



ConsensusDocs[®] 810 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND OWNER'S REPRESENTATIVE

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ConsensusDocs® 810

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND OWNER'S REPRESENTATIVE



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This Agreement has important legal consequences. Consultation with an attorney and an insurance consultant is encouraged with respect to its completion or modification.

ARTICLE 1 AGREEMENT

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

and between the

OWNER



[]

and the

OWNER'S REPRESENTATIVE

[]

for services in connection with the following PROJECT

Notice to the Parties shall be given at the above addresses.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

2.1 The Owner and the Owner's Representative agree to proceed on the basis of mutual trust, good faith and fair dealing and shall endeavor to promote harmony and cooperation among all Project participants.

2.2 The Owner's Representative represents that it is, whether a person or entity, an independent contractor and that in its performance of its Services it shall act as an independent contractor.

2.3 DEFINITIONS

2.3.1 The Design Professional means the licensed Architect, Design Professional or Engineer and its consultants, retained by Owner to perform design services for the Project.

2.3.2 The Contractor is a person or entity retained by the Owner to perform construction work in connection with the Project.

2.3.3 The term Day shall mean calendar day, unless otherwise specifically defined.

2.3.4 Final Completion occurs on the date when a Contractor's obligations under its agreement with the Owner are complete and accepted by the Owner and final payment becomes due and payable.

2.3.5 A Material Supplier is a person or entity retained by a Contractor to provide material and/or equipment for the Work.

2.3.6 The Owner is the person or entity identified in ARTICLE 1.

2.3.7 The Owner's Program is an initial description of the 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.

2.3.8 The Owner's Representative is the person or entity identified in ARTICLE 1. The Owner shall in its agreements with the Design Professional and the Contractor(s) identify the Owner's Representative and include a definition of Owner's Representative.

2.3.9 The Project is the building, facility and/or other improvements for which a Contractor is to perform Work under its agreement with the Owner. It may also include construction by the Owner or others.

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



2.3.11 A Subcontractor is a person or entity retained by a Contractor as an independent contractor to provide the labor, materials, equipment and/or services necessary to complete a specific portion of the Work.

2.3.12 Substantial Completion of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Contractor's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Contractor.

2.3.13 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

2.3.14 Work means the construction and services necessary or incidental to fulfill the Contractor's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.3.14.1 Changed Work means work that is different from the original scope of Work; or work that changes the Contract Price or Contract Time.

2.3.14.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents.

2.3.15 Worksite means the geographical area at the location of the Project where the Work is to be performed.

ARTICLE 3 OWNER'S REPRESENTATIVE'S SERVICES

3.1 The Owner's Representative shall serve as Owner's authorized representative on the Project and at the Worksite and shall be fully acquainted with the Project. The Owner's Representative shall have the authority to bind the Owner without the Owner's prior approval in all Project matters requiring the Owner's approval, authorization or written notice, to the extent such matters do not exceed the limit of \$[] on a per item basis (indicate dollar amount limit of Owner's Representative's authority), and the Owner's Representative shall notify the Owner of such approvals within a reasonable time. For all matters exceeding the indicated limit, the Owner's Representative shall not have the authority to bind the Owner absent the Owner's prior written approval.

3.2 The standard of care for Services performed under this Agreement shall be the care and skill ordinarily used by owner's representatives, or project administrators, practicing under similar conditions at the same time and locality.

3.3 The Owner's Representative's Services may be provided in one or more phases as outlined below. Portions of each phase may commence before the previous phase is completed, in which case both phases may proceed concurrently. The Phases of the Owner's Representative's Services shall include: (Strike services not required).



3.3.1 PROJECT INITIATION PHASE The Project Initiation Phase includes the development of the Owner's Program and the review of the Project's feasibility based on the Owner's Program and other relevant information, as further detailed in section 3.5.

3.3.2 PROJECT DESIGN PHASE The Project Design Phase includes Services during the development of the Project design and specifications through the preparation of construction documents for the Project, as further detailed in section 3.6.

3.3.3 PROJECT CONSTRUCTION PHASE The Project Construction Phase commences upon the issuance of a written notice to proceed to the Owner's Contractor(s) to proceed with the construction of the Project, and includes Services as further detailed in Section 3.7.

3.3.4 PROJECT CLOSE-OUT PHASE The Project Close-Out Phase commences when the Project, or a designated portion, achieves Substantial Completion, and continues through Final Completion, and includes Services as further detailed in section 3.8.

3.4 OWNER'S REPRESENTATIVE'S GENERAL RESPONSIBILITIES

The Owner's Representative shall:

3.4.1 Serve as the contact for all communications between the Owner and its Design Professional, Contractor(s) and consultant(s) including requests for information from or for actions by the Owner;

3.4.2 Maintain a copy of all Project documents and contract documents, including change orders and interim directed changes, for each of Owner's Contractor(s) on the Project, as well as meeting minutes, shop drawings, submittals, drawings and specifications, product data and applications for payment.

3.4.3 Perform on-site observations of the progress and quality of the Project so as to be able to report to the Owner on the progress and quality of the Work being performed and the services provided by all Project participants;

3.4.4 Attend Project meetings and report to the Owner on the proceedings.

3.5 PROJECT INITIATION PHASE SERVICES During the Project Initiation Phase, the Owner's Representative shall provide the following Services: (Strike services not required).

3.5.1 Review with the Owner the Project goals, objectives, constraints and relationships.

3.5.2 Assist the Owner in refining and clarifying the Owner's Program.

3.5.3 Assist the Owner in site selection and/or use of existing facilities.

3.5.4 Prepare cost estimates and/or review cost estimates prepared by others, provide a recommendation regarding such to the Owner and act upon any directive received from the Owner concerning such cost estimates.

3.5.5 Prepare preliminary Project schedule and/or review the preliminary Project schedule prepared by others, provide a recommendation regarding such to the Owner and act upon any directive received from the Owner concerning such preliminary Project schedule.

3.5.6 Assist the Owner in the selection of the Design Professional and other consultants retained by the Owner and types of agreements to be used between the Parties.



3.5.7 Review with the Design Professional its understanding of the Owner's Program and other relevant data, assist the Design Professional in determining the requirements of its services under the Owner-Design Professional agreement and report to the Owner any outstanding issues.

3.5.8 Assist the Owner with filing required documents with governmental authorities having jurisdiction over the Project, including necessary permits.

3.5.9 Review Project quality level guidelines.

3.5.10 Review Project management information systems and reporting procedures, attend meetings and monitor the compliance and completion of assigned responsibilities.

3.5.11 The Owner's Representative shall provide the following other Services, if any, during the Project Initiation Phase:

3.6 PROJECT DESIGN PHASE SERVICES During the Project Design Phase, the Owner's Representative shall provide the following Services: (Strike services not required).

Project Delivery System & Document Review

3.6.1 Assist the Owner in the selection of the type(s) of project delivery system(s) to be used for the Project including any phasing requirements and separate bid packages.

3.6.2 Receive and review the Design Professional's schematic design, design development and construction documents, provide recommendations to the Owner and act upon any directive received from the Owner concerning these documents, including communicating Owner's approval to the Design Professional.

3.6.3 Monitor quality level guidelines during the design process.

3.6.4 Review errors or omissions discovered in the drawings and specifications, review such with the Design Professional and provide recommendations to the Owner and act upon any directive received from the Owner.

3.6.5 Review recommendations concerning constructability issues, material availability or value engineering, review with the Design Professional and provide recommendations to the Owner and act upon any directive received from the Owner.

3.6.6 Review the general and/or supplementary conditions for the Project, provide recommendations to the Owner and act upon any directive received from the Owner including communicating Owner's approval.

Budget and Schedule

3.6.7 Prepare updated budget and schedule and/or review any updated budget and schedule prepared by others upon the completion of schematic design, design development and construction documents, provide recommendations to the Owner and act upon any directive received from the Owner concerning such updated budget and schedule, including communicating Owner's approval to the Design Professional and others.



3.6.8 Prepare budgets for changes including alternate costs and/or review budgets for changes including alternate costs prepared by others, provide recommendations to the Owner and act upon any directive received from the Owner including communicating Owner's approval.

3.6.9 Prepare schedule for procurement of long-lead time items and/or review schedule(s) for procurement of long-lead time items prepared by others which will constitute part of the Work as required to meet the Schedule of the Work provide recommendations to the Owner and act upon any directive received from the Owner including communicating Owner's approval.

Bidding and Award

3.6.10 Assist the Owner in the development of bid strategies and prequalification criteria and the selection process for contracting with the Contractor(s), Subcontractors and Material Suppliers.

3.6.11 Receive from the Contractor(s) a list of possible Subcontractors and Material Suppliers from whom proposals may be requested for each principal portion of the Work, provide recommendations to the Owner and act upon any directive received from the Owner including communicating Owner's approval of or objection to a specific Subcontractor.

3.6.12 Work with the Design Professional and/or others to obtain bids or negotiate proposals from Contractor(s), attend pre-bid or pre-award meetings and review bids or negotiated proposals including proposed subcontractors and material suppliers, provide recommendations to the Owner and act upon any directive received from the Owner.

3.6.13 Receive and review Contractor's(s) proposed superintendent(s) and project manager, provide a recommendation to the Owner and act upon any directive received from the Owner.

3.6.14 Work with the Design Professional and others to make necessary modifications to construction documents in the event the Owner elects not to accept the lowest bona fide bid or negotiated proposal, provide recommendations to the Owner and act upon any directive received from the Owner.

3.6.15 Review Contractor's(s) compliance with insurance and bonding requirements.

3.6.16 Consult with the Contractor(s) regarding equal employment opportunity and affirmative action programs.

3.6.17 Assist the Owner in the preparation and award of the Owner and Contractor's(s) agreement(s).

3.6.18 Review Project management information systems and reporting procedures.

3.6.19 The Owner's Representative shall provide the following other Services, if any, during the Project Design Phase:

3.7 PROJECT CONSTRUCTION PHASE SERVICES During the Project Construction Phase, the Owner's Representative shall provide the following Services: (Strike services not required).

Commencement and Progress of the Work

3.7.1 Issue written notices to the Contractor(s) to proceed with the Work.



3.7.2 With the Design Professional and others, review the Contractor's(s') schedule of values to determine its accuracy and sufficiency.

3.7.3 Work with Contractor(s) to coordinate work performed by the Owner with the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures, and monitor and review progress reports.

3.7.4 Receive and review the Design Professional's and others' recommendations regarding Contractor(s) submittals, including shop drawings, product data and samples, provide recommendations to the Owner, and act upon any directive received from the Owner.

3.7.5 Accompany the Design Professional and others on visits to the Worksite as required by agreement with the Owner, review the Design Professional's Worksite visit reports, and, as needed, provide Owner with recommendations in response to such reports.

3.7.6 Review and monitor the Schedule of the Work.

3.7.7 Receive and review Contractor's(s') notice of delays in the progress of the Work and Contractor's(s') delay claims, provide recommendations to Owner and act upon any directive received from the Owner.

Defective Work, Correction and Testing

3.7.8 Receive and review all notices of defects in the Work, provide recommendations to the Owner and act upon any directive received from the Owner.

3.7.9 With the Design Professional and others, advise Contractor(s) of Defective Work to be corrected.

3.7.10 Advise and provide a recommendation to the Owner regarding Work that may need to be uncovered for inspection, and act upon any directive received from the Owner including directing Contractor(s) to uncover Work for inspection.

3.7.11 Receive and review Design Professional's and others' recommendations regarding needed testing or inspection procedures for the Work, provide recommendations to the Owner and act upon any directive received from the Owner including communicating Owner's approval to the Design Professional.

Changes and Claims

3.7.12 Receive and review Contractor's(s') request for changes in the Work or claims related to the Project.

3.7.13 Work with the Design Professional and others to review and process Contractor's(s') requests for changes in the Work or claims related to the Project, advise the Owner of the Design Professional's and others' recommendations, provide recommendations to the Owner and act upon any directive received from the Owner, including communicating Owner's approval to the Design Professional and others and Contractor's(s').

Safety



3.7.14 Receive and review any reports of safety violations on the Worksite, provide recommendations to the Owner and act upon any directive received from the Owner including directing Contractor(s) to stop performance of the Work or take corrective measures.

3.7.15 Receive and review Contractor's(s') reports of recordable accidents and injuries occurring at the Worksite.

Hazardous Materials

3.7.16 Receive and review Contractor's(s') reports of hazardous material discovered at the Worksite, provide a recommendation to the Owner regarding such and act upon any directive received from the Owner.

3.7.17 Assist Owner in retaining an independent testing laboratory to determine the nature of suspected hazardous materials encountered at the Worksite.

Payment

3.7.18 Receive and review applications for payment and forward same to Owner with a recommendation for action, including amount due, adjustments to the payment application and any bases for withholding payment.

3.7.19 Receive and retain all Contractor's(s') partial lien and claim waivers for each progress payment as required in the Contractor's(s') agreement with the Owner.

3.7.20 Notify Owner and responsible Contractor(s) of liens filed against the Project and ensure that Contractor(s) cause the removal of any liens as required by their agreement with the Owner.

Substantial Completion

3.7.21 Participate in inspections to determine whether Substantial Completion has been achieved by Contractor(s) and assist in preparation of list of items to be completed or corrected in order to achieve Final Completion.

3.7.22 Receive and review Contractor's(s') proposed certificate of Substantial Completion, provide recommendation to Owner and act upon any directive received from the Owner including communicating Owner's approval.

Miscellaneous

3.7.23 The Owner's Representative shall provide the following other Services, if any, during the Project Construction Phase:

3.8 PROJECT CLOSE-OUT PHASE SERVICES During the Project Close-Out Phase, the Owner's Representative shall provide the following Services: (Strike services not required).

3.8.1 Receive and review all documentation required of Owner's Contractor(s) in order to achieve Final Completion and receive final payment.

3.8.2 Participate in any dispute resolution proceedings instituted by the Design Professional, Contractor(s) or consultants.



3.8.3 The Owner's Representative shall provide the following other Services, if any, during the Project Close-Out Phase:

3.9 The Owner's Representative shall not exceed the authority granted to it pursuant to this Agreement.

3.10 The Owner's Representative shall not be responsible for, nor liable to the Owner for, any damages arising out of, the failure of other persons providing services, work or goods to the Owner to carry out the performance of their contracts with the Owner.

3.11 The Owner's Representative makes no warranties relating to schedules or completion dates, budgets, the cost of the Work or the Project, the Work performed by Contractor(s), or any other warranties, express or implied, that are not expressly set forth herein. The Owner's Representative shall have no liability for any errors or omissions in the construction documents or any defects in the Services attributable to the Owner's Representative's use of and/or good faith reliance upon the construction documents or any other information furnished by or on behalf of Owner or Design Professional.

3.12 CONFIDENTIALITY The Owner's Representative shall treat as confidential and not disclose to third persons, except the Contractor(s), Subcontractors, Sub-subcontractors and Material Suppliers as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know how, discoveries, production methods and the like that may be disclosed to the Owner's Representative or which the Owner's Representative may acquire in connection with the Work.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Owner's Representative in the performance of its Services under this Agreement.

4.2 The Owner's Representative's contact with the Owner shall be: (indicate name and telephone number).

ARTICLE 5 TIME AND COMPENSATION

5.1 Except as otherwise provided herein, the Owner's Representative shall provide the Services required by this Agreement from the date of this Agreement until completion of the Project and no later than [____]. Should the completion of the Project be delayed through no fault of the Owner's Representative, the Owner's Representative's compensation shall be equitably adjusted.

5.2 The Owner's Representative shall be compensated on the following basis: (State whether a stipulated sum, actual cost or other basis. If a stipulated sum, state what portion of the sum shall be payable each month. If the Owner's Representative's compensation is by phases of the Project, so indicate).

5.3 Reimbursable expenses under this Agreement shall include: (List here all expenses that are to be reimbursed.)

5.4 Adjustments in the Owner's Representative's Compensation shall be made as follows:

5.5 The Owner shall pay the amount otherwise due on any payment application, no later than [____] ([____]) Days after the Owner's Representative has submitted a complete and accurate payment application.



5.6 PAYMENT DELAY If for any reason not the fault of the Owner's Representative, the Owner's Representative does not receive payment from the Owner within [] ([]) Days after the time such payment is due, then the Owner's Representative, upon giving [] ([]) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop providing services until payment of the full amount owing to the Owner's Representative has been received.

ARTICLE 6 INDEMNIFICATION AND INSURANCE

6.1 To the fullest extent permitted by law, the Owner's Representative shall indemnify and hold the Owner, the Owner's officers, directors, members, consultants, agents and employees harmless from all claims for bodily injury and property damage that may arise from the Owner's Representative's services, but only to the extent of the negligent acts or omissions of the Owner's Representative.

6.2 To the fullest extent permitted by law, the Owner shall indemnify and hold the Owner's Representative, the Owner's Representative's officers, directors, members, consultants, agents and employees harmless from all claims for bodily injury and property damage that may arise from the Owner's services, but only to the extent of the negligent acts or omissions of the Owner.

6.3 All contracts let by or on behalf of the Owner in connection with the Project shall contain a provision providing that the Owner and the other Party to the agreement agree to indemnify and hold the Owner's Representative harmless from all claims for bodily injury and property damage (other than to the Work itself) to the extent of the negligence attributed to such acts or omissions by the Owner or the other Party to the agreement or anyone employed directly or indirectly by them or by anyone for whose acts they may be liable. In addition, all such agreements shall contain a provision requiring the other Party to include the Owner and the Owner's Representative as additional insureds on their Commercial General Liability insurance policies for the Project.

6.4 The Owner's primary liability coverage shall name the Owner's Representative as an additional insured under the policy. The Owner shall provide the Owner's Representative with proof of the insurance coverages required.

6.5 If required in writing by the Owner, the Owner's Representative shall, before commencing its Services and as a condition of payment, purchase and maintain such insurance as will protect it from claims arising out of the performance of its Services under this Agreement.

ARTICLE 7 TERMINATION

7.1 Upon written notice to the Owner's Representative, the Owner may, without cause, suspend and/or terminate this Agreement. The Owner's Representative shall immediately cease providing Services under this Agreement. If the Owner terminates this Agreement pursuant to this section, the Owner's Representative shall be paid for all Services provided together with any reimbursable expenses incurred until the date of termination.

7.2 Upon seven (7) Days' written notice either Party may terminate this Agreement should the other Party breach this Agreement through no fault of the Party initiating the termination.

ARTICLE 8 DISPUTE RESOLUTION



8.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute first through direct discussions.

8.2 MEDIATION If the dispute cannot be settled through direct discussions, the Parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association before recourse to any binding dispute resolution procedures.

8.3 BINDING DISPUTE RESOLUTION. If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

ARBITRATION Unless the Parties mutually agree otherwise in writing, all claims, disputes and matters in question arising out of, or relating to, this Agreement shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An award entered in an arbitration proceeding shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

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

8.3.1 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.

8.3.2 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

8.4 PROGRESS OF THE PROJECT The Parties shall not permit any dispute resolution process to affect or threaten the progress and completion of the Project.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 ASSIGNMENT Neither the Owner nor the Owner's Representative shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Owner's Representative or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Owner's Representative than this Agreement. In the event of such assignment, the Owner's Representative shall execute any consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Agreement. 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.

9.2 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.



9.3 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.

9.4 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

9.5 TITLES AND GROUPINGS The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of sections or the use of headings be construed to limit or alter the meaning of any provisions.

9.6 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.

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

9.8 OTHER PROVISIONS (Insert here other provisions, if any, that pertain to this Agreement.)

ATTEST: _____

OWNER: []

BY: _____

PRINT NAME: [] PRINT TITLE: []

ATTEST: _____

OWNER'S REPRESENTATIVE: []

BY: _____

PRINT NAME: [] PRINT TITLE: []

END OF DOCUMENT.

