

AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL
Special Services

for { Feasibility Study or Other Specific Services }

Board of Regents, State of Iowa

FP&M Project No. CP00{ XXXX }

Agreement made by and between the Board of Regents, State of Iowa, acting for Iowa State University hereinafter called the Owner, and { }, hereinafter called the Design Professional. A strikethrough of paragraph(s) represents deleted or modified language. See Article 14 for deletions, modifications and additions to the Agreement.

The Owner intends to undertake on the Campus of Iowa State University a { Feasibility Study OR Other Descriptive Title for Services } entitled and briefly described as follows:

Project Title: { **Descriptive Title for Services** }

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

- I. The Design Professional shall provide professional services in accordance with the Terms and Conditions of this Agreement and within the standards of care exercised by design professionals within the industry.

- II. The Design Professional hereby acknowledges receiving and analyzing the Owner's Scope of Work and meeting with the Owner's Representative to confirm the Design Professional's understanding of the Scope of Work. By executing this Agreement, the Design Professional accepts the provisions of the Owner's Scope of Work as listed below.

{ Insert Scope of Work Document identity or description of Scope of Work here }

- III. BASIC SERVICES shall consist of all Services described in Article 2 unless modified in Article 14.
 - A. Owner's Representative Designee is: { Type in ISU Project Manager's Name }
 - B. Design Professional's Representative is: { Type in Design Professional's Name }
 - C. Professional Consultants retained by the Design Professional for the services covered by this Agreement are:
{ Type Professional Consultant's Firm Name, Representative and Discipline }
{ OR } Not Used

IV. The Owner shall compensate the Design Professional in accordance with the TERMS AND CONDITIONS OF THIS AGREEMENT.

{ }(Select one of the two methods for compensation and delete the other method.)

A. For BASIC SERVICES, compensation shall be a STIPULATED SUM of { **Amount in Words** } and No/100 Dollars (**{ Amount in Numbers }**).

OR

A. For BASIC SERVICES, compensation shall be on the basis of the hourly rates schedule attached hereto (Exhibit B) with a FIXED MAXIMUM not to exceed { **Amount in Words** } and No/100 Dollars (**{ Amount in Numbers }**). Said schedule shall govern for the duration of this Agreement. The Design Professional shall be compensated for Professional Consultants services that are included in the BASIC SERVICES at a multiple of 1.0 times the amount invoiced.

B. For Additional Services, compensation shall be stipulated at the time of occurrence.

C. For REIMBURSABLE EXPENSES, as defined in Article 4, compensation shall not exceed { **Amount in Words** } and No/100 Dollars (**{ Amount in Numbers }**). REIMBURSABLE EXPENSES shall be compensated at a multiple of 1.0 times the amount invoiced to the Design Professional for such expenses.

V. The Design Professional and all Professional Consultants shall maintain insurance for the duration of the Project or statute of limitations in effect at the time of the execution of this Agreement, whichever is longer in such amounts and types as required below. The insurance required shall be obtained from a company(ies) licensed to do business in the state of Iowa and hold a current financial rating from A. M. Best of no less than A-, financial size VII. The required minimum liability limits may be met through either the primary policy(ies), or a combination of primary and excess or umbrella policies.

A. Insurance coverage required:

i. Workers compensation in compliance with statutory requirements, and Employers Liability with limits of no less than \$100,000 Each Accident for bodily injury/\$100,000 Each Employee for bodily injury by Disease/ and \$500,000 Policy Limit for bodily injury by Disease. The Design Professional shall waive subrogation rights against the State of Iowa; the Board of Regents, State of Iowa; and, Iowa State University for any claim paid or payable on this policy.

- ii. Commercial General Liability (ISO 1998 or later/equivalent form) covering all work and operations under the Agreement with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - iii. Automobile Liability of no less than \$1,000,000 each accident and annual aggregate, covering owned, leased, hired, non-owned, and employee non-owned vehicles.
 - { }iv. Professional Liability of no less than \$1,000,000 per claim and \$2,000,000 annual aggregate. Coverage should be on a claims made basis.
 - { }v. Umbrella Liability of no less than \$1,000,000 per occurrence.
- B. The above liability insurance policies, with the exception of Professional and Workers Compensation coverage, shall name three entities: State of Iowa; Board of Regents, State of Iowa; and, Iowa State University as additional insureds.
- C. The Design Professional shall waive subrogation rights against the State of Iowa; the Board of Regents, State of Iowa; and, Iowa State University for any claim paid or payable by any of the above-required insurance policies. Endorsement form WC 00 03 13 may be attached to the certificate of insurance in lieu of waiver language being stated on the certificate.
- D. Neither the Owner, nor any additional insured required to be so named under this Agreement shall participate in any policy deductible or retention for claims. Any such deductible or retention shall be the sole responsibility of the Design Professional.
- E. Certificate Holder address shall be as follows:
- Iowa State University
Facilities Planning & Management
200 General Services Building
Ames, IA 50011-4021

TERMS AND CONDITIONS OF THE AGREEMENT

ARTICLE 1. WORKING RELATIONSHIPS

- 1.1 Owner's Representative. The Associate Vice President for Facilities or designee shall be the principal representative of the Owner. All communications between the Owner and Design Professional shall be made through the Owner's Representative. The Owner's Representative shall be at all meetings with the Design Professional.
- 1.2 Design Professional's Representative. The Design Professional shall designate one principal or an authorized representative to represent the firm in all communications and at all meetings with the Owner's Representative. All correspondence from the Owner to the Design Professional shall be directed to this person. The Design Professional's Representative shall not be changed without prior written consent of the Owner. The Design Professional's Representative shall be professionally licensed in the state of Iowa.
- 1.3 Professional Consultant's Representative. Each Professional Consultant retained by the Design Professional shall designate one principal or an authorized representative to represent the firm at all meetings with the Owner's Representative. The Professional Consultant's Representative shall not be changed without prior written consent of the Owner.
- 1.4 Definitions.
- 1.4.1 Design Documents: Drawings and other documents that fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, material and such other elements as may be appropriate.
- 1.4.2 Design Professional: The entity engaged to provide professional design services. The Design Professional may practice Architecture, Engineering, Interior Design, Landscape Architecture or other similar disciplines professionally qualified to provide the services described herein.
- 1.4.3 Professional Consultant: An entity contracted by the Design Professional to provide specific services for the project.

ARTICLE 2. THE DESIGN PROFESSIONAL'S SERVICES

- 2.1 Basic Services. The Design Professional's Basic Services shall consist of the work identified herein, including architectural, structural engineering, mechanical engineering, electrical engineering, estimating services, and any other services included in Article 14.
- 2.1.1 The Design Professional shall attend meetings with the Owner as may be necessary for the timely performance of all services.
- 2.1.2 The Design Professional shall work with the Owner's Representative in the development of the time schedule for the Design Professional's services and shall agree to maintain the schedule as established. Modifications to the agreed upon time schedule shall be approved by the Owner.
- 2.1.3 The Design Professional shall comply with all provisions of the university's design reference manual that can be viewed at { [HYPERLINK "http://www.fpm.iastate.edu/planning/aes/design_stds"](http://www.fpm.iastate.edu/planning/aes/design_stds) }. Any deviations must be called to the attention of, and reviewed with the Owner's Representative and receive written approval before implementation.
- 2.1.4 The Design Professional shall include the Owner's project title and project number, if applicable, on all documents, including correspondence, letters of transmittal, requests for payment, and drawings.

- 2.1.5 The Design Professional's Basic Services also includes:
- .1 Analyzing with documentation all site utilities and building systems with each utility company and/or Owner, if applicable.
 - .2 Reviewing existing building and campus planning documents.
 - .3 Researching and resolving code interpretations.
 - .4 Securing reviews and approvals, on behalf of the Owner, of authorities having jurisdiction over the project, when applicable and/or furnishing drawings, specifications and applications for such reviews as may be required.
 - .5 Furnishing Design Documents and applications for such reviews as may be required.
 - .6 Making a presentation to the Board of Regents, planning committee and any other appropriate committee when requested by the Owner.
 - .7 Keeping, preparing and transmitting minutes of meetings between the Design Professional, Owner's Representative or other institutional personnel and any other groups.
 - .8 Preparing for and participating in a meeting on behalf of the Owner in connection with any public hearing.
- 2.1.6 The Design Professional shall not enter into a contract with any Professional Consultant for the rendering of any of the services provided under this Agreement without first obtaining the Owner's written approval of the proposed consultant.
- 2.1.7 The Owner reserves the right to require the Design Professional's Professional Consultants to attend meetings referred to in Article 2, Paragraph 2.1.1 and to provide such data and design information as the Owner may find reasonably necessary in connection with the project.
- ~~2.1.8 The Design Professional shall furnish to the Owner a complete written report of observations made during the Construction Phase, if applicable.~~
- ~~2.1.9 The Design Professional shall not be responsible for the acts or omissions of the Owner's Representative during the Construction Phase.~~

2.2 Additional Services

- 2.2.1 The following services are not included in Article 2, Paragraphs 2.1 Basic Services. Such additional services will be paid for by the Owner in addition to compensation for the Design Professional's Basic Services, provided that such additional services have been authorized in writing by the Owner prior to their performance. The limitation on the total compensation provided in Paragraph IV shall be changed to reflect these additional services upon execution of an amendment to this Agreement. Such services include:
- .1 Making revisions in Design Documents resulting from Owner-initiated changes in scope or in the standards of the institution made subsequent to Owner approval of previously completed work.
 - .2 Preparing to serve or serving as an expert witness on behalf of the Owner in connection with any arbitration proceeding or legal proceeding.

- 2.2.2 The Design Professional shall have the right under this Article to claim additional compensation for any services not specifically covered herein, provided that such additional services are identified as such and are authorized in writing by the Owner's Representative prior to their performance.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

- 3.1 The Owner's Representative shall meet and confer with the Design Professional and the Design Professional's Professional Consultants as necessary to ensure complete understanding and communication relative to the needs and requirements of the project. The Owner's Representative shall notify the Design Professional in writing of any change in the scope of work.
- 3.2 The Owner will provide the Design Professional with a certified site survey, when such services are deemed necessary by the Design Professional and approved by the Owner, containing the data requested by the Design Professional.
- 3.3 The Owner shall furnish the services of a geotechnical engineer or other Professional Consultant when such services are deemed necessary by the Design Professional and approved by the Owner, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional recommendations.
- 3.4 The Owner shall furnish special testing services as deemed necessary by the Owner or Design Professional with appropriate professional reports or recommendations.
- 3.5 The services, information, surveys, and reports required by Article 3, Paragraphs 3.2 through 3.4, inclusive, shall be furnished at the Owner's expense and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof.
- 3.6 The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work.

ARTICLE 4. REIMBURSABLE EXPENSES

- 4.1 Reimbursable Expenses are in addition to the compensation for Basic Services and include actual expenditures made by the Design Professional, or its Professional Consultants associated with the services herein for the expenses listed in Article 14 and the following subparagraphs:
- 4.1.1 Reimbursable travel expenses shall be limited to those incurred in travel on behalf of the project when authorized by the Owner's Representative.
- 4.1.2 If authorized by the Owner, expenses for reproduction and distribution of documents shall be considered to be reimbursable expenses.
- 4.1.3 The Design Professional shall have the right under this Article to claim reimbursable expenses for any items not specifically covered herein, provided that such reimbursable expenses are identified as such and are authorized in writing by the Owner's Representative prior to being incurred.

ARTICLE 5. PAYMENTS TO DESIGN PROFESSIONAL

- 5.1 For Basic Services and Additional Services, as defined in Article 2, and for Reimbursable Expenses, as defined in Article 4, payments shall be made monthly based upon approved invoices.
- 5.2 Preparation of Invoices. Invoices for Basic and Additional Services and Reimbursable Expenses shall be prepared in accordance with the Owner's standard invoice and shall be accompanied with documentation for services and reimbursable expenses.

- 5.3 Termination of the Agreement. In the event the Agreement is terminated for any reason, the Design Professional shall be paid for services satisfactorily performed and unpaid Reimbursable Expenses incurred prior to receipt of written notice of termination.
- 5.4 Design Professional's Accounting Records. Records of the Design Professional's cost pertinent to Design Professional's compensation under this Agreement shall be:
- 5.4.1 Kept in accordance with generally accepted accounting practices.
- 5.4.2 Kept for the duration of the statute of limitations that governs when this Agreement was executed.
- 5.4.3 Made available to the Owner on request or shall be made available for examination by the Owner's authorized representative at mutually convenient times at no expense to the Owner.

ARTICLE 6. EQUAL EMPLOYMENT OPPORTUNITY

- 6.1 The Design Professional shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, physical or mental disability or status as a U.S. veteran. The Design Professional shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, physical or mental disability or status as a U.S. veteran except where it relates to a bona fide occupational qualification. Such action shall include, but not be limited in the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation, and, selection for training, including apprenticeship. The Design Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.
- 6.2 The Design Professional shall, in all solicitations or advertisements for employees placed by or on behalf of the Design Professional, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex, age, physical or mental disability or status as a U.S. veteran except where it relates to a bona fide occupational qualification.
- 6.3 The Design Professional shall send to each labor union or representative of workers with which the Design Professional has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Design Professional's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.4 The Design Professional shall comply with all relevant provisions of state and federal laws and regulations. The Design Professional shall furnish all information and reports requested by the Owner or required by or pursuant to the rules and regulations herein and shall permit access to payroll and employment records by the Owner or the Owner's Representatives for the purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.
- 6.5 In the event of the Design Professional's noncompliance with the nondiscrimination clauses of the Agreement or with any of the aforesaid rules, regulations or requests, this Agreement may be canceled, terminated or suspended in whole or in part and the Design Professional may be declared ineligible for further Agreements with the Owner. In addition, the Owner may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Code of Iowa, as heretofore and hereafter amended, or by the rules and regulations of the Owner or as otherwise provided by law.

- 6.6 The Design Professional shall include the provisions of this Article 6 hereof in every agreement with Professional Consultants unless specifically exempted by approval of the Owner, in accordance with the rules and regulations of said Owner, so that such provisions shall be binding on each Professional Consultant. The Design Professional shall take such action with respect to any Professional Consultant as the Owner or the Owner's authorized representative may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Design Professional becomes involved in, or is threatened with, litigation by a Professional Consultant as a result of such direction by the Board of Regents or its institutions, the Design Professional may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.

ARTICLE 7. TERMINATION OF AGREEMENT

- 7.1 This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- 7.2 This Agreement may be terminated by the Owner upon not less than seven (7) days written notice to the Design Professional for the Owner's convenience and without cause.
- 7.3 In the event of termination due to the fault of parties other than the Design Professional, the Design Professional shall be compensated for services performed to termination date, including reimbursable expenses.
- 7.4 This Agreement shall terminate upon final acceptance of the services described herein.

ARTICLE 8. OWNERSHIP OF DOCUMENTS

- 8.1 All documents required by this Agreement, as instruments of service are the property of the Owner whether the work for which they are made be executed or not.
- 8.2 Any use without specific written verification or adaptation by the Design Professional will be at Owner's sole risk and without liability or legal exposure to the Design Professional.
- 8.3. The Design Professional shall not acquire a copyright for documents but shall be permitted to retain copies including reproducible copies or electronic data of the documents.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

- 9.1 The Design Professional and all Professional Consultants employed by the Design Professional shall each effect and maintain insurance to protect the Design Professional from claims under worker's compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of their employees or of any person other than their employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom; and from claims arising out of the performance or professional services caused by any errors, omissions, or negligent acts for which the Design Professional is legally liable. Insurance shall be as identified in Paragraph V.
- 9.2 The Design Professional shall furnish certificates to the Owner showing insurance coverage. Certificates shall identify the name of the project and shall provide Owner with a minimum 30 days notice of cancellation. Upon written request of the Owner, the Design Professional agrees to provide certified copies of any or all insurance policies required in Paragraph V, within 30 days of such request.
- 9.3 The Design Professional agrees to indemnify and hold harmless the Owner against all damages, liabilities or costs, including reasonable attorneys' fees and all costs associated with internal and external expenses for labor and materials in preparing for the defense, to the extent caused by the Design Professional's negligent performance of professional services under this Agreement

and that of its Professional Consultants or anyone for whom the Design Professional is legally liable.

- 9.4 The requirements for insurance are not intended to limit, qualify or restrict the liabilities and obligations otherwise assumed by the Design Professional in this Agreement, including provisions concerning indemnification.

ARTICLE 10. DISPUTES

- 10.1 Any dispute between the Design Professional and the Owner regarding, but not limited to project budget, project scope, project layout, or types and quality of materials, shall be submitted in writing within twenty-one (21) days after occurrence of the event giving rise to the claim to be resolved by the Owner's Representative. If not resolved by the Owner's Representative within ten (10) days, then the Design Professional may submit in writing the issues(s) in dispute to the Vice President for Business and Finance as the University President's designee. The determination of the Vice President for Business and Finance is the final institutional decision.

ARTICLE 11. SUCCESSORS AND ASSIGNS

- 11.1 The Owner and the Design Professional each is bound, all partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Design Professional shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.

ARTICLE 12. EXTENT OF AGREEMENT

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

ARTICLE 13. GOVERNING LAW

- 13.1 This Agreement shall be governed by the laws of the state of Iowa.

ARTICLE 14. OTHER CONDITIONS OR SERVICES

14.1 MODIFICATION TO THE TERMS AND CONDITIONS OF THE AGREEMENT:

- 14.1.1 The following Paragraphs are deleted from this Agreement:

{ } 2.1.9 { If left in, go to 2.1.9 and remove the strikethrough }
{ list others }

- 14.1.2 The following Paragraphs have been modified in this Agreement:

2.1.8 The Design Professional's Basic Services shall include preparation of a booklet describing the Feasibility Study. Submit the designated quantity of the Study to the Owner's Representative as identified in Article 14.

{ OR } Not Used

- 14.1.3 The following Paragraphs have been added to this Agreement: { Use this subparagraph if Agreement is being used for Building Programming}

14.1.3.1 The Design Professional shall provide services necessary to assist the Owner in establishing a program by providing services to establish the detailed requirements for the Project which will consist of written design

objectives, limitations, and criteria; list space requirements with quantities and net areas; identify equipment and special systems needed for each space; and establish space relationships for the facility.

14.1.3.2 The Design Professional shall not finalize Schematic Design until the Owner has approved the Programming Report.

{ OR } Not Used

14.2 PAYMENT TO THE DESIGN PROFESSIONAL:

14.2.1 Payment to the Design Professional for Basic and Additional Services, as defined in Article 2, and for Reimbursable Expenses, as defined in Article 4, shall be made monthly upon presentation of the Design Professional's statement on the Owner's standard invoice format to the following office:

Contract Administration
Facilities Planning and Management
Iowa State University
200 General Services Building
Ames, IA 50011-4001

Owner's standard invoice format can be found at web address: { HYPERLINK "http://www.fpm.iastate.edu\planning\professionalconsultants" }. Depending on the method of compensation stated in this Agreement, select either the Stipulated Sum or Hourly Rates with Fixed Maximum invoice form. **Only payment requests submitted using the Owner's invoice format will be processed for payment.**

14.3 DOCUMENT SUBMITTAL SCHEDULE:

14.3.1 The Design Professional shall provide the Owner with the appropriate quantities identified below for distribution, and publish electronic file to the Owner's project web site.

{ }Feasibility Study Report	{ }10
{ }Building Programming	

14.4 DOCUMENT FORMAT:

14.4.1 The electronic text program used for the Project Manual shall be Microsoft Word (.doc), latest version.

14.4.2 The electronic drafting program used for the Contract Drawings shall be Architectural Desktop or AutoCAD (.dwg), latest version (preferred), or a program 100% compatible with AutoCad, latest version.

14.4.3 The Design Professional shall convert electronic documents to Adobe Portable Document Format (.pdf) and publish to Owner's project web site as required herein.

14.5 INTERNET BASED PROJECT COMMUNICATION AND MANAGEMENT SYSTEM:

14.5.1 An Internet based project communication and management system will be utilized on this project to share information among team members and conduct and track project communications. The Design Professional is required to participate with the project team and use the system for viewing correspondence and information posted by other project team members, publishing correspondence and information for viewing by other project team members, and logging and/or responding to items such as RFI's and Submittals. There are no fees required for access to the system. Iowa State University will provide project team members with password protected access privileges to the project web site.

Minimum System and Software Requirements:

- Operating Systems: Windows 2000, or Windows XP
- Minimum 128MB RAM
- Processor: PC Compatible, 700 MHz Pentium III or better
- Minimum 60 MB free hard disk space for application
- Minimum 120 MB of temporary free hard disk space used during installation
- Video Card and display capable of True Color (24-bit)
- Internet connection (high speed connection recommended)
- Internet Explorer, 5.5, 5.5 SP1, 5.5 SP2, 6.0, or 6.0 SP1
- Software to create and read Adobe Acrobat files
- Scanner
- MS Word, MS Excel, MS Outlook (recommended)

14.6 PROPOSAL LETTER:

- 14.6.1 The Design Professional's proposal letter of { Date of Letter mo/day/yr }, is appended and incorporated into this Agreement by reference as Exhibit A.

This Agreement becomes effective the day and year signed by the Owner below.

Design Professional:

{ Type in Firm Name }

by: _____

Dated: _____

FEIN No: _____

E-Mail: _____

{ Feasibility Study >\$50K, but less than \$149,999
and >\$150K requiring Board approval; or other
Special Services Agreement where Project budget is
\$1M or greater }

Recommended by:

Iowa State University

by: _____

Christopher K. Ahoy
Associate Vice President for Facilities

Dated: _____

by: _____

Warren R. Madden
Vice President for Business & Finance

Dated: _____

Owner:

Board of Regents, State of Iowa

by: _____

Gary Steinke
Executive Director

Dated: _____

{ Feasibility Study <\$50K; or other Special Services Agreement on Project with budget of \$999,999 or less.}

Recommended by:

Iowa State University

by: _____
Christopher K. Ahoy
Associate Vice President for Facilities

Dated: _____

Owner:

by: _____
Warren R. Madden
Vice President for Business & Finance

Dated: _____

g:\Capital Projects (Morton)\Templates\DP Agreement-Special Services 12-06