1.2 For Construction Phase Services in Section 3.3:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

- 1) Construction Phase 68% of the fee
This Phase includes construction administration, monitoring and managing contractors, reporting & updating progress of the work. The fee will be billed in equal monthly installments, based on the construction schedule duration.
- 2) Closeout Phase 2% of the fee
From Substantial Completion to Final Acceptance.

There are typical costs of the Work incurred by the Construction Manager for on-site personnel, general requirements, and insurance. These will be identified in pre-construction and included in the cost of the Work.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

To be determined later by mutual agreement, if required.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:

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

To be determined later by mutual agreement, if required.

Cost of the Additional Service shall be at hourly rates provided with no mark-up provided any Additional Service for which the Owner is to compensate the Construction Manager must be authorized in writing by the Owner before such

additional services is commenced, and an estimate of the cost or a method of determining the cost shall be submitted by the Construction Manager prior to the authority being granted for said service by the Owner.

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

Cost of the Additional Service shall be at hourly rates provided with no mark-up, provided any Additional Service for which the Owner is to compensate the Construction Manager must be authorized in writing by the Owner before such additional services is commenced, and an estimate of the cost or a method of determining the cost shall be submitted by the Construction Manager prior to the authority being granted for said service by the Owner.

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

To be mutually agreed upon during preconstruction phase and incorporated into this Agreement by amendment based on the needs of each project

Employee or Category

Rate (\$0.00)

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Upon prior written approval of the Owner, transportation and authorized out-of-town travel.
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Professional photography, and presentation materials requested by the Owner

(Paragraph deleted)

- .7 Site office expenses approved by the Owner
- .8 Other expenses approved in advance by the Owner

(Paragraph deleted)

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants with no mark-up.

§ 11.7 Payments to the Construction Manager

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

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services proven to have been performed. Payments are due and payable within thirty (30) days of the Owner's approval of the Construction Manager's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate

(Paragraphs deleted)

specifically set by rule pursuant to Iowa Code Section 74A.2 or the rate set by Iowa Code Section 573.14, whichever is less .

§ 11.7.3 The Owner shall not permanently withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding. However, the Owner may, upon the filing of or in anticipation of the imminent filing of a formal claim against the Construction Manager, withhold amounts in dispute from the Construction Manager pending the outcome of the claim.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 The Construction Manager shall not be owned, operated, or managed by a registered sex offender who has been convicted of a sex offense against a minor in accordance with Iowa Code 692A.113. In addition, the Architect shall not permit an employee, subconsultant (Company) owned, operated, or managed by, or subconsultant employee who is a registered sex offender convicted of a sex offense against a minor on real property of the Owner's schools in accordance with Iowa Code 692A.113, and shall fully executed and deliver a copy of 'Acknowledgement and Certification' form within ten (10) days of the execution of the Agreement or before any Company workers are on the Project site.

§ 12.2 If a suit, action, arbitration or other proceeding is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all attorney fees, costs, expert witness fees, and litigation expenses incurred by the prevailing party, including those incurred on appeal

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™-2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 AIA Document A232, General Conditions of the Contract for Construction, Construction Manager as Advisor, as amended

(Paragraphs deleted)

.3 Supplementary conditions to AIA 232, as applicable.

.4 Other documents:

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

OWNER *(Signature)*

Greg Jones, Board President
Clarinda Community School District

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Paul Neuharth, Vice President,
Estes Construction

(Printed name and title)

Init.

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User Notes:

(1817597274)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:25:14 ET on 12/06/2018 under Order No. 8372417479 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C132™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)