

6/3/19

**City of Sioux Falls**

**Addendum No. 1**

**Request 19-3001**

**Request for Proposals for Construction Manager at Risk Services, Water Reclamation Facility Improvements and Expansion Project**

Please add the attached Consensus document as an appendix to the RFP.

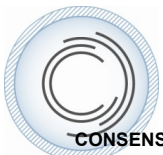
Consensus Docs 240, Owner and Design Professional Agreement, will be the base template for the contract between the City and the selected CMAR (attached). This does not incorporate the Summary of Contract Terms listed in the RFP or other changes to be negotiated prior to finalizing the contract with the selected CMAR.

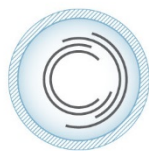
**Sign this form and include with your proposal response.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date





**ConsensusDocs®**  
BUILDING A BETTER WAY

**ConsensusDocs® 240**  
**STANDARD AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL**

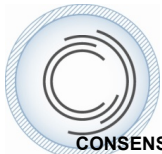


This page is solely for the information and convenience of ConsensusDocs users, and is not a part of the contract. Gray boxes indicate where you should click and type in your project information. The yellow shading is a Word® default function that displays editable text. Shading can be turned off by going to the Review tab, select “Restrict Editing” button and uncheck “Highlight the regions I can edit”. In Word 2003 you will find this option under the Tools tab, Options, Security tab, Protect Document button.

**EMBEDDED INSTRUCTIONS** are provided solely to help you complete the document. To display or hide instructions select the “¶” button under the “Home” tab to show all formatting marks.

**Red Boxes:** Instructions for fields that are typically required to complete contract.

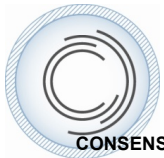
**Blue Boxes:** Instructions for fields that may or may not be required for a complete contract.



**Green Boxes:** Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at [www.ConsensusDocs.org/guidebook](http://www.ConsensusDocs.org/guidebook).

This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. This document has important legal and insurance consequences, and it is not intended as a substitute for competent professional services and advice. This document must be reviewed and adapted to meet your project-specific needs. Federal, State and Local laws may vary with respect to the applicability or enforceability of specific provisions in this document. CONSENSUSDOCS SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ASSUMES ALL LIABILITY WITH RESPECT TO THE USE OF THIS DOCUMENT, AND CONSENSUSDOCS AND ANY OF THE ORGANIZATIONS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE. For additional information, please contact ConsensusDocs, 2300 Wilson Blvd, Suite 300, Arlington, VA 22201, 866-925-DOCS (3627), [support@consensusdocs.org](mailto:support@consensusdocs.org) or [www.ConsensusDocs.org](http://www.ConsensusDocs.org).

DRAFT



**ConsensusDocs® 240**  
**STANDARD AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL**

**TABLE OF ARTICLES**

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN PROFESSIONAL'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. TIME
6. COMPENSATION AND PAYMENTS
7. INDEMNITY AND INSURANCE
8. TERMINATION
9. DISPUTE MITIGATION AND RESOLUTION
10. MISCELLANEOUS

**ARTICLE 1 AGREEMENT**

This Agreement is made this [ ] Day of [ ] in the year [ ], by and between the

OWNER, [ ]

and the

DESIGN PROFESSIONAL, [ ]

Tax identification number (TIN) [ ]

License Identification for the state of the Project [ ]

for services in connection with the following

PROJECT [ ]

**ARTICLE 2 GENERAL PROVISIONS**

2.1 STANDARD OF CARE Design Professional shall furnish or provide the architectural and engineering Services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project, which are attached as Exhibit A. The Services shall include Basic Services plus any Additional Services as may be authorized by Owner. Services shall be performed in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity, during the time in which the Services are provided.

2.2 RELATIONSHIP OF THE PARTIES Design Professional will cooperate and exercise the skill and judgment required above in performing Services. Design Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Parties each agree to work together in good faith and fair dealings, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

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

2.4 ETHICS The Parties shall each perform their obligations with integrity, so that, at a minimum each: (a) avoids conflicts of interest; and (b) promptly discloses to the other Party any conflicts of interest which may arise. Each party warrants to the other Party 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, subconsultants, or others for whom they may be liable, to secure preferential treatment.

## 2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 240, Standard Agreement Between Owner and Design Professional, as modified, and exhibits and attachments made part of this Agreement upon its execution.

2.5.1.1 The following exhibits are part of this Agreement:

EXHIBIT A: Project and Worksite information, including Owner's Program, other relevant data defining the Project, and information as set forth in §4.1.1 dated [REDACTED], [REDACTED] pages.

EXHIBIT B: Direct Personnel Expense Rates, dated [REDACTED], [REDACTED] pages.

EXHIBIT C: Key Project Personnel, dated [REDACTED], [REDACTED] pages.

EXHIBIT D: Reimbursable Expenses, dated [REDACTED], [REDACTED] pages.

EXHIBIT E: Schedule of Worksite visits, dated [REDACTED], [REDACTED] pages.

EXHIBIT F: Services related to Basic Services.

EXHIBIT G: Other Additional Services.

2.5.2 "Business Days" are all Days, except weekends and official federal or state holidays where the Project is located.

2.5.3 "Constructor" means the person or entity retained by Owner to perform Work for the Project and includes Constructor's Representative.

2.5.4 "Consultant" is a person or entity that contracts with Design Professional to provide professional architectural, engineering, or other consulting services for this Project.

2.5.5 "Cost of Construction" means Owner's total cost of Project components. In the event the Project is not completed, Cost of Construction shall mean the final approved estimated cost of Project components.

2.5.6 "Day" means a calendar day.

2.5.7 "Design Professional" is the person or entity identified in ARTICLE 1 and includes Design Professional's representative.

2.5.8 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.

2.5.9 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Services and with which Design Professional must comply that are enacted as of the Agreement date.

2.5.10 "Others" mean other contractors, suppliers, and persons at the Worksite who are not employed by Constructor or Subcontractors.

2.5.11 "Owner" is the person or entity identified in ARTICLE 1 and includes Owner's representative.

2.5.12 "Owner's Program" means an initial description of Owner's objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.5.13 "Parties" mean Owner and Design Professional collectively.

2.5.14 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements to be designed by Design Professional for which Constructor is to perform Work under the agreement between Owner and Constructor. It may also include construction by Owner, or Others.

2.5.15 The "Schedule of the Work" is the document prepared by Constructor that specifies the dates on which Constructor plans to begin and complete various parts of the Work, and the Project, including dates on which information and approvals are required from Owner.

2.5.16 "Services" mean the services provided by Design Professional or by consultants retained by Design Professional for the Project, including coordination of design services of subcontractors who may be procured by

Constructor or Subcontractors. The Services include basic services and Additional Services as may be authorized by Owner.

2.5.17 A "Subcontractor" is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.5.18 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

2.5.19 "Work" means the construction and services necessary or incidental to fulfill Constructor's obligations for the Project in conformance with the agreement between Owner and Constructor.

2.5.20 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

### **ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES**

#### **3.1 GENERAL RESPONSIBILITIES**

3.1.1 PROJECT REQUIREMENTS Design Professional, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information set forth in Exhibit A. Design Professional shall confirm its understanding of such requirements with Owner and shall assist Owner to refine or make clarifications to Owner's Program for the Project.

3.1.2 Design Professional shall not proceed with the development of successive design documents until receiving written approval from Owner. Design Professional shall promptly revise without additional compensation:

3.1.2.1 those documents which have not been previously approved by Owner and to which Owner has reasonable objections;

3.1.2.2 those documents identified by Constructor and reasonably accepted by Owner as presenting constructability problems; and

3.1.2.3 those documents needing revisions to reflect clarifications and assumptions and allowances on which a guaranteed maximum price is based. To the extent that any design documents approved by Owner deviate from the requirements of Owner's Program, the approved design documents shall govern.

3.1.3 Design Professional shall have reasonable access to the Worksite at all times.

3.1.4 Design Professional shall assist Owner with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.

3.1.5 Design Professional shall not be responsible for the acts or omissions of Owner, Constructor, and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of Design Professional.

3.2 BASIC SERVICES Design Professional's Basic Services consist of any Services provided pursuant to §3.1 and §3.2 Design Professional shall identify in Exhibit F: (a) other Services included in Basic Services; (b) the specific design disciplines included in Basic Services; (c) those portions of the Project design to be furnished by Owner, Constructor, or Others; and (d) design services that are required to comply with elected green measures and green status identified in Owner's Program. If additional services are required (*i.e.*, serving as a green building facilitator), such services shall be included as Additional Services. Documents generated by Design Professional shall be in a format consistent with Owner's articulated intended use. If applicable, BIM use shall be governed by the ConsensusDocs 301 BIM Addendum or a separate addendum: If professional design services are to be furnished by Owner, Constructor, or Others, Design Professional shall indicate all performance and design criteria to be satisfied in accordance with Owner's Program, and Owner, Constructor, or Others shall not be responsible for the adequacy of such performance and design criteria. Whenever a license is required, Design services furnished by a party other than Design Professional shall be obtained from licensed design professionals, who shall affix their signature and seal on all drawings, specifications, calculations,

and submittals prepared by them, and Design Professional shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services.

**3.2.1 COST ESTIMATES** Except when estimates are the responsibility of Constructor retained to provide preconstruction services as part of the Work, Design Professional shall prepare for Owner's review and approval (a) a preliminary estimate of the Cost of Construction utilizing area, volume, or similar conceptual estimating techniques and based upon Owner's Program and other relevant information in Exhibit A, and (b) updated estimates of the Cost of Construction at the completion of the Schematic Design Documents, the Design Development Documents, and the Construction Documents, except when construction commences before the completion of such documents. If at any time Design Professional's estimate exceeds Owner's previously approved estimate, Design Professional shall make recommendations to Owner describing ways to proceed within Owner's budget described in Owner's Program for Owner's written approval.

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

**3.2.3 SCHEMATIC DESIGN DOCUMENTS** Based on Owner's Program, including any approved refinements or clarifications, Design Professional shall prepare, for Owner's review and approval, Schematic Design Documents consisting of drawings, outline specifications, and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; approximate areas, volumes, and dimensions; and preliminary selections of materials and systems. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Schematic Design Documents shall be provided to Owner. When Design Professional submits the Schematic Design Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from Design Professional's approved preliminary estimate of the Cost of Construction and Project Schedule.

**3.2.4 DESIGN DEVELOPMENT DOCUMENTS** Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare, for Owner's review and approval, Design Development Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems. Design Development Documents shall include, as applicable, plans, sections, and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When Design Professional submits Design Development Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. If requested by Owner, Design Professional shall prepare alternate bid documents. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Design Development Documents shall be provided to Owner.

**3.2.5 CONSTRUCTION DOCUMENTS** Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare, for Owner's review and approval and the approval of governmental authorities, Construction Documents, including any revisions necessary to secure such approvals, setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with Laws. When Design Professional submits the Construction Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall describe all work necessary to bid and construct the Project. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of the Construction Documents shall be provided to Owner.

**3.2.6 DESIGN COORDINATION** Design Professional shall coordinate the services of all design consultants for the Project, who are or will be: [REDACTED]. Design Professional shall promptly report any known errors or omissions to

Owner. However, unless retained by Design Professional or a Consultant, Design Professional does not assume an affirmative responsibility to detect errors, omissions, or inconsistencies in a design consultant's services.

**3.2.7 BIDDING OR NEGOTIATION ASSISTANCE** Design Professional shall assist Owner in obtaining bids or negotiated proposals from contractors by providing up to six (6) sets of drawings, specifications, and any addendum, attending pre-bid and pre-award meetings, clarifying the scope and intent of the Construction Documents, and, if appropriate, evaluating proposed subcontractors and suppliers for portions of the Work. Design Professional shall issue any required addenda or clarifications promptly in writing.

**3.2.7.1** If the lowest bona fide bid or negotiated proposal exceeds the final approved estimate of the Cost of Construction by [ ] percent ([ ]%) or more, and Owner, in its sole discretion, elects not to accept such bid or proposal or elects to rebid or renegotiate the Project, Design Professional, without additional compensation, shall work with Owner to make the necessary modifications to the Construction Documents to reduce the Cost of Construction to an amount less than or equal to the sum of the final approved estimate of the Cost of Construction plus the percentage stated above. This subsection shall not apply if estimates are prepared by or are the responsibility of Constructor or Others.

**3.2.8 CONSTRUCTION PHASE SERVICES** The Construction Phase will commence upon the issuance of a written notice from Owner to the Constructor to proceed with the Work, with contemporaneous notification to Design Professional. Design Professional shall (a) review and advise Owner as to the accuracy and sufficiency of the schedule of values submitted by Constructor for the Work, (b) coordinate the Project Schedule with the Schedule of the Work submitted by Constructor and approved by Owner, (c) prepare design documents in connection with change orders, (d) respond to Constructor requests for information, and (e) prepare alternate bid documents after completion of schematic design documents. Design Professional shall furnish to Owner and, if directed, to Constructor interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda, or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

**3.2.8.1 SUBMITTALS** Design Professional shall review Constructor's submittals, including shop drawings, product data, and samples, and make approvals of or recommendations about such submittals to Owner within ten (10) Business Days of receiving the submittals from Constructor, unless mutually agreed otherwise by Design Professional, Constructor, and Owner. Design Professional shall check Constructor's submittals for conformance with the design and the scope of the Project and for compliance with the Construction Documents. Design Professional's review shall not extend to Constructor's means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by Owner or Design Professional.

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

**3.2.8.3** Design Professional shall visit the Worksite at appropriate intervals, but not less than [ ] ([ ]) times or pursuant to such schedule as the Parties may establish by attachment of Exhibit E to this Agreement, to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. After each Worksite visit, Design Professional shall promptly provide Owner with a written report. If Design Professional becomes aware of any defects or deficiencies in the Work, or failure of the Work to progress in conformity with the Schedule of the Work, Design Professional shall provide prompt notice, followed by written confirmation, to Owner. If, in Design Professional's opinion, special testing or inspection of the Work is needed, Design Professional shall recommend to Owner such testing or inspection procedures and appropriate consultants. Design Professional shall not be responsible for construction means, methods, techniques, sequences, and procedures, unless they are specified by Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

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

**3.2.8.5** Design Professional shall attend up to [ ] ([ ]) meetings with Owner and Constructor upon reasonable request of Owner.



3.2.8.6 Design Professional shall assist Owner in conducting up to [ ] ([ ]) inspections to determine the date or dates of Constructor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that Owner may occupy or utilize the Work or a designated portion for its intended use, without unscheduled disruption.

3.2.8.7 Design Professional shall assist Owner in conducting up to [ ] ([ ]) inspections to determine Constructor's final completion of the Work.

3.2.8.8 COMMISSIONING Design Professional shall assist with the implementation of formal commissioning.

3.2.8.9 If requested by Owner, Design Professional shall make up to two (2) visits to the Worksite during Constructor's one-year correction period to assist Owner in evaluating the need for any corrective measures.

3.2.8.10 Design Professional shall prepare record drawings from marked-up prints, drawings, or other documents that incorporated changes made during the Construction Phase.

3.2.9 HAZARDOUS MATERIAL To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, Design Professional shall not be required to perform Services relating to or in the area of the Hazardous Material without written mutual agreement.

3.2.10 Except as otherwise provided in this Agreement, Design Professional hereby grants a license to use design and construction documents prepared by Design Professional to those retained by Owner or Constructor to perform construction services for the Project.

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

3.3.1 investigation of sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project;

3.3.2 consultations, negotiations, and documentation supporting the procurement of Project financing;

3.3.3 assistance with the preparation of Owner's Program and planning surveys;

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

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

3.3.6 document reproduction exceeding the limits provided for under §3.2;

3.3.7 preparing measured drawings of existing conditions;

3.3.8 Design Professional will assist Owner in processing Constructor's applications for payment. Based on its on-site observations and other relevant information, Design Professional shall certify to Owner the amounts due Constructor and that the Work has progressed to the point indicated in the payment application based on the schedule of values submitted by Constructor. Design Professional's certification for payment shall not be a representation that Design Professional has: (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) reviewed construction means, methods, techniques, sequences, or procedures for Constructor's Work; (c) reviewed copies of requisitions received from Subcontractors and Material Suppliers and other data requested by Owner to substantiate Constructor's right to payment; or (d) ascertained how or for what purpose Constructor has used money previously paid. Design Professional shall be entitled to rely on Constructor's certification as to the application of moneys previously paid;

3.3.9 artistic renderings, models, and mockups of the Project or any part of the Project;

3.3.10 inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;

- 3.3.11 interior design and related services, including procurement and placement of furniture, furnishings, artwork, and decorations;
- 3.3.12 Other than as provided by §3.2.7.1, making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by Owner, and which are due to causes beyond the control of Design Professional;
- 3.3.13 design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained or work to be performed by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not otherwise required by this Agreement;
- 3.3.14 estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss;
- 3.3.15 the premium portion of overtime work ordered by Owner other than that required by Design Professional to maintain the Project Schedule for causes that are the responsibility of Design Professional;
- 3.3.16 obtaining service contractors and training maintenance personnel; or assisting and consulting in the use of systems and equipment after the initial startup;
- 3.3.17 services for tenant or rental spaces which are not otherwise required by this Agreement;
- 3.3.18 except when Design Professional is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;
- 3.3.19 Worksite visits in excess of the number of visits provided for in §§3.2.8.3, 3.2.8.7–3.2.8.9 or the number of visits in a schedule established by attachment to this Agreement;
- 3.3.20 attending meetings in excess of those provided for in §3.2.8.5;
- 3.3.21 providing Services relating to Hazardous Material discovered at the Worksite;
- 3.3.22 consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits;
- 3.3.23 out-of-town travel by Design Professional in connection with Services, except between Design Professional's office, Owner's office, and the Worksite;
- 3.3.24 services requested by Owner or required by the Work that are not normally part of generally accepted design and construction practice and not otherwise required by this Agreement;
- 3.3.25 acting as a Green Building Facilitator as identified in the ConsensusDocs 310 Green Building Addendum or separate addenda, which, at a minimum, shall address: (a) coordinating and facilitating the achievement of elected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and submitting necessary documentation for elected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;
- 3.3.26 furnishing services related to the suspension of construction work;
- 3.3.27 performing formal commissioning services; and
- 3.3.28 other additional services as agreed to by the Parties and identified in an attached exhibit.

3.4 QUALIFICATIONS Design Professional warrants and represents that Design Professional and its consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.

3.5 CONSULTANTS Design Professional shall not engage the services of any consultant without first obtaining Owner's written approval, which approval shall not be unreasonably withheld. Such approval by Owner shall not be deemed to create any contractual relationship between Owner and any such consultant, except that Owner shall be considered the

intended third-party beneficiary of the performance of their services. Except for the waivers required under §5.4 and §7.3.2, Design Professional shall not include any limits of liability in its agreements with any Consultants without the prior written approval of Owner. Design Professional shall bind its Consultants in the same manner as Design Professional is bound to Owner under this Agreement.

3.6 DESIGN PROFESSIONAL'S REPRESENTATIVE Design Professional's representative is [REDACTED], who shall possess full authority to receive and act on instructions from Owner, in accordance with this Agreement. If Design Professional changes its representative or the representative's authority, Design Professional shall immediately notify Owner in writing.

3.7 KEY PROJECT PERSONNEL The key Project personnel whom Design Professional shall assign and their anticipated time percentage each shall devote to Design Professional's Services shall be set forth in Exhibit C. Such personnel shall not be changed without the written approval of Owner, which approval shall not be unreasonably withheld.

3.8 FINANCIAL INFORMATION Prior to commencement of Services, and thereafter, Design Professional shall have the right, upon written request, to receive from Owner evidence of Owner's financial ability to pay for Design Professional's Services. Evidence of Owner's financial ability to pay for Services shall be a condition precedent to Design Professional commencing or continuing Services. Design Professional shall be notified prior to any material change in Owner's ability to pay for Services.

3.9 ROYALTIES, PENALTIES, AND COPYRIGHTS Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design Professional and incorporated in the design or construction documents prepared by Design Professional. Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by Design Professional and incorporated in the design or construction documents prepared by Design Professional. Design Professional shall defend, indemnify, and hold Owner, Constructor, and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.10 CONFIDENTIALITY Design Professional shall treat as confidential and not disclose to any third parties, except as necessary for the performance of this Agreement or as required by law, or use for its own benefit, any of Owner's confidential information, know-how, discoveries, production methods, and the like that are so identified in writing and disclosed to Design Professional or which Design Professional acquires in performing the Services required by this Agreement. Except for information that Owner obtains through ownership of the copyright, Owner shall treat as confidential information all design systems that may be disclosed to Owner in connection with the performance of this Agreement. Owner and Design Professional shall each specify those items to be treated as confidential and shall mark them as "Confidential."

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **4.1 INFORMATION AND SERVICES PROVIDED BY OWNER**

4.1.1 To the extent Owner has obtained the information and services identified below, Owner shall provide them to Design Professional with reasonable promptness. Unless otherwise limited by Owner in writing, Design Professional shall be entitled to rely on the accuracy of such information and services:

4.1.1.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations all in reasonable detail and as set forth in Exhibit A.;

4.1.1.2 inspection reports and testing services conducted during construction as required by law or as mutually agreed;

4.1.1.3 unless otherwise provided in this Agreement, documentation evidencing any necessary approvals, site plan review, rezoning, easements and assessments, fees, and charges required for the construction, use, occupancy, or renovation of permanent structures.

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

4.1.3 Approvals by Owner shall not be deemed to be an assumption of responsibility by Owner for any error, inconsistency, or omission in the drawings and specifications or other documents prepared by Design Professional, its

employees, agents, or consultants. Owner shall provide all approvals required under this Agreement in a timely manner.

4.2 OWNER'S REPRESENTATIVE Owner's representative is [REDACTED]. The Representative shall be fully acquainted with the Project; agrees to furnish the information and services required of Owner pursuant to §4.1 in a timely manner; and shall have authority to bind Owner in matters requiring Owner's approval, authorization, or written notice, but may not change this ConsensusDocs 240, Standard Agreement Between Owner and Design Professional, as modified by the Parties. If Owner changes its representative or their authority, Owner shall immediately notify Design Professional in writing.

4.3 ROYALTIES, PATENTS, AND COPYRIGHTS Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems specifically required by Owner to be incorporated in the design and construction documents prepared by Design Professional. Owner warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems required by Owner to be incorporated in the design documents of Design Professional. Owner agrees to defend, indemnify, and hold Design Professional harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems required by Owner or used by Constructor but not required by Owner or Design Professional.

## ARTICLE 5 TIME

5.1 TIME FOR SERVICES Time is of the essence. Design Professional shall provide the Services required by this Agreement in a timely manner and in conformance with the most recent Project Schedule approved by Owner. Design Professional's Fee as set forth in §6.1 is based on completion of Construction Documents no later than [REDACTED] ([REDACTED]) Days following execution of this Agreement. If completion of Construction Documents is not achieved within this time through no fault of Design Professional, Design Professional may seek an adjustment to its compensation and time for Services in accordance with this Agreement.

5.2 DELAYS BY DESIGN PROFESSIONAL If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of Design Professional which violates its standard of care, Design Professional shall compensate Owner for and indemnify it against all damages that may accrue as a result of such delay, except as otherwise provided in §5.4. In addition, Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay. Owner shall provide prompt written notice to Design Professional of such delay after Owner first recognizes the delay.

5.3 DELAYS BY OWNER If Design Professional is delayed in the performance of its Services by any act or omission of Owner, or by changes ordered by Owner which are due to causes beyond Design Professional's control, or by a delay authorized by Owner pending dispute resolution, then the time allotted in the Project Schedule for Design Professional's Services shall be extended for the period of such delay or Owner shall authorize and approve Design Professional to work to make up such lost time. Design Professional may seek an equitable adjustment under this Agreement. Design Professional shall provide prompt written notice to Owner of such delay after Design Professional first recognizes such delay.

### 5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 The Parties each waive claims against each other for consequential damages arising out of or relating to this Agreement, whether arising in contract, warranty, tort (including negligence), strict liability, or otherwise, including but not limited to losses of use, profits, business, reputation, or financing, except for those specific items of damages excluded from this waiver, as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Design Professional agrees to waive damages including, but not limited to, loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The following items of damages are excluded from this mutual waiver: [REDACTED].

5.4.1.1 The provisions of this subsection shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with their contractors and consultants retained for the Project.

## ARTICLE 6 COMPENSATION AND PAYMENTS

## 6.1 COMPENSATION FOR BASIC SERVICES

6.1.1 For Basic Services as described in §3.1 and §3.2, Owner shall compensate Design Professional on the following basis, including applicable sales taxes (designate only one of the following options):

- Stipulated Fee. The amount of [ ] dollars (\$[ ]).
- Guaranteed Maximum Fee. The actual cost of the following:
- a. Design Professional's personnel at the rates listed in Exhibit B.
  - b. Services of consultants and subcontractors at a multiple of [ ] ([ ]) times the amount billed to Design Professional for such services.
  - c. Reimbursable Expenses incurred in connection with Basic Services.
- Other basis of fee as follows: [ ]

## 6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 Design Professional shall be compensated for Additional Services as described in §3.3 on the following basis: [ ].

6.2.2 Design Professional shall be compensated for the Reimbursable Expenses described in Exhibit D at their actual cost, unless otherwise provided in §6.1.1.

## 6.3 PAYMENTS

6.3.1 Design Professional shall submit to Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. Owner shall pay approved amounts no later than thirty (30) Days after Design Professional has submitted its applications for payment. No matter how computed in §6.1, payments for Basic Services either:

6.3.1.1 shall not exceed the following percentages of the total Fee for Basic Services at the completion of each Phase of Design Professional's Services:

Schematic Design Documents	[ ]%
Design Development Documents	[ ]%
Construction Documents	[ ]%
Bidding or Negotiation Assistance	[ ]%
Construction Phase	[ ]%
TOTAL	[ ] 100%

or

6.3.1.2 shall not exceed the following lump sum amounts for each Phase of Design Professional's Services:

Schematic Design Documents	[ ] dollars (\$[ ])
Design Development Documents	[ ] dollars (\$[ ])
Construction Documents	[ ] dollars (\$[ ])
Bidding or Negotiation Assistance	[ ] dollars (\$[ ])
Construction Phase	[ ] dollars (\$[ ])
TOTAL	[ ] dollars (\$[ ])

Upon receipt of payment from Owner, Design Professional shall promptly make payment to its Consultants as appropriate.

6.3.2 Prior to final payment to Design Professional, Design Professional shall furnish evidence satisfactory to Owner that there are no claims, obligations, or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by Design Professional for compensation for its Services.

6.3.3 Should there be any claim, obligation, or lien asserted before or after final payment is made that arises from Design Professional's Services, Design Professional shall reimburse Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by Owner in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered, provided Owner is making payments or has made payments to Design Professional in accordance with the terms of this Agreement.

6.3.4 Should Design Professional or its Consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, 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 Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.5 Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to Owner at mutually convenient times for all Services to be compensated on the basis of actual cost.

6.3.6 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

## **ARTICLE 7 INDEMNITY AND INSURANCE**

### **7.1 INDEMNITY**

7.1.1 To the fullest extent permitted by law, Design Professional shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Constructor, Subcontractors, and Others (the Indemnitees) from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, for bodily injury, sickness, or death, and property damage, that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions of Design Professional, Design Professional's consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Design Professional shall be entitled to reimbursement of any defense costs paid above Design Professional's percentage of liability for the underlying claim to the extent provided for under §7.1.2 immediately below.

7.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design Professional, its officers, directors, members, consultants, agents, and employees, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §7.3.1, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner or Others, but only to the extent caused by the negligent acts or omissions of Owner or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under §7.1.1.

7.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Design Professional, anyone directly or indirectly employed by Design Professional or anyone for whose acts Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design Professional under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

### **7.2 INSURANCE**

7.2.1 Before commencing its Services and as a condition of payment, Design Professional shall purchase and maintain such insurance as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by Design Professional or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 Design Professional shall maintain in effect all insurance coverage required under this §7.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which are reasonably satisfactory to Owner:

7.2.2.1 Workers' Compensation and Employers' Liability Insurance in accordance with Laws and wherever Design Professional's Services are being performed. Employers' Liability coverage shall be written with at least the following limits of liability:

- a. \$[ ] bodily injury per accident
- b. \$[ ] bodily injury by disease policy limit
- c. \$[ ] bodily injury by disease per employee

7.2.2.2 Commercial General Liability Insurance, including contractual liability insurance for the liability assumed in §7.1.1, with at least the following limits of liability:

- a. \$[ ] per occurrence
- b. \$[ ] general aggregate
- c. \$[ ] products/completed operations aggregate
- d. \$[ ] personal and advertising injury limit

7.2.2.3 Business Automobile Liability Insurance \$[ ] per occurrence.

7.2.3 Design Professional shall require its consultants to maintain Business General Liability and Business Automobile Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

7.2.4 PROFESSIONAL LIABILITY INSURANCE Design Professional shall maintain Professional Liability Insurance with a company satisfactory to Owner, whose approval shall not be unreasonably withheld, for claims arising from the negligent performance of Services under this Agreement, which shall be either (designate one only):

- Practice Policy
- Project Specific Coverage

written for not less than \$[ ] per claim and in the aggregate with a deductible not to exceed \$[ ]. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by Design Professional for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for [ ] ([ ]) year(s) following final payment to Design Professional. The deductible shall be paid by Design Professional.

7.2.5 Consultants retained by Design Professional for this Project shall maintain Professional Liability Insurance with a company and for such amounts as are satisfactory to Owner for claims arising from the negligent performance of its Services, which shall be either (designate one only):

- Practice Policy
- Project Specific Coverage.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all services performed by the consultants for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for [ ] ([ ]) year(s) following final payment to Design Professional. Deductibles shall be paid by Design Professional.

7.2.6 Design Professional shall furnish to Owner certificates of insurance evidencing the required coverages listed in this section and a copy of its Professional Liability policy. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to Owner. Such requirement for prior written notice does not apply to modifications caused by claims made against the policy. Design Professional and its Professional Liability insurance carrier shall notify Owner within thirty (30) Days of any claims made or loss expenses incurred against the Professional Liability policy. Owner shall have the right to notify directly Design Professional's Professional Liability insurance carrier of a claim against the policy. The Professional Liability policies shall be continued in effect for [ ] ([ ]) year(s) following final payment to Design Professional.

### 7.3 PROPERTY INSURANCE

7.3.1 Owner shall provide, or cause Constructor to provide, property insurance that names Design Professional and its consultants as named additional insureds. Owner shall furnish to Design Professional certificates of insurance evidencing such coverage.

7.3.2 WAIVER OF SUBROGATION The Parties each waive all rights against each other and Constructor, for loss or damage to the extent covered by property insurance, except such rights as they may have to the proceeds of such

insurance. Owner and Design Professional shall require similar waivers from all of their consultants retained for the Project.

## ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for default absent appropriate corrective action upon seven (7) Days from receipt. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.

8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, Owner may, without cause, terminate this Agreement with Design Professional. If this Agreement is terminated pursuant to this section, Design Professional may recover from Owner: (a) payment for Services performed to the date of termination, in accordance with this Agreement; (b) any cost, or expense in connection with the Services, including those resulting from the termination, but not including lost profits on unperformed Services; and (c) a premium as set forth here [ ]

## ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

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

9.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, 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 the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

9.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §9.5. The Parties agree that the dispute mitigation procedure shall be:

- Project Neutral
- Dispute Review Board.

9.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Project Neutral/Dispute Review Board ("Neutral/Board") shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral's/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral/Board to address matters in dispute between the Parties promptly and knowledgeably. The Neutral/Board shall issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

9.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §9.5.

9.4 MEDIATION If direct discussions pursuant to §9.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §9.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.



9.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

#### 9.5.1 ARBITRATION

The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

9.5.1.1 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

9.5.1.2 The arbitration shall use the following rules:

- the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party's disclosed claim or counterclaim exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default;
- the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- the current arbitration rules of [ ] and administered by [ ].

#### 9.5.2 LITIGATION

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project

If not indicated, then litigation is the default and not arbitration.

9.5.3 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

9.5.4 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

9.6 MULTIPARTY PROCEEDINGS All parties necessary to resolve a claim agree to be parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the joinder or consolidation of such dispute resolution procedures.

9.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Design Professional that Design Professional may have under lien laws.

### ARTICLE 10 MISCELLANEOUS

10.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Design Professional or by consultants retained by Design Professional and distributed to Owner for this Project, upon making the final payment to Design Professional or in the event of termination under ARTICLE 8, upon payment for all sums due to Design Professional under ARTICLE 8. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

10.1.1 COPYRIGHT The Parties agree that Owner shall/ shall not obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by §10.1 and the payment of the fee reflecting the agreed value of the copyright set forth below: .

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design Professional.

10.1.2 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 8, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under §10.1.1, provided payment has been made pursuant to §10.1.

10.1.3 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design Professional's involvement or on other projects is at Owner's sole risk, except for Design Professional's indemnification obligations pursuant to §3.9, and Owner shall defend, indemnify, and hold harmless Design Professional and its consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

10.1.4 DESIGN PROFESSIONAL'S USE OF DOCUMENTS Where Design Professional has transferred its copyright interest in the Documents under §10.1.1, Design Professional may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

10.1.5 Design Professional shall obtain from its consultants rights and rights of use that correspond to the rights given by Design Professional to Owner in this Agreement, and Design Professional shall provide evidence that such rights have been secured.

10.2 EXTENT OF AGREEMENT Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated agreement between Owner and Design Professional and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of Owner and Design Professional and not for the benefit of any third party.

10.3 DOCUMENTS IN ELECTRONIC FORM If Owner requires that Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, prior to any such exchange, Owner, Design Professional, and Constructor shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. Notwithstanding other provisions in this Agreement, printed documents and sets shall not be required if such documents are required to be prepared and transmitted in electronic form.

10.4 ASSIGNMENT Except for an assignment of proceeds, neither Owner nor Design Professional shall assign its interest in this Agreement without the written consent of the other Party, except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design Professional or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design Professional than this Agreement. If such assignment occurs, Design Professional shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the contract documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

10.5 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

10.6 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.7 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for agreement termination, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

10.8 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any, 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.

10.9 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.

10.10 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.

OWNER: [REDACTED]

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

DESIGN PROFESSIONAL: [REDACTED]

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

END OF DOCUMENT.