



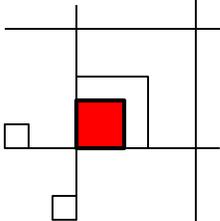
Nebraska State Capitol  
Masonry Restoration Project



The Sower  
During Restoration

# Procedural Manual for Capital Construction Projects

State of Nebraska  
Department of Administrative Services  
State Building Division  
December 2005 (revised June 2019)



# **Procedural Manual For Capital Construction Projects**

**State of Nebraska  
Department of Administrative Services  
State Building Division**

June 2019

# Procedural Manual for Capital Construction Projects

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# Procedural Manual for Capital Construction Projects

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## **CHAPTER I INTRODUCTION**

### **A. Purpose of the Procedural Manual**

The legislative and executive branches of government in the State of Nebraska have sought to attain maximum utilization of the tax dollars in all capital construction projects undertaken for the benefit of Nebraska citizens. Construction processes and methods of delivery have become much more diverse in the last twenty years. Accordingly, as the level of technology and complexity of construction projects has grown,, there has been a continuing effort by the elected representatives to develop a system of checks and balances in the capital construction process. To insure creativity, to make sure each new structure meets the unique needs of its users and to obtain maximum professional proficiency, there have been periodic legislative directives requiring the utilization of outside professional consultants in major capital construction projects.

Legislation has been enacted to consolidate responsibilities for the planning, construction, energy conservation and the administration of State facilities. The goal of the legislation has been an attempt to provide technical assistance to the State agencies and their professional consultants plus, providing a central source of records on facilities for use by the legislative and executive branches of State government. This manual attempts to consolidate these efforts by interpreting both the legislative and administrative directives into rules and regulations, guidelines and procedures required for the development and completion of capital construction projects.

The primary objective of this "Procedural Manual" is to assist the State agencies, the DAS State Building Division, the professional consultants and the building construction industry in understanding and implementing the procedures required for successfully processing a capital construction project for the State of Nebraska. Most of the procedures involved are the direct responsibility of the State agencies and the DAS State Building Division, but the professional consultants and the construction industry should also be acquainted with the specifics of all responsibilities involved in capital construction projects.

## Rules and Regulations

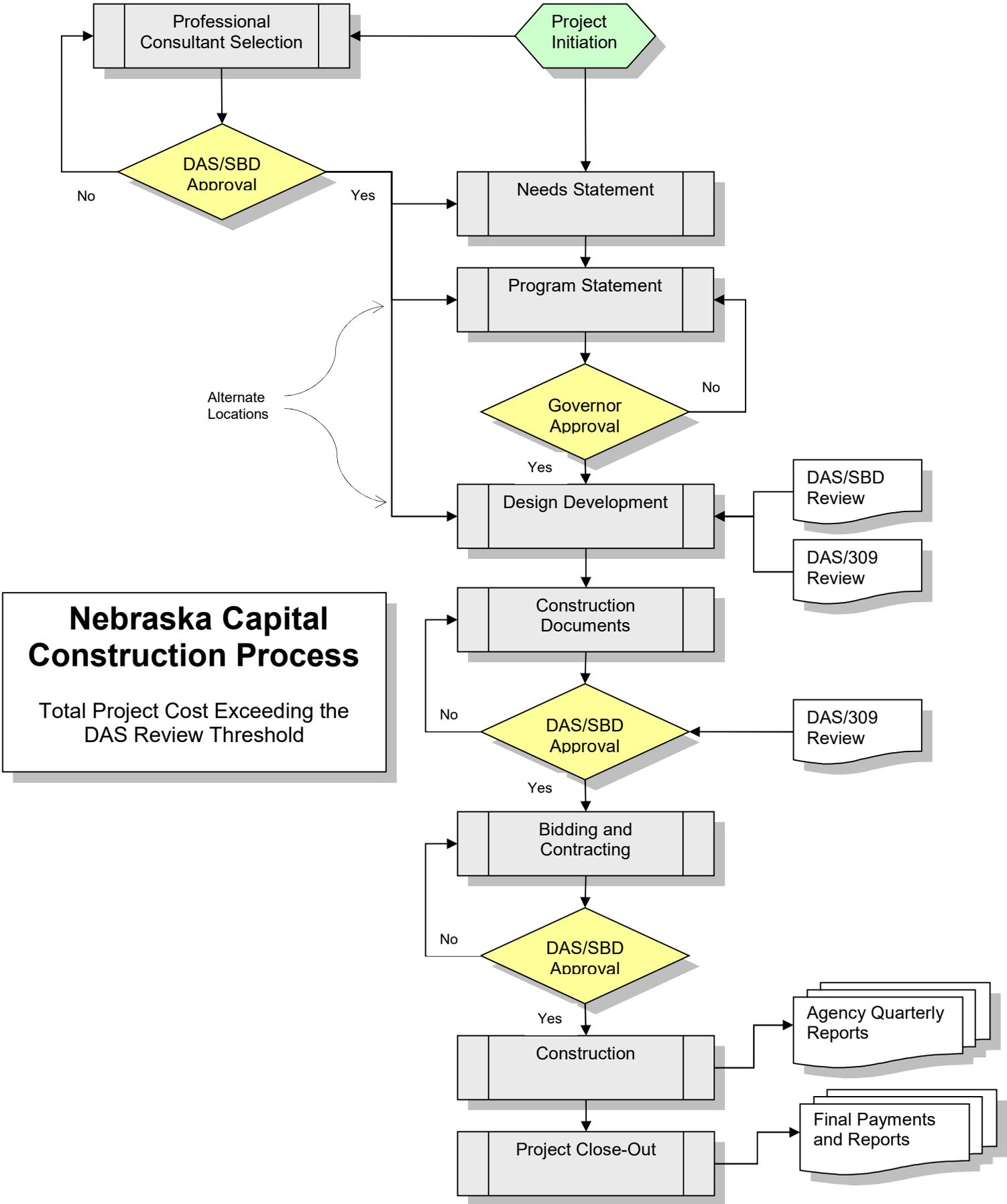
Statutory requirements and those items within the manual which have been filed as official rules and regulations are mandatory procedures in the capital construction process. Sections of this manual that are official rules and regulations are designated by the symbol R- XX in the left margin. Additionally, all official rules and regulations are listed in Appendix N.

### **B. Chronological Summary of the Procedures**

1. Refer to the diagram on page II-4.

### **D. Applicability**

The procedures outlined in this manual shall apply to all capital construction projects whose total project cost exceeds **\$705,000** which are administered by a State agency, board or commission, regardless of the source of funding (i.e. State funds, federal funds, private donations, etc.). It should be noted that the Nebraska Supreme Court, in the case of Board of Regents vs. Exon, 199 Neb 146, 256 N.W. 2d 330 (1977) held that State Statute Sections 81-1108.41 to 1108.43 did not apply to the Board of Regents.



**Nebraska Capital Construction Process**  
 Total Project Cost Exceeding the DAS Review Threshold

## CHAPTER II. DEFINITIONS

Owner	State of Nebraska
Agency	Any State board, council, commission or department responsible for executing the project under consideration
SBD	State Building Division, which is a division of the Department of Administrative Services
DAS	Department of Administrative Services
A.I.A.	American Institute of Architects
N.S.P.E.	National Society of Professional Engineers
Project	Any capital facilities planning or construction of a project which is executed by an agency. A project may constitute: <ul style="list-style-type: none"><li>• A single construction project</li><li>• A grouping of minor construction, rehabilitation, restoration or renovation activities</li><li>• A grouping of substantially similar construction, rehabilitation, restoration or renovation activities.</li></ul>

### Fixed Limit of Construction Costs

The maximum dollar amount to be expended for a project which has a specific funding either partially or totally through an appropriation of State funds.

### Estimated Total Project Costs

The calculated dollar amount for the complete construction of a specific project including but not limited to the following:

- program planning
- professional fees (Architect/Engineer, Planning,, other)
- moveable equipment
- special or technical equipment
- land acquisition
- artwork (for applicable projects)

- other costs (agency administration costs, moving, testing, surveys, legal fees, insurance, etc.)
- construction costs (general, mechanical, electrical, elevator, fixed equipment, site improvements, utility connections)
- Environmental remediation
- contingency

#### Need Statement

A document, prepared by the agency, which serves as the basis of their request for capital funding. The data supplied should assist the Executive Budget Office, the State Building Division and the Legislature Fiscal Analyst Office in the initial evaluation of the project.

#### Program Statement

A document which further develops the data contained in the agency's need statement into a detailed facility planning program. This document shall be prepared either in-house or by a professional consultant and serves as:

- the basis of their request for project funding
- a narrative and graphic summary of the project and all supporting information
- a programming tool for further development of the project

#### Professional Consultant

A person or organization professionally qualified and duly licensed in the State of Nebraska to perform architectural, landscape architectural, engineering or land surveying services.

#### Consultant

A person or organization engaged by the owner or Professional Consultant to render special consulting services of a technical nature not normally required for a capital facility construction project.

#### Firm

Firm shall mean any individual, partnership, corporation, association or other legal entity permitted by law to practice architecture, landscape architecture, engineering or land surveying in the State of Nebraska.

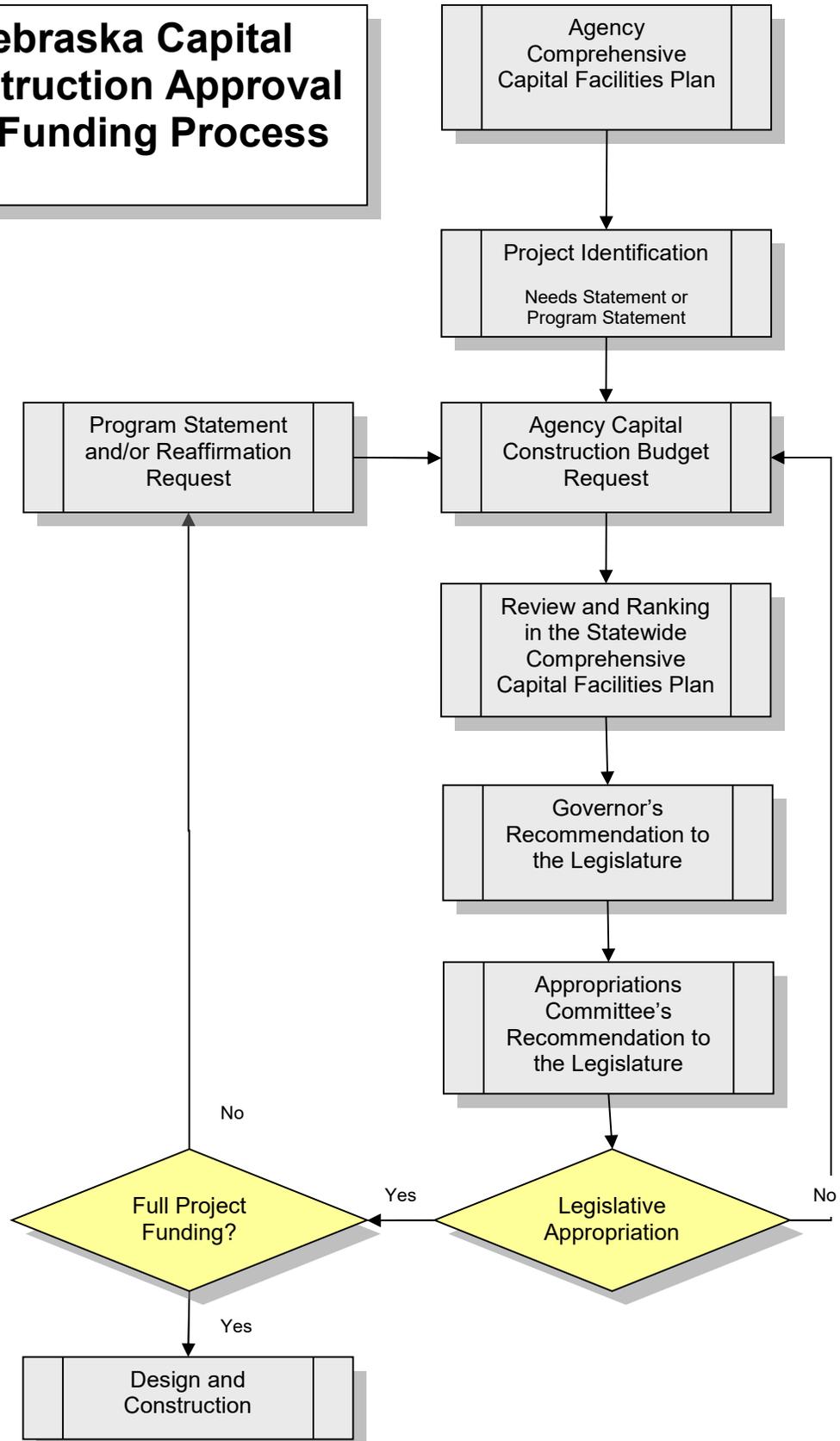
#### Project Manager

A person within an agency designated by the Director who is responsible for administration of the project and coordination with the DAS State Building Division, the agency's professional consultant(s) and the contractor(s).

#### Time-Cost Schedule

The following chart outlines the construction approval and funding process for a project.

# Nebraska Capital Construction Approval and Funding Process



## **CHAPTER III. CAPITAL CONSTRUCTION BUDGET AND APPROPRIATION CYCLE**

### **Agency Request**

The Agency's budget request shall be submitted in accordance with the 'Budget Preparation Instructions for Capital Construction Projects' and may represent any of the following situations:

- planning funds only
- total project funding over one fiscal year
- planning funds the first year and construction funds the following year(s)
- construction funds for a project whose program statement and/or documents have been previously submitted
- reaffirmation of funds previously authorized, but not yet appropriated

### **Amended Budget Request**

In order for a budget request to be revised between September 15th and the end of the Legislative Session, the budget request documents must be officially amended according to the procedures outlined in the current edition of the 'Budget Preparation Instructions for Capital Construction Projects'.

### **Federal Requirements**

It is the Agency's responsibility to follow all federal requirements for projects which are funded either partially or totally by federal funds. Any conflicts between federal and State requirements shall be referred to the State Building Division.

## **CHAPTER IV. PROJECT RESPONSIBILITIES**

### **A. Introduction**

The purpose of this chapter is to establish an understanding of the general responsibilities required of the agency, the DAS State Building Division, the professional consultants and the construction industry in the successful undertaking of a capital facilities project for the State of Nebraska. Successful projects are the result of close interaction between these four groups on a team basis with the common goal of achieving the highest quality project possible within the constraints of budgetary, administrative and legislative guidelines.

### **B. Agency Responsibilities**

The following items are basic responsibilities of the agency. Those items indicated with an asterisk may be performed by the professional consultants.

1. Coordination with the DAS State Building Division
2. Professional consultant(s) selection (if over the specified threshold)
- \*3. Development of a comprehensive capital facilities plan
4. Funding request
- \*5. Program planning, including full information for the requirements of the project
6. Information about the following:
  - \*a. Site, including a certified land survey, utility information, soil test reports
  - \*b. Laboratory tests, inspections and reports
  - c. Legal, accounting and insurance counseling services
  - \*d. Project budget and funding
  - \*e. Project schedule
7. Designation of an agency project manager
- \*8. Submission of appropriate approvals as specified or required by

this manual.

- \*9. Approval of other governmental agencies as required by state statutes (Fire Marshall, Electrical Inspector, HHSS Regulation and Licensure Department, Labor Department, etc.)
- \*10. Compliance with state building codes and energy codes:
- 11. Procurement of artwork in coordination with the Nebraska Arts Council (for applicable projects)
- 12. Issuance of legal and public notices
- 13. Processing of payments to the professional consultants and the contractors
- 14. Submission of quarterly progress and final reports to the DAS State Building Division
- 15. Final evaluations of the project, the contractor and the professional consultant
- 16. Final acceptance of the project
- 17. Coordination with the State Historical Society

### **C. DAS State Building Division Responsibilities**

The DAS State Building Division shall have the primary functions and responsibilities to coordinate statewide facilities planning, construction, administration and to promulgate rules and regulations to carry out the following:

- 1. Facilities planning shall include the following responsibilities:
  - a. To establish and maintain a state-wide comprehensive capital facilities plan
  - b. To maintain utilization records for all state-owned and occupied facilities
  - c. To coordinate comprehensive capital facilities planning
  - d. To define and review program statements
  - e. To prepare or review planning and construction documents

- f. To develop and maintain time-cost schedules for capital construction projects
  - g. To assist the Governor and the Legislative Fiscal Analyst in the preparation of the capital construction budget recommendations
  - h. To maintain a complete inventory of all state-owned or occupied sites and structures and to review the proposals for naming such sites and structures
  - i. To guide the professional consultant selection process
2. Facilities construction shall include the following powers and duties:
- a. To maintain close contact with the agency's Project Manager and make inspections of each project so as to assure execution of time-cost schedules and efficient contract performance
  - b. To perform final acceptance inspections and evaluations
  - c. To review all change management documents and progress payment orders
  - d. In coordination with DAS Risk Management Division, establish insurance requirements with minimum limits for construction activities (Workers compensation, builders risk insurance, public liability and automobile, consultant's professional liability)
  - e. Manage the scope, budget and schedule of the project to ensure compliance with the approved program or need statement
  - f. Review quarterly reports
  - g. Review and approve payments to contractors over \$100,000 including final payments regardless of the amount..
3. Facilities administration shall include the following powers and duties:
- a. To administer the State Emergency Capital Construction Contingency Fund

- b. To submit quarterly progress reports to the Governor and Legislative Fiscal Analyst
- c. To submit a final report (final quarterly report) on each project to the Governor and Legislative Fiscal Analyst

#### **D. Professional Consultants' Responsibilities**

The professional consultants' responsibilities may include, but are not limited to, the following services to the State of Nebraska as part of the basic services for the successful completion of the project.

1. Comprehensive Capital Facilities Plan

Develop or review and update of the agency's comprehensive capital facilities plan

2. Program Statement

Develop or review and update the agency's program statement

3. Schematic Design (33%)

- a. Review and comment on project budget requirements
- b. Development of alternative approaches to the design of the project
- c. Development of schematic design documents
- d. Statement of conformance with fixed budget for construction (develop cost estimate)
- e. Statement of conformance with comprehensive capital facilities plan and program statement

4. Design Development (65%)

- a. Preparation of Design Development documents
- b. Statement of conformance with fixed budget for construction (develop cost estimate)
- c. Statement of conformance with the program statement

- d. Statement of conformance with the energy standards as adopted by the State of Nebraska (International Energy Code)
  - e. Coordination with the Nebraska Arts Council (for applicable projects)
5. Construction Documents (100%)
- a. Development of detailed drawings and specifications
  - b. Certification of conformance with approved design development documents
  - c. Certification of conformance with fixed budget requirements (develop cost estimate)
  - d. Submission of plans for review by the State Fire Marshal and other applicable code authorities.
  - e. Certification of compliance with the State Building Code and justification for variances
  - f. Storm Water Pollution Prevention Plan (SWPPP) outline (as required for new construction or additions)
6. Bidding and Construction Contract Phase
- a. Preparation of the bid documents and Addenda
  - b. Assist the agency in obtaining bids
  - c. Assist the agency in reviewing, awarding and preparing contracts for construction
7. Construction Phase
- a. Administration of the construction documents
  - b. Review and approval of shop drawings
  - c. Periodic site inspections and reports per Agreement
  - d. Respond to Request for Information (RFI's)

- e. Prepare Architect Supplemental Instructions (ASI's) and Construction Proposal Requests (CPR's)
- f. Review and approval of certificates of payment by the contractor
- g. Prepare cost estimates for each Cost Proposal Request (CPR)
- h.. Preparation and recommendation of change orders
- i. Issuance of certificate of substantial completion
- j. Approval of final certificate of payment
- k. Review and assure warranties and operating manuals are provided to the agency
- l. Provide written interpretations in the event of disputes between the State of Nebraska and the contractor
- m. Provide additional services as specifically requested in writing by the agency in accordance with the agreement
- n. Review end-of-period warranty conditions and report findings (eleventh month walk through)

#### **E. Building Construction Industry Responsibilities**

The building construction industry shall generally be responsible to the State of Nebraska for the following to insure successful completion of the project:

1. Secure all permits required for the project
2. Become familiar with existing site conditions including, but not limited to utilities, easements, appurtenances to the project
3. Coordination of all portions of the work under contract
4. Provide all labor, materials, equipment and supervision necessary for the proper execution and completion of the work
5. Comply with all codes, laws, ordinances, rules, regulations and orders relating to the project, including coordination with Fire Marshal's office and State Electrical Inspector

6. Coordinate with the agency, and other contractors for the use of the site
7. Compliance with project schedule
8. Submission of applications for payment as stipulated in the Contract
9. Provide and maintain insurance as required in the project's specifications
10. Provide to the agency all operating instructions, maintenance manuals, and all warranties required by the contract documents
11. Honor all warranties, including warranted deficiencies found prior to the end of the warranty period
12. Comply with all contractual requirements, including submission of construction schedule, list of subcontractors, submittals, etc.

## CHAPTER V. PROFESSIONAL CONSULTANTS SELECTION PROCESS

### A. Introduction

The purpose of the professional consultants selection process is to provide managerial control over competitive negotiations by the State of Nebraska for the acquisition of services by professional architects, engineers, landscape architects or land surveyors. The selection and review process is the basis for acquiring the highest level and most appropriate professional consultant services available for the requirements of the project being undertaken within the professional fee budget. The definitions found in sections 81-1704 thru 81-1710 shall apply only to this chapter.

### B. Statutory Authority

- |    |                          |   |
|----|--------------------------|---|
| 1. | R.R.S. 33-141 - 33-142   | (Rates for legal notices)                               |
| 2. | R.R.S. 73-101 - 73-105   | (Public lettings)                                       |
| 3. | R.R.S. 81-1108.16        | (State Building Division review of contracts)           |
| 4. | R.R.S. 81-1108.41        | (Review, reports and approval of contracts)             |
| 5. | R.R.S. 81-1114           | (Submission of contracts to Legislative Fiscal Analyst) |
| 6. | R.R.S. 81-1701 - 81-1721 | (Nebraska Consultant's Competitive Negotiation Act)     |

### C. Legal Requirements

1. The selection process shall apply to all state agencies.
2. The professional consultants selection process is required for projects whose total project cost is estimated to exceed **\$705,000** and/or professional consultant services is estimated to exceed **\$70,000**.
3. The selection process shall not apply to projects for which the agency is able to reuse existing drawings, specifications and other documents from a prior project and such documents are owned by the state. The reuse of existing drawings and specifications shall be applied to a project substantially identical to the project for which

the plans were originally prepared.

#### **D. Definition of a Project**

A project is any construction or planning activity executed by an agency. A project may constitute:

1. A single construction project
2. A grouping of minor construction, rehabilitation, restoration or renovation activities
3. A grouping of substantially similar construction, rehabilitation, restoration or renovation projects
4. A continuing contract for construction related services of a specified nature with no time limitation

#### **E. Information Statements**

Firms are encouraged to submit annually a statement of qualifications, fees and performance data to the DAS State Building Division or the individual agencies, and to keep this material current. The DAS State Building Division shall maintain a central file of performance data and qualification statements for use by the state agencies. This data may include the Standard Federal Form 254 - Architect/Engineer and Related Services Questionnaire.

#### **F. Selection Process (Considerations, Interviews)**

1. Selection Committee:

Each agency shall assemble the professional consultants selection committee. The committee shall be composed of 3 to 5 members in which one member represents the agency, one member whose profession represents that particular field of endeavor being considered, one member as designated by the DAS State Building Division and two others selected by the agency if desired. The DAS State Building Division representative may also represent the professional member, if such arrangement is agreed to by the agency and the DAS State Building Division.

2. Public Notice:

The public notice includes a general description of the project and shall indicate how interested firms can apply for consideration. The public notice shall be published in a statewide publication and in the locality of the project.

The public notice shall be published a minimum of one time at least 15 calendar days prior to the deadline for receipt of consultant proposals.

3. The selection committee shall receive all the letters of interest generated by the public notice and other methods of soliciting input from prospective consultants.
4. All firms responding with a letter of interest shall develop additional information with reference to the project as specified by the selection committee.
5. The selection committee shall evaluate all information supplied by each firm.
6. The selection committee shall consider the following qualifications in selecting no less than three and no more than seven firms for interviews:
  - a. Ability of professional personnel proposed to be assigned to the project
  - b. Past performance on projects of the agency or other agencies
  - c. Willingness and stated ability to meet time and budget requirements
  - d. Geographic location of the firm's office(s)
  - e. Recent, current and projected workload of the firm
  - f. Volume of work previously awarded the firm by the agency or other state agencies
  - g. Other criteria the committee deems relevant to the project
7. Interviews with the selected firms

The following are appropriate topics for discussion:

- a. Qualifications of key personnel to be assigned to the project
- b. Approach to the project development
- c. Design philosophy as it relates to the project

- d. Ability to furnish required services within the time and budget restraints
  - e. Identify portions of the work to be performed by outside consultants hired by the firm being interviewed
  - f. Relevant experience with similar projects
  - g. Other topics that the committee deems relevant to the project
8. After completion of all of the interviews the selection committee (or the committee's designated representative) shall attempt to negotiate a contract with the most highly qualified firm which identifies work to be done as basic and additional services at a compensation the committee (or its designee) determines to be fair and reasonable. If unable to reach an agreement with the most highly qualified firm, the committee (or its designee) shall terminate negotiations and initiate negotiations with the second most qualified firm for negotiation. If unable to reach an agreement, the third most qualified firm is to be considered for negotiation. If unable to reach an agreement, the committee shall either reevaluate the scope and requirements of the project to determine the possible cause for failure to achieve a negotiated agreement or select additional firms in order of their competence and qualifications and continue negotiations until an agreement is reached.
9. The State of Nebraska recognizes the currently published set of American Institute of Architects Owner-Architect Agreements as standard contracts with some modifications. Use of the A.I.A. documents, with stipulated modifications that add certain responsibilities to the professional consultant's "basic services" is recommended. A list of recommended modifications to standard A.I.A. agreements is included in Appendix A. The State of Nebraska also recognizes the Standard N.S.P.E. "Standard Form of Agreement Between Owner and Engineer for Professional Services", provided that the agreement includes modifications similar to those outlined in the A.I.A. document.

## **G. Contract Review and Approval**

1. DAS State Building Division review and approval/disapproval

Note: Consultant contracts for projects funded by the Task Force for Building Renewal (309) (80% or greater funding by the Task Force) are to be submitted for review and approval to the Task Force in accordance with their

Policies and Procedures (see Appendix I ) rather than the DAS State Building Division.

a. Information to be submitted by the agency shall include, but not be limited to the following:

(1) Funding

- LB number and section
- year and legislative session
- amount(s)
- program numbers
- agency number (see Appendix G)

(2) Project

- purpose of the contract (program statement, preliminary plans, bidding and construction documents, inspections and/or general consulting)
- location (county, town or campus)
- description of the project
- statewide building inventory number (except new construction)

(3) Contract

- copy of the proposed contract (unsigned by agency)
- recommendation by the agency director
- recommendation by the agency project manager
- review by the agency's legal counsel or by the State Attorney General

(4) Certification by the agency of compliance with the Nebraska Consultants Competitive Negotiations Act.

b. DAS State-Building Division report and approval/disapproval  
Note: The DAS State Building Division will generally be completed within 30 days after submittal by the agency.

2. Report filed

Copies of the DAS State Building Division's report and approval/disapproval are filed with the requesting agency, the DAS Budget Office and the Legislative Fiscal Analyst.

3. Notice to proceed

The agency will be notified by the DAS State Building Division on how to proceed.

## **CHAPTER VI. COMPREHENSIVE CAPITAL FACILITIES PLAN**

### **A. Introduction**

Each department and agency of the state, prior to submitting a capital construction project request in excess of seven hundred five thousand dollars (\$705,000), shall cause a comprehensive capital facilities plan to be prepared. Copies of the plan and all revisions shall be submitted to the:

1. DAS State Building Division
2. DAS State Budget Division
3. Legislative Fiscal Office

Agencies which are responsible for individual departments, campuses or institutions, shall develop an agency-wide plan. Such plan shall have the approval of the agency director or the associated governing board.

### **B. Statutory Authority**

- |    |                   |  |
|----|-------------------|--|
| 1. | R.R.S. 81-1108.15 | (Facilities planning, construction and administration) |
| 2. | R.R.S. 81-1114.01 | (Comprehensive capital facilities planning)            |
| 3. | R.R.S. 81-1108.16 | (Comprehensive capital facilities planning)            |
| 4. | R.R.S. 81-1108.41 | (Comprehensive capital facilities planning)            |

### **C. Outline for Comprehensive Capital Facilities Planning**

1. Agency purpose

A narrative description outlining the basic purpose of the agency as set forth by legislative action, by administrative directive or by the agency planning process

2. Agency organization

An outline or chart describing the organizational structure of the agency

3. Agency programmatic goals and objectives

A narrative outlining the goals and objectives of the agency

4. Analysis of existing facilities

Agency programs/services - a listing and brief description of the programs and services being offered in the facility(ies).

- a. Detailed inventory and maps of existing lands and facilities
- b. Utilization data on existing facilities
- c. Physical deficiencies
- d. Programmatic deficiencies

5. Future programmatic needs

- a. Activity analysis
  - (1) New programs
  - (2) Expanding or declining programs with reasons and background
- b. Utilization data
  - (1) Projected space utilization
  - (2) Population projections
  - (3) Identify standards used for projections
- c. Facilities analysis
  - (1) Type of space
  - (2) Quality of space
  - (3) Functional relationship of space and use

6. Identification of projects necessary to meet the stated programmatic goals

- a. New construction
- b. Additions to existing facilities

- c. Renovation or restoration of existing facilities
  - d. Land or building acquisition
  - e. Site improvements
    - (1) Parking and circulation
    - (2) Utilities
    - (3) Landscaping
  - f. Deferred renewal, handicapped modifications, energy conservation, fire and life safety
  - g. Leased space or property
  - h. Demolition, abandonment or replacement of existing facilities
7. Compliance with the State Comprehensive Capital Facilities Plan
- a. How the plan objectives respond to the Mission Statement and Governing Values for State of Nebraska Capital Construction
  - b. Consequences of delaying project funding for projects as proposed in the agency comprehensive plan
8. Budget estimates
- a. Estimated total project cost of each project identified in the comprehensive plan
  - b. Year in which the calculations are based
  - c. Annual fiscal impact (staffing and operational costs)
9. Time line
- a. Short range plan, 6 years, to coincide with three biennial budget periods detailed by project, year and priority
  - b. Long range projections, 7-20 years

#### **D. Updating Requirements**

All comprehensive plans shall be updated and revised when a major capital construction project requested for funding is not in compliance with the plan, when major project(s) are completed requiring significant revisions to existing comprehensive plans, or when revisions in projected programmatic needs would significantly affect the comprehensive capital facilities plan. Copies of all updates and revisions shall be submitted by the agency to the:

1. DAS State Building Division
2. DAS State Budget Division
3. Legislative Fiscal Office

## CHAPTER VII. NEED STATEMENT - INITIAL FUNDING REQUEST

### A. Introduction

The Need Statement serves as the basis of the agency's request for initial capital funding. This document is generally prepared in-house and submitted on or before September 15<sup>th</sup> as required in the Budget Preparation Instructions.

1. For projects whose estimated total project cost exceeds **\$705,000**, a subsequent program statement must be developed. In such cases, funding procedures allow for consideration during the first year for planning funds and the following year(s) for design development and construction funds.
2. A program statement may be submitted in lieu of a need statement when an agency is preparing a program statement for a project whose estimated total cost exceeds **\$705,000** and the agency wishes to immediately request funds for planning and construction.
3. For projects whose estimated total cost is less than **\$705,000** only a need statement is required. Under this procedure, the initial request for funding may include total funding.
4. For need statement applicability to all projects funded by the Task Force for Building Renewal (see Task Force for Building Renewal Procedures,-Appendix I)

### B. Need Statement

1. Project description

Narrative statement describing the project and the primary program concepts and objectives (as related to the agency's mission, goals and objectives) shall be fulfilled as a result of the capital construction request.

2. Project justification

Data which supports the request for funding

3. Location
  - a. County
  - b. Town or campus

- c. Existing site location and conditions (if applicable)
  - d. Proposed site
- 4. Comprehensive plan compliance
  - a. Year of the agency's comprehensive plan, and updates or revisions
  - b. Compliance with the agency comprehensive capital facilities plan
  - c. Compliance with the current version of the Statewide Comprehensive Capital Facilities Plan.
- 5. Analysis of existing facilities as they relate to the proposed project
  - a. Functions/purpose of existing programs
  - b. Page size floor plans (8-1/2 X 11" preferred) of existing areas
  - c. Utilization of existing space which will be affected by the proposed project by facility, room, and/or function (whichever is applicable)
  - d. Physical deficiencies
  - e. Programmatic deficiencies
- 6. Facility requirements and the impact of the proposed project
  - a. Functions/purpose of the proposed program
    - (1) Activity identification and analysis
    - (2) Projected occupancy/user levels
  - b. Space Requirements
    - (1) Proposed square footage by functions
    - (2) Basis for square footage/planning parameters
    - (3) Estimated Square footage difference between existing

and proposed areas

- c. Impact of project on existing space
  - (1) Reutilization and function(s)
  - (2) Demolition
  - (3) Renovation
- d. Influence of project on existing site conditions
  - (1) Relationship to neighbors and environment
  - (2) Utilities
  - (3) Parking and circulation

7. Project budget and proposed funding source

- a. Cost estimate criteria
  - (1) Identify recognized standards, comparisons and sources used to develop the estimated cost
  - (2) Identify the year and month on which the estimates are made and the inflation factors used
  - (3) Estimated gross square feet
  - (4) Total project cost per gross square foot
- b. Total project cost
  - (1) Program planning
  - (2) Professional fees
    - professional consultants
    - other consultants
  - (3) Construction
    - general, including mechanical, electrical, elevator
    - fixed equipment

- contingency
  - Site improvements (utilities, sidewalks, parking, landscaping, etc.)
  - (4) Moveable equipment
  - (5) Land acquisition
  - (6) Artwork (Appendix H) (for applicable projects)
  - (7) Other costs (agency administration costs, moving, testing, surveys, legal fees, insurance, etc.)
- c. Fiscal Impact
- (1) Estimated additional operational and maintenance costs per year
  - (2) Estimated additional programmatic costs per year (including FTE)
  - (3) Applicable building renewal assessment charges
  - (4) Other costs
    - cost to renovate vacated space
    - cost to operate vacated space
    - related costs
- d. Funding sources (amounts and/or percentage of each)
- (1) State funds
  - (2) Cash funds
  - (3) Federal funds
  - (4) LB 309 funds
  - (5) Revenue bonds
  - (6) Private donations
  - (7) Other sources

8. Time line
  - a. Funding request
  - b. Funding approval
  - c. Program statement submission (if necessary)
  - d. Professional consultants selection (if necessary)
  - e. Receive bids for construction
  - f. Award of Contract and start of construction
  - g. Completion of construction

## **CHAPTER VIII. PROGRAM STATEMENT**

### **A. Introduction**

A program statement is required of all projects whose estimated total project cost is \$705,000 or more. Copies of all program statements shall be submitted to the State Building Division and Legislative Fiscal Office on or before September 15<sup>th</sup> of the year previous to the initiation of an appropriation for drawings and construction. No contract for the planning, design or construction of a new facility, or major modification or repair of an existing facility provided for by any state appropriation may be initiated unless an acceptable program statement has been approved by the Governor. If an agency intends to contract for professional services to develop a program statement refer to Chapter V.

1. For program statement applicability to all projects funded by the Task Force for Building Renewal see Task Force for Building Renewal Procedures, Appendix I.
2. For projects directly related to program continuation such as fire and life safety, maintenance, utility improvements, handicapped access, parts C-4, C-5 and C-6 of the program statement (below) may be omitted.

### **B. Statutory Authority**

1. R.R.S. 81-1108.15 (Facilitates planning, construction and administration)
2. R.R.S. 81-1108.16 (Review program statements and contract)
3. R.R.S. 81-1108.41 (Program statement)

### **C. Outline for Program Statements**

1. Introduction
  - a. Background and history
  - b. Project description
  - c. Purpose and objectives
2. Justification of the Project
  - a. Data which supports the funding request

- b. Alternatives considered (when applicable)
3. Location and site considerations
- a. County
  - b. Town or campus
  - c. Proposed site
  - d. Statewide building inventory (not required for new buildings)
  - e. Influence of project on existing site conditions
    - (1) Relationship to neighbors and environment
    - (2) Utilities
    - (3) Parking and circulation
4. Comprehensive plan compliance
- a. Year of the agency's comprehensive plan and updates or revisions
  - b. Consistency with the agency comprehensive capital facilities plan
  - c. Consistency with the current version of the Statewide Comprehensive Capital Facilities Plan or CCPE Project Review Criteria/Statewide Plan (whichever applies)
5. Analysis of existing facilities
- a. Functions/purpose of existing programs as they relate to the proposed project
  - b. Square footage of existing areas
  - c. Utilization of existing space by facility, room and/or function (whichever is applicable)
  - d. Physical deficiencies
  - e. Programmatic deficiencies

- f. Replacement cost of existing building
- 6. Facility requirements and the impact of the proposed project
  - a. Functions/purpose of the proposed program
    - (1) Activity identification and analysis
    - (2) Projected occupancy/use levels
      - Personnel projections
      - Describe/Justify projected enrollments or occupancy
  - b. Space requirements
    - (1) Square footage by individual areas and/or functions
    - (2) Basis for square footage/planning parameters
    - (3) Square footage difference between existing and proposed areas (net and gross)
  - c. Impact of the proposed project on existing space
    - (1) Reutilization and function(s)
    - (2) Demolition
    - (3) Renovation
- 7. Equipment Requirements
  - a. List of available equipment for reuse (if applicable)
  - b. Additional equipment (if applicable)
    - (1) Fixed equipment
    - (2) Movable equipment
    - (3) Special or technical equipment
- 8. Special Design Considerations
  - a. Construction Type

- b. Heating and cooling systems
  - c. Life Safety/ADA
  - d. Historic or architectural significance
  - e. Artwork (for applicable projects)
  - f. Phasing
  - g. Future expansion
  - h. Other (e.g., IBC & NFPA codes)
9. Project budget and fiscal impact
- a. Cost estimates criteria
    - (1) Identify recognized standards, comparisons and sources used to develop the estimated cost
    - (2) Identify the year and month on which the estimates are made and the inflation factors used
    - (3) Gross and net square feet
    - (4) Total project cost per gross square foot
    - (5) Construction cost per gross square foot
  - b. Total project cost
    - (1) Non-Construction Costs:
      - program planning
      - professional fees (Architect/Engineer, Planning,, other)
      - moveable equipment
      - special or technical equipment
      - land acquisition
      - artwork (for applicable projects)
      - other costs (agency administration costs, moving, testing, surveys, legal fees, insurance, etc.)
      - non-construction contingency
    - (2) Construction Costs:

- construction (general, mechanical, electrical, elevator, fixed equipment, site improvements, utility connections)
  - Environmental remediation
  - Construction contingency
- (3) Moveable equipment
  - (4) Special or technical equipment
  - (5) Land acquisition
  - (6) Artwork (for applicable projects)
  - (7) Other costs (agency administration costs, moving, temporary space, testing, surveys, legal fees, insurance, etc.)
  - (8) Project contingency
- c. Fiscal Impact based upon first full year of operation (include proposed funding sources and percentage of each)
- (1) Estimated additional operational and maintenance costs per year
  - (2) Estimated additional programmatic costs per year
  - (3) Applicable building renewal assessment charges

10. Funding

- a. Total funds required
- b. Project Funding sources (amounts and/or percentage of each)
  - (1) State funds
  - (2) Cash funds
  - (3) Federal funds
  - (4) LB 309 funds
  - (5) Revenue bonds

- (6) Private donations
    - (7) Other sources
  - c. Fiscal year expenditures for project duration
- 11. Time line
  - a. Need Statement (if applicable)
  - b. Program Statement
  - c. Funding
  - d. Professional consultants selection
  - e. Design Development documents
  - f. Receive bids for construction
  - g. Award of contract and start of construction
  - h. Completion of construction
- 12. Higher Education Supplement
  - a. Coordinating Commission for Postsecondary Education (CCPE) Review
    - (1) CCPE review is required
    - (2) CCPE review is not required
  - b. Method of contracting
    - (1) Identify method
    - (2) Provide rationale for method selection

#### **D. Program Statement Approval Process**

- 1. State Building Division review
  - a. Information to be submitted by the agency shall include the following:

(1) Funding

- LB number and section
- year and legislative session
- program numbers
- agency number (Appendix G)
- amount(s)

(2) Copy of program statement (unless previously submitted)

b. State Building Division's report and recommendations

2. Review by D.A.S. Budget Division
3. Review by D.A.S. Director
4. Review by Governor for approval or disapproval
5. Report filed

Copies of the State Building Division's report and recommendations are filed with the requesting agency, Legislative Fiscal Analyst, and the Governor.

6. Notice to proceed

The agency will be notified by the State Building Division on how to proceed.

## CHAPTER IX. DESIGN DEVELOPMENT DOCUMENTS

### A. Introduction

During the Schematic Design and Design Development phases of a project, the professional consultant provides drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate. During these phases, potential alternate designs shall be explored and potential problems identified and corrected.

### B. Statutory Authority

1. R.R.S. 81-1108.15 (State DAS Building Division review planning and construction documents)
2. R.R.S. 81-1108.41 (DAS Building Division review at completion of design phases)
3. R.R.S. 81-1114.02 (Preliminary plans)

### C. Legal Requirements

1. Definitions
  - a. Preliminary plans, as referenced in the above stated statutes are defined as Design Development Documents for this manual.
  - b. Working drawings, as referenced in the above statutes are defined as Construction Documents for this manual.
2. A design development documents submittal and review shall apply to all agencies with capital construction appropriations, whose estimated total project cost exceeds **\$705,000**.

### D. Elements of Design Development Documents

1. Design Development Plans:
  - a. Site
  - b. Architectural
  - c. Structural

- d. Mechanical and electrical
  - e. Other
2. Design Development specifications:
- a. Bidding and contract approach (traditional bidding, design/build, construction management at risk, etc)
  - b. Outline Specifications (Divisions 1 thru 16)
3. Program Statement Versus Design Development Analysis
- a. Comparison of program vs. design development space categories (square footage)
  - b. Building efficiency (net vs. gross square footage)
  - c. Explanation and justification for major variances from program specifications and special design considerations
4. Code and Regulatory Agency Compliance
- a. Life Safety Code issues (NFPA), most current adopted version
  - b. State Building Code variances or issues (including ADA)
  - c. International Energy Conservation Code approach
    - (1) Not applicable
    - (2) Designer certification
    - (3) Plan Review
    - (4) Standard Plans
  - d. Historic Building (N.R.S. 72-808 through 72-810)

If the capital project involves a state-owned historic building for which the Agency has been notified, early consultation with the State Historic Preservation Officer (Nebraska State Historical Society) should be initiated under the provisions of state statute to insure that proposed improvements, alterations or changes shall be in keeping with the building's historical or architectural significance. No alterations to such buildings shall be made without review and comment by the State Historic Preservation Officer.

- e. Applicable local zoning or code issues
  - f. Compliance with the Governor's Policy on Tree Removal (Appendix L)
  - g. Other code or regulatory issues affecting the project
  - h. Public notices or hearings as required or requested
  - i. Agency specific accreditation standards
5. Revised budget (As compared to Program Statement budget)
- a. Cost estimates criteria
    - (1) Identify recognized standards, comparisons and sources used to develop the estimated cost
    - (2) Identify the year and month on which the estimates are made and the inflation factors used
    - (3) Gross and net square feet
    - (4) Total project cost per gross square foot
    - (5) Construction cost per gross square foot
  - b. Total project cost
    - (1) Program planning
    - (2) Professional Fees
      - professional design consultants
      - in-house consultants
      - other consultants
      - testing fees
    - (3) Construction
      - general, including mechanical, electrical, elevator fixed equipment
      - site improvements (utilities, sidewalks, parking, landscaping, etc.)
    - (4) Moveable equipment

- (5) Special or technical equipment
- (6) Land acquisition
- (7) Artwork (Appendix H) (for applicable projects)
- (8) Other costs (agency administration costs, moving, temporary space, testing, surveys, legal fees, insurance, etc.)
- (9) Project contingency

6. Time Line

- a. Funding request
- b. Funding approval
- c. Program statement approval
- d. Professional consultant selection
- e. Design Development document submittal
- f. Construction documents approval
- g. Receive bids for construction
- h. Construction contract approval
- i. Award of contract and start of construction
- j. Completion of construction

**E. Design Development Review**

1. State DAS Building Division and LB309 Task Force review
  - a. Information to be submitted by the agency shall include the following:
    - (1) Funding
      - LB number and section

- year and legislative session
- agency number (Appendix G)
- program number
- amount(s)

(2) Project

- brief description of the project
- location
- statewide building inventory number (except new construction)

(3) Copy of design development documents

(4) Copy of design development outline specifications

(5) Budget

- project budget as specified in section D-5, above (prepared by professional consultant)
- any anticipated changes in operational costs as compared to the program statement budget

(6) Program statement compliance as specified in section D-3, above

(7) Time line as specified in section D-6, above

b. State Building Division review

(1) The DAS Building Division will review design development documents for consistency with the approved program statement and return any questions or comments to the agency within 30 days. This process may occur concurrent with the preparation of contract documents by the agency or their consultants.

(2) No formal approval of design development documents will be required. In the event that the agency receives no response from the DAS Building Division within 30 days they may proceed with completion of contract documents.

c. LB309 Task Force Review

- (1) NOT APPLICABLE for those projects or buildings which are NOT eligible for LB309 Task Force funds
  - (2) The LB309 Task Force will review schematic design or design development documents for building envelope issues and other design items that can impact LB309 funding. The LB309 Task Force will return any questions or comments to the agency within 30 days. This process may occur concurrent with the preparation of contract documents by the agency or their consultants.
- d. No formal approval of schematic OR design development documents will be required. In the event that the agency receives no response from the LB309 Task Force within 30 days, they may proceed with completion of the contract documents.
2. Distribution of State Building Division's recommendations.
    - a. Recommendations and questions returned to the requesting agency
    - b. Record of comments, questions and responses filed by the DAS Building Division.
  3. Distribution of 309 Task Force Recommendations
    - a. Recommendations and questions returned to the requesting agency
    - b. Record of comments, questions and responses filed by the LB309 Task Force

## **CHAPTER X. CONSTRUCTION DOCUMENTS**

### **A. Introduction**

The construction document phase of a project consists of the professional consultant providing drawings and specifications which set forth in detail the requirements for the construction of the entire project including the necessary bidding information. The professional consultant shall assist in the preparation of bidding forms and preparation of the basic conditions of the contract.

### **B. Statutory Authority**

1. R.R.S. 81-1108.15 (State Building Division review of construction documents)
2. R.R.S. 81-1108.41 (State Building Division review of construction documents)

### **C. Legal Requirements**

A construction document submittal and review shall apply to all capital construction projects with an estimated cost of **\$705,000** or more.

### **D. Elements of Construction Documents**

1. Drawings
  - a. Site Plan
  - b. Architectural
  - c. Structural
  - d. Mechanical
  - e. Electrical
  - f. Other (details)
2. Project Manual
  - a. Bidding requirements (instructions to bidders, bid form, etc.)
  - b. General conditions
  - c. Supplemental conditions

- d. General requirements
  - e. Technical specifications (Divisions 2 thru 16)
  - f. Other
3. Revised budget (As compared to Program Statement and Design Development budgets)
- a. Cost estimates criteria
    - (1) Identify recognized standards, comparisons and sources used to develop the estimated cost
    - (2) Identify the year and month on which the estimates are made and the inflation factors used
    - (3) Gross and net square feet
    - (4) Total project cost and gross square foot
    - (5) Construction cost and gross square foot
  - b. Total project cost
    - (1) Program planning
    - (2) Professional consultants
      - professional design consultants
      - in-house consultants
      - other consultants (food service, acoustical, etc)
    - (3) Construction
      - general, including mechanical, electrical, elevator
      - fixed equipment
      - site improvements (utilities, sidewalks, parking, landscaping, etc.)
    - (4) Moveable equipment
    - (5) Special or technical equipment
    - (6) Land acquisition

- (7) Artwork (Appendix H) (for applicable projects)
  - (8) Other costs (agency administration costs, moving, temporary space, testing, surveys, legal fees, insurance, etc.)
  - (9) Project contingency
- c. Comparison to appropriations and other (itemized) available funding

4. Time Line

- a. Funding request
- b. Funding approval
- c. Program statement approval
- d. Professional consultant selection
- e. Design Development documents submittal
- f. Construction documents approved
- g. Receive bids for Construction
- h. Construction contract approval
- i. Award of contract and start of construction
- j. Completion of construction

**E. Construction Documents Review and Approval**

1. DAS Building Division and LB309 Task Force review
  - a. Information to be submitted by the agency shall include the following:
    - (1) Funding
      - LB number and section
      - year and legislative session
      - agency number (Appendix G)
      - program number

- amounts
- (2) Project
    - brief description of the project
    - location
    - statewide building inventory number (except new construction)
  - (3) Two sets of Construction documents (plans and specifications)
    - one set for DAS Building Division review
    - one set for Task Force for Building Renewal review
    - NOT APPLICABLE for those projects or buildings which are not eligible for LB309 Task Force funds
  - (4) Budget - Project budget as specified in section D-3, above (prepared by professional consultant)
  - (5) Compliance with the approved program statement, highlighting any significant variances subsequent to the design development documents submittal
  - (6) Time line as specified in section D-4, above
- b. State Building Division report and approval (generally completed within 30 days of receipt of the agency submittal).
2. Report filed.
    - a. Copies of the State Building Division's review and approval are filed with the State Building Division, The DAS Budget Division, The Legislative Fiscal Office and the requesting agency.
    - b. Copies of the Task Force for Building Renewal review and recommendations are filed with the DAS Building Division and the requesting agency.

## **CHAPTER XI. BIDDING AND CONSTRUCTION CONTRACT PHASE**

### **A. Introduction**

The purpose of the guidelines for the project bidding and construction contract phase is to fulfill statutory requirements as set forth for the bidding procedures and to establish fair and equitable construction cost amounts for capital construction projects. A successful project bidding and negotiation phase is one that assures the State of Nebraska the highest quality construction effort within the budget constraints established by the Legislature, while at the same time maintaining the integrity of the competitive bidding process for the long-range benefit of the State of Nebraska.

### **B. Definitions and Applicability**

1. This procedure may apply to the procurement of any professional construction, reconstruction, renovation, alteration or improvement to any building, facility, structure, site improvements or landscaping. Generally, these services involve the provision of both material and labor to produce a custom made product.
2. A construction or renovation project would generally not include maintenance contracts. Maintenance contracts are defined as any work performed on an ongoing or annual basis to include inspections, tests, adjustments, preventive or routine maintenance or any warranty-related requirements. Generally, maintenance contracts should be procured in accordance with the Procedure for Procurement of Contractual Services authored by the Department of Administrative Services (DAS) Materiel Division, most current version.
3. The procedures under this guideline should not be used to acquire finished products that do not involve on-site contractor labor to produce or install. Procurement of material only purchases are governed by procedural guidelines issued by the DAS Materiel Division.
4. Procedures under this guideline shall not be used to hire, or obtain the services of an employee or contractor in a manner contrary to state law, regulation, appropriation or executive order. The procuring agency is responsible for insuring that any contract executed as a result of this process does not circumvent or violate such rules and regulations.

### C. Statutory Authority

1. R.R.S. 33-141 (Rates for legal notices)
2. R.R.S. 73-101 thru 73-105 (Public Letting)
3. R.R.S. 81-146 (Non applicability of purchasing statutes to construction)
4. R.R.S. 81-1108.16 (SBD review of construction contracts)
5. R.R.S. 81-1108.16 (Review, report, and approval of contracts)
6. R.R.S. 81-1108.43 (Capital construction acts prohibited)
7. R.R.S. 81-1114 (Submission of contracts to Legislative Fiscal Analyst)
8. R.R.S. 72-801 thru 72-803 (Public buildings cost and use)

### D. Project Classification

1. Total project cost over **\$705,000** - Major Capital Construction Projects (Use most current AIA document A-101)
  - a. A formal set of plans and/or specifications shall be prepared for distribution to all bidders who indicate an interest in bidding. The scope and detail of the project shall be adequately defined so competitive bids can be received. A date and time shall be set, at which time bids will be received. Contract documents shall be prepared under the direct supervision of a professional architect or engineer who has been selected under the Nebraska Consultant's Competitive Negotiation Act.
  - b. The agency shall require all firms submitting bids to include bid security in the amount of 5% of the bid amount and agree to furnish bonds for performance and labor and material payment in the event they are awarded a contract for the work.
  - c. A public notice to bidders announcing the availability of the project shall appear in a publication based in or near the locality of the project and in other widely circulated publications as deemed necessary by the agency. Contractor plan services, builders bureaus or the Internet should be used to supplement notice placed in publications available to the general public.

- d. Sealed bids shall be submitted to the agency not later than a specified date and time. Bids will be publicly opened and read aloud.
  - e. A formal agreement between the agency and the selected contractor shall be executed. American Institute of Architects (AIA) documents with required State modifications or agency standard contracts should be used.
  - f. Prior to executing the contract, the agency shall ensure that the proposed agreement is reviewed and approved by the following:
    - (1) The Attorney General's office or their designee
    - (2) The Department of Administrative Services State Building Division
2. Total project cost between \$50,000 and **\$705,000** - Formal Bidding Process With Bonding (See Appendix B)
- a. A formal set of plans and/or specifications shall be prepared for distribution to all bidders who indicate an interest in bidding. The scope and detail of the project shall be adequately defined so competitive bids can be received. A date and time shall be set, at which time bids will be received. Contract documents shall be prepared under the direct supervision of a professional architect or engineer.
  - b. The agency shall require all firms submitting bids to include bid security in the amount of 5% of the bid amount and agree to furnish bonds for performance and labor and material payment in the event they are awarded a contract for the work.

- c. A public notice to bidders announcing the availability of the project shall appear in a publication based in or near the locality of the project and in other widely circulated publications as deemed necessary by the agency. Contractor plan services, builders' bureaus or the Internet should be used to supplement notice placed in publications available to the general public.
  - d. Sealed bids shall be submitted to the agency not later than a specified date and time. Bids will be publicly opened and read aloud.
  - e. A formal agreement between the agency and the selected contractor shall be executed. AIA documents with required State modifications or agency form contracts may be used.
  - f. Prior to executing the contract, the agency shall ensure that the proposed agreement is reviewed and approved by the Attorney General's office or their designee.
3. Total project cost between \$15,000 and \$50,000 - Informal Bidding Process (See Appendix B)
- a. Three or more quotations for the project shall be solicited from responsible bidders. Original quotations may be in writing or verbal. Any verbal quotations must be followed up with a written or faxed confirmation for project files.
  - b. The agency shall require the successful firm to furnish bonds for labor and material payment in the event that a contract is awarded for the work.
  - c. A fixed bid receipt date or public opening is not required.
  - d. A formal contract shall be executed for the project. The contract may be an agency form contract or letter of agreement.
  - e. All resulting quotations or refusals to quote shall be documented by the agency for reference.
4. Total project cost less than \$15,000 - Open Solicitation Process (See Appendix C)
- a. Competitive bidding not required

- b. The agency may contract directly with a responsible contractor.

## **E. Special Situations**

1. **Emergencies** - Emergencies are defined as situations where a clear and foreseeable danger will exist without the institution of appropriate measures to reduce or remove that danger. If the subject situation is not alleviated, the health, safety or welfare of citizens of this State or the mission or condition of the facility will continue to be threatened or is in jeopardy of further damage. In such cases, the Agency Director shall be responsible for making whatever modifications to the above processes are deemed most appropriate to obtain the needed services within the required time frame.
2. **Sole Source** - In the event that the requirements of a project or process require that it be supplied by a single firm or other unique circumstances preclude the opportunity to receive competitive bids, the Agency Director may negotiate a price for the project with a single qualified contractor. Documentation justifying the sole source process shall be included in the project file for possible future reference. Prior to the award of a sole source contract in excess of \$50,000, a Request for Proposal form must be made public for 15 days to assure public awareness of the project.
3. **Fewer than Three Bids** - In the event that the prescribed procedures for competitive bidding are carried out and the resulting bids received number less than three, the agency may award the project based upon the bids submitted or rebid the project. The Agency Director shall ensure that documentation is included in the project file which shows compliance with the appropriate bidding procedures and shows that it is in the State's best interest enter into an agreement with the selected bidder.
4. **All Bids Exceed Project Budget** – In the event that all submitted bids exceed the fixed project budget, the agency may choose to proceed in accordance with one of the following procedures. Any revisions to the project scope or budget undertaken as part of the below procedures must remain consistent with the approved program statement and legislative intent that may be tied to the project appropriation. Note: For projects funded by the 309 Task Force, see Appendix I.

- a. The agency may reject all bids, adjust the project scope and/or budget and repeat the public bidding process.
  - b. If rebidding is determined by the agency to not be in the State's best interest, the agency may negotiate with the lowest responsible bidder in the following manner.
    - (1) Award the project to the lowest responsible bidder contingent upon the mutual ability of the State and the bidder to negotiate acceptable cost reductions to bring the project within the fixed budget.
    - (2) In cooperation with the project consultants and the low bidder identify methods to adjust the project scope, materials or labor to reduce the overall cost of the project. The agency shall reserve the right to accept or reject any proposed changes and accompanying costs.
    - (3) In the event that acceptable cost reductions can be achieved, the agency may execute a formal contract with the contractor for the project. The contract should be in the amount of the original bid with a change order to include the negotiated cost reductions being executed simultaneously with the contract.
    - (4) If the agency and the bidder cannot reach a mutually acceptable agreement, the agency may terminate negotiations and rebid the project.
    - (5) For requirements for bidding materials for in-house labor projects funded by the 309 Task Force, see Appendix I.
5. Special project bidding conditions or requirements for contractor qualifications.

## **F. Ethics and Conduct**

1. Conflict of Interest - No person shall participate in, or assume responsibility in, the implementation and execution of the procedures including the evaluation of proposals and selection of contractors when participation constitutes a conflict of interest as defined by law, regulation or executive order.

2. Equal Access to Information - All bidders shall be afforded equal access to information which may affect their bids submitted under this process. A state agency or state employee shall not furnish any technical information, solicit proposals or take any action which could be construed as giving a direct or indirect advantage to any potential bidders. Bidders= requests for technical information or clarification can and should be answered, if possible. However, if the response may, in any way, affect the bid received, the information must be supplied equally to all potential bidders.

### **G. Technical Specifications and Scope of Work**

1. It is the responsibility of the agency to ensure that technical plans and specifications are created which accurately and adequately define the scope of work for potential bidders.
2. It is the responsibility of the agency to ensure that technical plans and specifications issued to potential bidders are:
  - a. Quantified and structured in such a manner which ensures quality while recognizing the need to be cost effective.
  - b. Clearly stated to ensure equal competition among bidders.
  - c. Unbiased and non-prejudicial toward bidders
  - d. Structured to ensure free and open competition to the maximum extent possible.
3. The technical plans and specifications eventually form a key portion of the basic governing language of the resulting contract with the successful bidder. Specifications must be written in a manner which ensures that the project requirements are fully and adequately described. Incomplete or unclear specifications may result in many details of the agreement being defined by the contractor=s proposal or standards of the industry which may not, in many cases, be in the State' s best interest.

### **H. Contractor Selection and Project Award**

1. The agency is responsible to act in the best interest of the State in the evaluation of all competitive bids and proposals and the award

of projects to the lowest responsible bidder. In reviewing bids, the agency may consider the following criteria:

- a. Bid price
  - b. The ability, capacity and skill of the bidder to perform the work required.
  - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
  - d. The ability of the bidder to perform the contract within the time specified (assuming a time is specified in project specifications).
  - e. The quality of workmanship and level of performance on previous contracts.
  - f. Past and present level of compliance by the bidder with laws relating to the contract.
  - g. Life cycle costs
  - h. Performance in accordance with commonly accepted standards of usability and user requirements.
  - i. Energy efficiency ratios
  - j. Expected life, repair, maintenance costs and energy costs
  - k. Other criteria specific to the project being awarded.
2. The agency shall ensure compliance with Nebraska Statutes relating to giving preference for resident bidders.
  3. The agency shall ensure compliance with Nebraska Statutes relating to Fair Labor Standards.
  4. The agency shall ensure compliance with the State statutes relating to equal opportunity.
  5. All contractors shall be required to certify that they have a drug free workplace policy prior to entering into a contract for any State work.

## **I. Grievance Procedure**

In the event that any individual or firm wishes to contest the agency's selected bidder or the selection process, a predefined grievance procedure will be of assistance to the agency in resolving the protest. The following suggested procedure is modeled after the procedure developed by the DAS Materiel Division for dealing with bid grievances.

1. Grievances/protests are to be expressed in writing to the Administrator of the procuring agency. The letter should state the project and specific issues that are to be addressed.
2. Within ten (10) days of the posting of the award or intent to award, grievances/protests are to be expressed in writing and mailed to the Agency Administrator. The vendor will address each issue individually, in writing, to the Administrator. The letter should state the name of the project and specific issues that are to be addressed, and should provide a point of contact and address to which a response can be sent.
3. The Administrator will review and evaluate the issues of the grievance and the staff response to make a determination of any merit the grievance may have. The Administrator will respond to the bidder in writing within ten (10) business days of receipt of the grievance/protest specifying findings related to the grievance and actions, if any, to be initiated by the agency to resolve the grievance.
4. If the response from the Administrator has not satisfied the grievance of the vendor, the vendor shall mail a protest letter stating the name of the project, the specific issues that are to be addressed, and requesting a meeting with the Agency Director, and shall be received by the Director's office within ten (10) business days of the date of the response of the Agency Administrator
5. A meeting will be scheduled with the vendor and the Agency Director for the vendor to present the issues to be considered.
6. A written response of the final decision of the Agency Director will be sent to the vendor, generally within ten (10) business days unless additional time is necessary to fully examine the issues presented.

## **J. Construction Contract Review and Approval**

1. State Building Division Review
  - a. Information submitted by the agency shall include the following
    - (1) Copy of the proposed contract (unsigned by agency)
    - (2) Funding
      - LB number and section
      - year and legislative session
      - agency number (Appendix G)
      - program number
      - amount(s)
    - (3) Project
      - description of the project
      - location (County, town or campus)
      - statewide building inventory number (except new construction)
    - (4) The bid tabulation report by agency
    - (5) Agency director=s and project manager recommendation of award of bid
    - (6) Approval of the contracts by legal counsel or the Attorney General
    - (7) Professional consultant=s recommendation of award of bid
    - (8) Revised budget
    - (9) Time/cost schedule
  - b. State Building Division=s report and approval
2. Distribution of Report and Approval

Copies of the State Building Division=s report and approval are filed with the Legislative Fiscal Analyst.

3. Notice to proceed

The agency will be notified by the State Building Division on how to proceed.

## **CHAPTER XII. CONSTRUCTION PHASE**

### **A. Introduction**

This phase of the project begins after the Owner-Contractor Agreement has been approved and signed by both parties. It requires submittal of information prior to and after construction is initiated.

### **B. Statutory Authority**

1. R.R.S. 81-1108.15 (State Building Division, time-cost schedules)
2. R.R.S. 81-1108.15 (State Building Division, facilities construction supervision, reports and approvals)
3. R.R.S. 81-1108.15 (State Building Division, cost and status reports)
4. R.R.S. 81-1108.42 (State Building Division, DAS, certificate of final payment)
5. R.R.S. 81-1108.43 (State Building Division, DAS warrants for payment of work)

### **C. Preconstruction Phase**

1. In addition to the Owner/Contractor Agreement, there are related documents that should also be reviewed by all parties concerned with the construction of the project construction. Documents which should be submitted by the contractor to the agency for approval include:
  - a. Performance Bond and Labor and Material Payment Bond
  - b. Certificate of insurance (Appendix D)
  - c. Schedule of values (Appendix D)
  - d. Construction schedule
  - e. Monthly time-cost schedule
2. In the event that the contractor's time-cost schedule varies significantly from that submitted to SBD with the Construction Contract Submittal, the agency shall provide changes to DAS/SBD and the DAS Budget Office.

3. A preconstruction conference should be conducted with the agency representative, consultant and contractor present. The purpose shall be to discuss the project and responsibilities such as administration, inspection, observation, superintendence and supervision. State Building Division shall be notified of the time and place for the preconstruction conference.

#### **D. Construction Phase**

1. The documents to be submitted by the contractor and the professional consultant to the agency shall include, but not limited to the following:
  - a. Shop drawings and samples
    - (1) Review and approval by contractor
    - (2) Review and approval by professional consultant
    - (3) Review and approval by agency
  - b. Schedules
  - c. Tests and reports
  - d. Professional consultant's request for payments
  - e. Periodic observations and progress reports by professional consultant and agency representative.
  - f. Contractor application and certificate of payment (Appendix F)
    - (1) Certification by professional consultant
    - (2) Approval by agency
  - g. Change Orders (Appendix E)
    - (1) Certification by professional consultant
    - (2) Approval by agency
2. Quarterly Capital Construction Project Reporting to the DAS State Building Division

- a. Reporting requirements
    - (1) Agencies shall prepare and submit to DAS State Building Division quarterly reports for all projects whose total project funding exceeds \$705,000.
    - (2) DAS/SBD may require that quarterly project reports be submitted for projects under \$705,000.
  - b. Reporting format – See Appendix K
    - (1) Updated project budget in the same format as used in the construction contract Submittal to DAS/SBD.
    - (2) Contracts and other commitments through the end of the quarterly reporting period, referenced to budget category
    - (3) Cumulative expenditures through the end of the reporting period, referenced to budget category
    - (4) Copies of all construction contract change orders executed during the reporting period
3. Periodic Contractor Payments
- a. All project payments shall be processed using the Nebraska Information System (NIS).
  - b. NIS Business Unit setup and payment coding shall be structured to allow aggregation by capital construction budget category.

## **E. Substantial Completion**

- 1. Certificate of substantial completion (AIA Form G704)
  - a. Notification by contractor
  - b. Certification by consultant
    - (1) Attach punch list, inspection and report by consultant.
  - c. Inspection and report by agency project manager.

- d. Approval by agency
  - e. Demonstration of equipment and mechanical systems
  - f. Move in by agency
2. Note: Most warranties start with the date of substantial completion.

**F. Final Completion – Submittal of Final Contractor Payment(s) to the DAS State Building Division**

- 1. Submittal by the Contractor to the Agency shall include:
  - a. Final Payment Request in accordance with contract requirements
  - b. Submittal of the consent of the surety to final payment
- 2. Submittal by the Consultant to the Agency shall include:
  - a. Certification of the Contractor's final payment request
  - b. Certification that all work under the contract substantially conforms to the contract documents and that the contract has been satisfactorily performed except for the making of final payment.
- 3. Submittal of final contractor payment to DAS/SBD shall include:
  - a. The Contractor's final payment request
  - b. Certification (in accordance with item F.2 above) from the Consultant
  - c. Approval for payment by the Agency
- 4. Processing of the final contractor payment by DAS/SBD
  - a. Review Agency final contractor payment submittal for completeness
  - b. Submit final payment submittal to the DAS Director (as applicable) and State Accounting for payment.

## CHAPTER XIII. POST CONSTRUCTION PHASE

### A: Introduction

When the project is completed and final payments have been made, evaluations of all aspects of the project and submittals of contract guarantees and warranties are required.

### B. Statutory Authority

1. R.R.S. 81-1108.15 (State Building Division, acceptance and final inspection)
2. R.R.S. 81-1108.15 (State Building Division assurance of maintenance)
3. R.R.S. 81-1108.15 (State Building Division, acceptance and final reports)
4. R.R.S. 81-1108.43 (Capital construction prohibitive act)

### C. Legal Requirements

1. Submittal of final report to the State Building Division on projects whose total cost is **seven hundred five** thousand dollars (**\$705,000**) or more.
2. The State Building Division may require the final report on projects whose total cost is less than **seven hundred five** thousand dollars (**\$705,000**).

### D. Final Report by Agency

1. The Agency final report shall be submitted not later than 30 days after final payment and shall include, but not limited to the following:
  - a. The Final Quarterly Project Report
  - b. Certification that the construction complied with the approved program statement.
  - c. Agency Evaluation of consultant
    - (1) Conformance with professional service agreement
    - (2) Conformance with budget requirements

- (3) Conformance with time line
- (4) Project management
- (5) Planning and design
- f. Agency Evaluation of contractor
  - (1) Conformance to construction agreement
  - (2) Quality of workmanship
  - (3) Conformance with time line
  - (4) Project management
  - (5) General comments

**E. Final Review by State Building Division**

- 1. Review of Agency submittal
- 2. Report filed
  - a. Legislative Fiscal Analyst
  - b. Governor

**F. Guarantee and Warranty Phase**

- 1. Eleven month inspection of the facility with professional consultant
  - a. Written notice of deficiencies (if any) to contractor
- 2. Guarantee and warranty procedures
  - a. Agency's written report of deficiency to contractor
  - b. Agency's written acknowledgment of corrective work to contractor
  - c. Coordinate with DAS State Building Division as necessary
- 3. Evaluation of the facility
  - a. Success of design

- b. Energy efficiency
- c. Operational experience
- d. Environmental considerations
- e. Evaluation of artwork

**G. Project Close-out**

- 1. One year post-completion inspection
  - a. Written notice to contractor of any deficiencies not corrected
  - b. Written notice to professional consultant of any deficiencies not corrected
- 2. Extended warranties
  - a. Written notice of deficiency direct to manufacturer/supplier or sub-contractor
  - b. Written acknowledgment of correction action
- 3. Operations and maintenance programs
  - a. Establishment of a preventive maintenance program
  - b. Operations in accordance with manufacturer's recommendations
  - c. Coordination with the State Building Division and the Task Force for Building Renewal.

## **CHAPTER XIV. SITE AND STRUCTURE NAMING PROCEDURES**

### **A. Introduction**

To name a site or structure requires the following review and approvals.

### **B. Statutory Authority**

1. R.R.S. 81-1108.15 (State Building Division review of proposals)
2. R.R.S. 81-1108.36 (State owned or leased site or structure naming)

### **C. Procedures**

1. Agency proposal
2. Agency submittal to Legislature for approval
3. Agency submittal to State Building Division for review and Governor's approval or disapproval

### **D. Site and Structure Naming Review and Approval**

1. State Building Division Review
  - a. Submission to the State Building Division by the agency shall include, but not limited to, the following
    - (1) Site or Structure
      - name or designation
    - (2) Location
      - county name
      - town or campus
      - address
      - statewide building inventory number
    - (3) Previous name or designation and reason for the change
      - name

- reason for name
  - evidence of support
2. Distribution of the State Building Division's report and recommendations
    - a. Review by D.A.S. Budget Division
    - b. Review by D.A.S. Director
    - c. Review by the Governor for approval or disapproval
  3. Report filed
    - a. Legislative Fiscal Analyst
    - b. Governor
  4. Notice to proceed

The State Building Division will notify the agency the agency on how to proceed.

**CHAPTER XV. CAPITAL CONSTRUCTION EMERGENCY  
CONTINGENCY FUND**

**A. Introduction and Purpose**

The Legislature, in 1974 (Statute 81-1108.24 - 81-1108.25), recognized the problem of emergency situations which could not be foreseen by the agencies and which would require the availability of immediate funds to resolve such problems. Expenditures from this fund shall be authorized to supplement available funds for construction projects when needed for emergency construction, repair or remodeling. Emergency shall mean that a clear and foreseeable danger is created and that without institution of appropriate measures to reduce or alleviate such danger, the health, safety or welfare of the citizens of this State or the purposes of the facility will be or will continue to be threatened.

Section 81-1108.25 of Nebraska Statutes Cumulative Supplement, 1976, provides for the expenditure of these funds to be made by the Department of Administrative Services as when approved by the Governor.

**B: Statutory Authority**

1. R.R.S. 81-1108.24 (Creation of the Emergency Capital Construction Contingency Fund)
2. R.R.S. 81-1108.25 (State Emergency Capital Construction Contingency Fund purpose.)

**C. Procedures**

No appropriation is presently available, therefore application procedures and guidelines will be made available if an appropriation is made to this fund.

 **AIA**® **Document B101™ – 2017**

**Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the Eighteenth day of July in the year 2017  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

Division of Behavioral Health, Nebraska Department of Health & Human Services  
P.O. Box 95026  
Lincoln, NE 68509

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

Alley Poyner Macchietto Architecture Incorporated  
1516 Cuming Street  
Omaha, NE 68102

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

Hastings Regional Center, Youth Treatment Facility

APMA Project No. 17033

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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ARTICLE 1 INITIAL INFORMATION

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

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

The proposed Project would relocate the youth from the Hastings JCDP into three new buildings located on a vacant site just to the south of the current Building #3 on the Hastings Regional Center campus. The buildings will include two housing buildings and one larger building to provide education, treatment and dining services for the youth.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

The new buildings are planned to be slab on grade, wood framed structures with residential-type construction methods. The facility would be designed specifically for the treatment of the youth and would include the following design goals: Enhance safety of the youth; Create an environment to promote healing and treatment; Maximize sightlines throughout the facility to increase staff efficiency.

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Housing: Two of the buildings would be individual housing units for each group of youth. These buildings would each provide 12 bedrooms with restrooms, day hall space, kitchenette, small exercise space, central med room, and a laundry room. Consideration in infrastructure will be given to provide for future expansion of two additional twelve-bedroom housing units.

The Education, Treatment and Dining Building will provide a number of service functions for the youth.  
Counseling: Individual and group treatment rooms. Education: Classrooms, Offices, Library and Support Spaces.  
Dining: Full-service kitchen, walk-in cooler and freezer, loading dock and cafeteria space. Storm Shelter: A hardened space will be provided as a storm shelter for the youth and staff.

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
*(Provide total and, if known, a line item breakdown.)*

\$4,796,124.70

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Final Construction Documents - January 2018

.2 Construction commencement date:

April 2018

.3 Substantial Completion date or dates:

April 2019

.4 Other milestone dates:

Not Applicable

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project:  
*(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)*

Competitive bidding

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

Not Applicable  
*(Paragraph Deleted)*

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

Nick Amen, Facilities Construction Coordinator

Nebraska Department of Administrative Services  
1526 K Street, Suite 200  
P.O. Box 98940  
Lincoln, NE 68509

Phone: (402) 471-0413  
Email: nick.amen@nebraska.gov

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

Not Applicable

§ 1.1.9 The Owner shall retain the following consultants and contractors: Not Applicable

(Paragraphs Deleted)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

Dan Dolezal, Project Manager

Alley Poyner Macchietto Architecture Incorporated  
1516 Cuming Street  
Omaha, NE 68102

Phone: (402) 341-1544  
Email: ddolezal@alleypoyner.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Civil Engineer:

JEO Consulting Group, Inc.  
308 West 3rd Street, Suite 1  
Grand Island, NE 68801-5941

Phone: (308) 381-7428

.2 Mechanical and Electrical Engineers:

Morrissey Engineering, Inc.  
4940 North 118 Street  
Omaha, NE 68164

Phone: (402) 491-4144

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.3 Food Service Design:

FOODLINES  
1401 "O" Street, Suite 200  
Lincoln, NE 68508

Phone: (402) 475-1787

.4 Structural Engineer:

Thompson, Dreesen and Domer, Inc.  
10836 Old Mill Road  
Omaha, NE 68154

Phone: (402) 330-8860

.5 Cost Estimating:

Building Cost Consultants, Inc.

Phone, Office: (402) 298-8260

Phone, Cell: (402) 699-1832

Fax: (402) 298-8260

Email: bcddsieh@aol.com

§ 1.1.11.2 Consultants retained under Supplemental Services:

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

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability: See Exhibit B: Certificate of Liability Insurance issued by State Farm Fire and Casualty Company.

§ 2.5.2 Automobile Liability: See Exhibit B: Certificate of Liability Insurance issued by State Farm and Casualty Company.

§ 2.5.3 Umbrella Liability, for Commercial General Liability and Automobile Liability: See Exhibit B: Certificate of Liability Insurance issued by State Farm and Casualty Company.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability: See Exhibit C: Certificate of Liability Insurance issued by The Harry A. Koch Company.

§ 2.5.6 Professional Liability: See Exhibit C: Certificate of Liability Insurance issued by The Harry A. Koch Company.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

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§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

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### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.3.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

**§ 3.4.4** The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

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### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Owner shall give final approval on all changes to the original scope of work or additional costs.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. Final approval and processing of payment shall be by Owner.

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

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

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### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

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

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Not Provided
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided

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User Notes:

§ 4.1.1.20	Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21	Telecommunications/data design	Owner
§ 4.1.1.22	Security evaluation and planning	Owner
§ 4.1.1.23	Commissioning	Not Provided
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25	Fast-track design services	Not Provided
§ 4.1.1.26	Multiple bid packages	Not Provided
§ 4.1.1.27	Historic preservation	Not Provided
§ 4.1.1.28	Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29	Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30	Other Supplemental Services	Not Provided

**§ 4.1.2 Description of Supplemental Services**

**§ 4.1.2.1** A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

4.1.1.2 Multiple preliminary designs. The Architect will provide multiple designs to satisfy the Program and the Owner's needs.

4.1.1.8 Civil engineering. Civil engineering consulting is included in the Architect's basic services fee.

4.1.1.9 Landscape design. The Architect will provide minimal landscaping within the area defined as the project scope.

4.1.1.10 Architectural interior design. Architectural interior design services are included in the Architect's basic services fee.

4.1.1.15 As-designed record drawings. As-designed record drawings are included in the Architect's basic services fee.

4.1.1.16 As-constructed record drawings. As-constructed record drawings are included in the Architect's basic services fee. Drawings will be provided in CAD format.

4.1.1.20 Architect's coordination of the Owner's consultants. The Architect will coordinate aspects of the design with the consultants directly contracted with the Owner.

**§ 4.1.2.2** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

4.1.1.21 Telecommunications/data design. Telecommunications/data design is not included in the Architect's scope of basic services. If required, Morrissey Engineering, Inc. can provide a fee to add these services.

4.1.1.22 Security evaluation and planning. Pathways for security devices will be included in Architect's scope of basic services. Design of security system and specifications of components and wiring is not included in Architect's scope of basic services.

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**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

**§ 4.2.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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**§ 4.2.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Ten ( 10 ) visits to the site by the Architect during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

**§ 4.2.4** Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

**§ 4.2.5** If the services covered by this Agreement have not been completed within Thirty ( 30 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

**§ 5.2** The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

**§ 5.5** The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.6** The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

**§ 5.7** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

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

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

#### ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

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§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

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§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 The Owner, to the extent permitted by law, agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

#### ARTICLE 8 CLAIMS AND DISPUTES

##### § 8.1 General

§ 8.1.1 (See paragraph 8.1.4)

§ 8.1.2 (See paragraph 8.1.4)

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

*(Paragraph Deleted)*

§ 8.1.4 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to the State Contract Claims Act.

§ 8.2 Mediation (Section intentionally deleted)

*(Paragraphs Deleted)*

§ 8.3 Arbitration (Section intentionally deleted)

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(Paragraphs Deleted)

§ 8.3.4 Consolidation or Joinder (Section intentionally deleted)

(Paragraphs Deleted)

§ 8.4 Not used.

**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. Owner shall pay all debts as per "Prompt Payment Act" and within 45 days from receipt of invoice. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably negotiated.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.1, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination.

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§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

Not Applicable

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Not Applicable

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

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

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

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose “confidential” or “business proprietary” information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

#### ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
*(Insert amount)*

Compensation for Scope of Architect’s Basic Services shall be a lump sum of Three Hundred Ninety-Three Thousand Five Hundred Dollars (\$393,500.00) based on the scope of work identified in the Program Statement. This fee includes a lump sum of \$13,500 for reimbursable expense compensation to be broken out at a later date.

*(Paragraph Deleted)*

*(Paragraphs Deleted)*

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

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

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§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

Hourly or negotiated fee

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect.

*(Paragraph Deleted)*

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See Exhibit A: 2017 Standard Hourly Rate Schedule  
*(Table Deleted)*

#### § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of

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additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent ( 0 %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

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

§ 11.10.1.2 Not used.

##### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice as per "Prompt Payment Act ." Amounts unpaid Forty-five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts through the dispute or contract claims process.

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

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

*(Include other terms and conditions applicable to this Agreement.)*

§ 12.1 The Architect shall exercise usual and customary professional care in efforts to comply with all applicable codes, ordinances, rules and regulations in effect as of the date of execution of this Contract.

§ 12.2 The Architect shall assist the Owner in the preparation of a pre-bid conference to answer all prospective bidders' questions and to clarify all discrepancies in the documents. The Architect shall take minutes of the meeting and furnish copies to all in attendance. This service shall be included within the fee proposal for basic services.

§ 12.3 If record drawings are indicated on the § 4.1.15 as being required the Architect shall, prior to final completion, obtain from the Contractor the original record drawing and a conformed copy of the specifications, prepared in accordance with the requirements of the Contract Supplemental Conditions. Record drawings shall

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include addenda and change orders approved for the Project. Record drawings shall also include the architect's observations during construction. These drawings shall be transmitted to the Owner in the form specified on the Work Authorization Check List. If record documents are to be submitted in an electronic form, the format shall be in an AutoCAD format acceptable to the Owner. In addition, the architect shall deliver to the Owner any data or field notes obtained pertaining to the Project, including survey field notes or data, test borings, compaction tests, concrete tests, or any other tests performed for the Project.

§ 12.4 The Architect shall, one month prior to the expiration of the one year correction period as provided in the General Conditions, reassemble the project team (to the extent possible) that was used for the substantial completion review. The team shall conduct a complete, on site review of the facility. Two lists of items shall be developed; (1) defective or deficient items the Contractor is required to repair or replace at no cost to the Owner, and (2) items that have become defective because of abuse or neglect and items that should be modified to better serve the needs of the Owner (such items to be done at the Owner's expenses). Within ten days of completion of the review, the written reports shall be furnished to the Owner, the Contractor and the Surety.

§ 12.5 The Owner and Architect may agree to utilize bidding alternates to adjust the scope of a project to meet the project budget. Any alternates included in bidding documents shall be approved, in writing, by the Owner along with any associated Architectural fees for development of alternates.

§ 12.6 As per requirements of Sections § 1-1716 through § 1-17109, Revised Statutes of Nebraska, 1943, the Architect warrants that he has not employed or retained any company or person, other than bona fide employees working solely for him, to solicit or secure this agreement and that he has not paid, or agreed to pay, any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award for the making of this Agreement.

§ 12.7 The Architect agrees to comply with all applicable provisions of the Federal Rehabilitation Act of 1973, as amended, the Americans with Disabilities act of 1990, as amended, Section 5043 of the Rehabilitation Act of 1973, as amended, and the age Discrimination Act of 1975, as amended, which are hereby incorporated by reference. The Architect agrees to comply with any amendments to these laws effective during the term of the Agreement. The Architect further agrees to include similar provision in all subcontracts for services allowed in connection with this Agreement.

§ 12.8 (paragraph intentionally omitted)

§ 12.9 Drug Free Workplace Policy. The Architect certifies that as a condition of the Agreement, neither the Architect nor the employees of the Architect shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. The Architect certifies that it maintains a drug free workplace policy. The Owner reserves the right to request a copy of the Architect's drug Free Workplace policy. The Architect further agrees to insert a provision similar to this statement in all sub-contracts for services required under this Agreement.

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§ 12.10 Compliance with Civil Rights Laws and Equality Opportunity Employment. The Architect affirms that it complies with, and will continue to comply with, the Nebraska Fair Employment Practice Act and Title VI of the Civil Rights Act of 1964, as amended. The Architect affirms that no person (including employees or applicants for employment) shall, on the grounds of age, religion, sex, disability, race or national origin, be excluded from participation in, be denied the benefits of, or otherwise subject to discrimination under this Agreement or any other project, program or activity supported by this Agreement. The Architect agrees that in performance of this Agreement it will not discriminate against any of its employees or applicants for employment concerning the employees' or applicants' hire, tenure, terms, conditions or privilege of employment based on the employees' or applicants' race, color, religion, sex, marital status, age, disability or national origin.

§ 12.11 The Architect hereby grants permission to the State of Nebraska and/or its agencies to reprint or republish any and all copyrighted documents related to this agreement and any and all figures, illustrations, photographs, charts, and other supplementary material online pursuant to Neb. Rev. Stat. § 84-602. This waiver does not apply to any and all proprietary information properly submitted in a separate sealed package that is clearly marked "Proprietary."

The Architect represents and warrants that the content of this Agreement and all figures, illustrations, photographs, charts, and other supplementary material herein are original and do not libel anyone or infringe upon any patent, copyright, proprietary right, or any other right whatsoever of any other party. The Architect represents and warrants that he/she has full power and authority to execute this Copyright Release and to grant the State of Nebraska and/or its agencies the right granted herein.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect.

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit. Not Used

*(Paragraphs Deleted)*

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this agreement.)

Other Exhibits incorporated into this Agreement:

*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

Exhibit A: 2017 Standard Hourly Rate Schedule

Exhibit B: Certificate of Liability Insurance issued by State Farm Fire and Casualty Company

Exhibit C: Certificate of Liability Insurance issued by The Harry A. Koch Company

- .4 Other documents:

*(List other documents, if any, forming part of the Agreement.)*

Not Applicable

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User Notes: (3B9ADA20)

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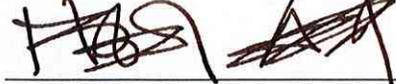
This Agreement entered into as of the day and year first written above.

OWNER  
Nebraska Department of Administrative Services

  
(Signature)

Sheri Dawson, Department of Health and Human  
Services, Director of Behavior Health  
(Printed name and title)

ARCHITECT  
Alley Poyner Macchietto Architecture Incorporated

  
ARCHITECT, Alley Poyner Macchietto Architecture  
Incorporated (Signature)  
Michael Alley, President  
(Printed name, title, and license number, if required)

Init.

**ALLEY POYNER MACCHIETTO ARCHITECTURE INCORPORATED**  
*Effective 01/01/2017*

**Hourly Professional Services Rates**

Principal	\$ 200
Senior Project Manager	\$ 150
Senior Design Professional	\$ 140
Design Professional 5	\$ 125
Design Professional 4	\$ 115
Design Professional 3	\$ 105
Design Professional 2	\$ 95
Design Professional 1	\$ 85
Intern	\$ 60
Administrative Staff 3	\$ 80
Administrative Staff 2	\$ 70
Administrative Staff 1	\$ 55
CAD Rendering /3D Technician	\$ 90
Construction Administration 2	\$ 120
Construction Administration 1	\$ 100

**Reimbursable Expenses**

*For Reimbursable Expenses, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of one and one tenth percent of the expenses incurred.*

Parking	
Car Rental	
Air Travel	
Hotel	
Meals	
Long Distance Telephone	
Delivery / Shipping / Postage	
Mileage	\$ 0.54 per mile
B & W copies / prints	\$ 0.10 (8.5 x 11)
	\$ 0.50 (11 x 17)
	\$ 1.00 (13 x 19)
Color prints / prints	\$ 1.00 (8.5 x 11)
	\$ 1.50 (11 x 17)
	\$ 2.50 (13 x 19)
Bond plots	\$ 0.30 per SF
Color plots	\$ 3.00 per SF

*Rates are effective through December 31, 2017. Services performed thereafter are subject to change.*





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
9/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Harry A. Koch Co. P.O. Box 45279 Omaha NE 68145-0279	<b>CONTACT NAME:</b> PHONE (A/C, No., Ext): 402-861-7000		<b>FAX (A/C, No.):</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> Alley Poyner Macchietto Architecture, Inc. 1516 Cuming St. Omaha NE 68102	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> XL Specialty Insurance Co		37885
	<b>INSURER B:</b> Accident Fund Ins Co of America		10166
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** 1459436927                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

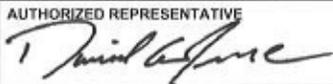
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$	
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$	
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WCV8011906	1/1/2017	1/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000	
A	Professional Liability Claims Made Basis Incl. Pollution Liability			DPR8811162	3/15/2017	3/15/2018	\$2,000,000 \$4,000,000 Ea.Claim Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Hastings Regional Center, Youth Treatment Facility. The General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status only when there is a written contract between the named insured and the certificate holder/entity(ies) that require such status prior to a loss. The blanket endorsement provides additional insured status for the state of Nebraska when required by written contract. Waiver of Subrogation applies for Workers' Compensation if required by written contract executed prior to loss.

### CERTIFICATE HOLDER

### CANCELLATION

The State of Nebraska Administrative Services 1526 K Street, Suite 200 P.O. Box 98940 Lincoln NE 68509-8940	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# Document A101™ – 2017

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the    day of    in the year  
*(In words, indicate day, month and year.)*

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

Nebraska Department of Administrative Services/State Building Division  
1526 K Street, Suite 200  
PO Box 94940  
Lincoln, NE 68509  
Telephone Number: 402-471-0409

and the Contractor:  
*(Name, legal status, address and other information)*

To be determined

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

State of Nebraska - Department of Administrative Services - Hastings Regional Center  
Facility Improvements  
Hastings, Nebraska

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

Architectural Design Associates  
7501 'O' Street, Suite 105  
Lincoln, NE 68510  
Telephone Number: 402-486-3232

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

Init.

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$ ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:  
*(Identify each allowance.)*

Item	Price
------	-------

#### § 4.4 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

#### § 4.5 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

#### § 4.6 Other:

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month and does not require revision or correction, the Owner shall make payment of the amount certified to the Contractor in accordance with the Prompt Payment Act (NEB.REV.STAT.81-2401). If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner in accordance with the Prompt Payment Act (NEB.REV.STAT.81-2401) after the Architect certifies the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017, General Conditions of the Contract for Construction;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of Ten percent (10%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 (clause intentionally deleted)
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

Init.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Ten percent (10%) of each progress amount

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Not applicable

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

Once a payment is approved, then the AS/State Building Division will pay to the Contractor in State warrants, and in accordance with the payment provisions in the Agreement and these General Conditions, the amount approved, which shall be ninety percent (90%) of completed work and stored materials. The AS/State Building Division may at any time reserve and retain payment as authorized in Provision #27 of these General Conditions. However, prior to final payment, the total paid to the Contractor shall not exceed Ninety percent (90%) of the estimated value of the work performed and materials stored at the site.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

### § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

### § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

Init.

Per Nebraska's Prompt Payment Act (NEB.REV.STAT.81-2401)

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Administrator of the State Building Division will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*  
Contract Claims Act

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

As provided in Article 14 of AIA Document A201-2017.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

Kevin Herr  
Nebraska Department of Administrative Services/State Building Division  
1526 K Street, Suite 200  
PO Box 98940  
Lincoln, NE 68509-8940  
kevin.herr@nebraska.gov 402-417-0413

Init.

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

To be determined

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

### § 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, and as outlined in Specification section – General Conditions, where the basis of payment is a Stipulated Sum and elsewhere in the Contract Documents.

(Paragraphs deleted)

§ 8.7 Other provisions:

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™-2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

### .5 Drawings

Number	Title	Date
A0.0	COVER SHEET	6/14/19
C1.0	GENERAL INF.	6/14/19
C1.1	ADMIN. BLDG. PLANS	6/14/19
C1.2	CHAPEL PLANS	6/14/19
C2.1	MISC. DETAILS	6/14/19
C2.0	MISC. DETAILS	6/14/19
M1.0	MECH. WELL FIELD	6/14/19
M2.0	MECH. SCHEM. DET.	6/14/19
S1.1	STOOP DETAILS	6/14/19
Building 5		
5D1.0	FLOOR PLAN DEMO	6/14/19
5D1.1	CEILING PLAN DEMO	6/14/19
5A1.1	FLOOR PLAN	6/14/19
5A1.2	PLAN & INT. ELEV.	6/14/19
5A2.1	SCHEDULES	6/14/19
5A2.2	ROOM FINISH SCHED.	6/14/19
5A3.1	CEILING PLAN	6/14/19
5A5.1	EXTERIOR ELEV.	6/14/19
5A6.1	BUILD. SECTIONS	6/14/19
5MD.0	MECH. DEMO	6/14/19
5M1.0	HVAC	6/14/19
5M2.0	PLUMB. AND PIPING	6/14/19
5M3.0	PLANS AND RISERS	6/14/19

Init.

5M4.0	MECH. DETAILS	6/14/19
5M4.1	MECH. DETAILS	6/14/19
5M4.2	MECH. DETAILS	6/14/19
5M5.0	MECH. SCHEDULES	6/14/19
5M5.1	MECH. SCHEDULES	6/14/19
5ED.0	ELEC. DEMO	6/14/19
5E1.0	LIGHTING	6/14/19
5E2.0	POWER	6/14/19
5E3.0	SPECIAL SYSTEMS	6/14/19
5E4.0	ELEC. SYMB. & SCHD.	6/14/19
5E5.0	ELEC. DETAILS	6/14/19
Building 6		
6D1.1	DEMO PLAN	6/14/19
6A1.1	FIRST FLOOR PLAN	6/14/19
6A1.2	INT. ELEV.	6/14/19
6A4.1	ROOF PLAN	6/14/19
6A5.1	EXT. ELEV.	6/14/19
6MD.0	MECH. DEMO	6/14/19
6M1.0	HVAC	6/14/19
6M2.0	PLUMB. & PIPING	6/14/19
6M3.0	ENLARGED PLANS	6/14/19
6M4.0	MECH. DETAILS	6/14/19
6M4.1	MECH. DETAILS	6/14/19
6M5.0	MECH. SCHEDULES	6/14/19
6M5.1	MECH. SCHEDULES	6/14/19
6ED.0	ELEC. DEMO	6/14/19
6E1.0	LIGHTING	6/14/19
6E2.0	POWER & SYSTEMS	6/14/19
6E3.0	ELEC. SYM. & SCHED.	6/14/19

.6 Specifications  
(Row deleted)

**Section**

**PROCUREMENT AND CONTRACTING REQUIREMENTS  
1.01 DIVISION 00 -- PROCUREMENT AND CONTRACTING  
REQUIREMENTS**

- A. 00 01 07 - Seals Page
- B. 00 01 10 - Table of Contents
- C. 00 11 13 - Advertisement for Bids
- D. Attestation Form
- E. 00 21 13 - Instructions to Bidders
- F. 00 31 00 - Available Project Information
- G. 00 41 13 - Bid Form
- H. 00 52 13 - Contract
- I. 00 63 63 - Change Order Form
- J. 00 72 00 - General Conditions
- K. Project Special Conditions
- L. State of Nebraska Form 13
- M. State of Nebraska Form 17

**SPECIFICATIONS**

**2.01 DIVISION 01 -- GENERAL REQUIREMENTS**

- A. 01 10 00 - Summary
- B. 01 23 00 - Alternates
- C. 01 30 00 - Administrative Requirements
- D. 01 70 00 - Execution and Closeout Requirements

**2.02 DIVISION 02 -- EXISTING CONDITIONS**

- A. 02 41 00 - Demolition

Init.

**2.03 DIVISION 03 -- CONCRETE**

A. 03 30 00 - Cast-in-Place Concrete

**2.04 DIVISION 04 -- MASONRY (NOT USED)**

**2.05 DIVISION 05 -- METALS**

A. 05 52 13 - Pipe Railings

**2.06 DIVISION 06 -- WOOD, PLASTICS, AND COMPOSITES**

A. 06 10 00 - Rough Carpentry

B. 06 20 00 - Finish Carpentry

**2.07 DIVISION 07 -- THERMAL AND MOISTURE PROTECTION**

A. 07 21 00 - Thermal Insulation

B. 07 22 00 - Composite Roof Panels

C. 07 31 13 - Asphalt Shingles

D. 07 46 46 - Fiber Cement Siding

E. 07 62 00 - Sheet Metal Flashing, Trim, Gutters and Downspouts

F. 07 84 00 - Firestopping

G. 07 92 00 - Joint Sealants

**2.08 DIVISION 08 -- OPENINGS**

A. 08 12 13 - Hollow Metal Frames

B. 08 14 16 - Flush Wood Doors

C. 08 43 13 - Aluminum-Framed Fixed Windows and Aluminum Doors

D. 08 71 00 - Door Hardware

E. 08 80 00 - Glazing

**2.09 DIVISION 09 -- FINISHES**

A. 09 21 16 - Gypsum Board Assemblies

B. 09 30 00 - Tiling

C. 09 51 00 - Acoustical Ceilings

D. 09 65 00 - Resilient Flooring

E. 09 68 13 - Tile Carpeting

F. 09 90 00 - Painting and Coating

**2.10 DIVISION 10 -- SPECIALTIES**

A. 10 21 13.19 - Plastic Toilet Compartments

B. 10 28 13 - Toilet Accessories

**2.11 DIVISION 12 -- FURNISHINGS**

A. 12 36 61 - Solid Surfacing Sills

**2.12 DIVISION 21 -- FIRE SUPPRESSION**

A. 21 01 00 - General Requirements for fire Suppression

B. 21 10 00 - Water-Based Fire-Suppression System

**2.13 DIVISION 22 -- PLUMBING**

A. 22 01 00 - General Requirements for Plumbing

B. 22 05 23 - Valves for Plumbing

C. 22 07 20 - Pipe Insulation for Plumbing

D. 22 11 16 - Water Distribution Piping

E. 22 11 23 - Domestic Water Pumps

F. 22 13 16 - Drainage and Vent Piping

G. 22 13 19 - Plumbing Specialties

H. 22 33 00 - Domestic Water Heaters

I. 22 40 00 - Plumbing Fixtures

**2.14 DIVISION 23 -- HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)**

A. 23 01 00 - General Requirements for Mechanical Systems

B. 23 05 00 - Basic Mechanical Materials and Methods

C. 23 05 05 - Basic Mechanical Piping Materials and Methods

D. 23 05 23 - Valves for HVAC

E. 23 05 93 - Testing, Adjusting, and Balancing

F. 23 07 00 - Duct Insulation

G. 23 07 20 - Pipe Insulation for HVAC

H. 23 09 00 - HVAC Instrumentation and Controls

- I. 23 09 60 - Variable Frequency Drives
- J. 23 09 93 - Sequence of Operations for HVAC Controls
- K. 23 11 23 - Fuel Gas Piping
- L. 23 21 13 - Hydronic Piping
- M. 23 21 15 - Ground-Loop Heat-Pump Piping
- N. 23 21 23 - Hydronic Pumps
- O. 23 23 00 - Refrigerant Piping and Accessories
- P. 23 31 13 - Metal Ducts and Accessories
- Q. 23 34 23 - Power Ventilators
- R. 23 52 40 - Condensing Boilers
- S. 23 72 00 - Air-to Air Energy Recovery Units
- T. 23 81 27 - Multiple Evaporator, Direct Expansion (DX), Water Cooled, Variable Capacity, Split-System, HVAC System
- 2.15 DIVISION 26 -- ELECTRICAL**
- A. 26 01 00 - General Electrical Requirements
- B. 26 05 00 - Basic Electrical Materials and Methods
- C. 26 06 00 - Grounding and Bonding
- D. 26 24 16 - Panelboards
- E. 26 27 26 - Wiring Devices
- F. 26 28 16 - Disconnect Switches and Circuit Breakers
- G. 26 43 13 - Surge Protective Devices (SPD's)
- H. 26 51 00 - Lighting
- I. 26 52 00 - Lighting Control
- J. 26 81 00 - Fire Alarm
- 2.16 DIVISION 27 -- COMMUNICATIONS**
- A. 27 15 00 - Communication Cabling Systems

.7 Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:  
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

*(Paragraphs deleted)*

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

\_\_\_\_\_  
 OWNER *(Signature)*

\_\_\_\_\_  
 CONTRACTOR *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

# Additions and Deletions Report for

AIA<sup>®</sup> Document A101<sup>™</sup> – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:11:18 ET on 06/14/2019.

## PAGE 1

Nebraska Department of Administrative Services/State Building Division  
1526 K Street, Suite 200  
PO Box 94940  
Lincoln, NE 68509  
Telephone Number: 402-471-0409

...

To be determined

...

State of Nebraska - Department of Administrative Services - Hastings Regional Center Facility Improvements  
Hastings, Nebraska

...

Architectural Design Associates  
7501 'O' Street, Suite 105  
Lincoln, NE 68510  
Telephone Number: 402-486-3232

## PAGE 2

A date set forth in a notice to proceed issued by the Owner.

## PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~day of a month, last day of a month and does not require revision or correction,~~ the Owner shall make payment of the amount certified to the Contractor ~~not later than the day of the month. If Contractor in accordance with the Prompt Payment Act (NEB.REV.STAT.81-2401.~~ If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner ~~not later than ( ) days after the Architect receives in accordance with the Prompt Payment Act (NEB.REV.STAT.81-2401)~~ after the Architect certifies the Application for Payment.

...

- 1 That portion of the Contract Sum properly allocable to completed ~~Work;~~ Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017, General Conditions of the Contract for Construction;

- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in ~~writing; and~~ writing, less retainage of Ten percent (10%);
- .3 ~~That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified. Subtract the aggregate of previous payments made by the Owner; and~~
- .4 Subtract amounts, if any for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

...

- .3 ~~Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~ (clause intentionally deleted)

**PAGE 5**

Ten percent (10%) of each progress amount

...

Not applicable

...

Once a payment is approved, then the AS/State Building Division will pay to the Contractor in State warrants, and in accordance with the payment provisions in the Agreement and these General Conditions, the amount approved, which shall be ninety percent (90%) of completed work and stored materials. The AS/State Building Division may at any time reserve and retain payment as authorized in Provision #27 of these General Conditions. However, prior to final payment, the total paid to the Contractor shall not exceed Ninety percent (90%) of the estimated value of the work performed and materials stored at the site.

**PAGE 6**

~~%~~ Per Nebraska's Prompt Payment Act (NEB.REV.STAT.81-2401

...

~~The Architect Administrator of the State Building Division will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.~~ A201-2017.

...

[  ] Other (Specify)

Contract Claims Act

~~If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.~~

...

As provided in Article 14 of AIA Document A201-2017.

...

Kevin Herr

Nebraska Department of Administrative Services/State Building Division  
 1526 K Street, Suite 200  
 PO Box 98940  
 Lincoln, NE 68509-8940  
 kevin.herr@nebraska.gov 402-417-0413  
 PAGE 7

To be determined

...

~~§ 8.5.1~~ The ~~Owner and the~~ Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, ~~Standard Form of Agreement Between Owner and Contractor~~ and as outlined in Specification section – General Conditions, where the basis of payment is a Stipulated Sum, ~~Exhibit A, Insurance and Bonds, Sum~~ and elsewhere in the Contract Documents.

~~§ 8.5.2~~ The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

~~§ 8.6~~ Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

...

- ~~2~~ AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- ~~3~~ AIA Document A201™-2017, General Conditions of the Contract for Construction
- ~~4~~ AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

...

<u>A0.0</u>	<u>COVER SHEET</u>	<u>6/14/19</u>
<u>C1.0</u>	<u>GENERAL INF.</u>	<u>6/14/19</u>
<u>C1.1</u>	<u>ADMIN. BLDG. PLANS</u>	<u>6/14/19</u>
<u>C1.2</u>	<u>CHAPEL PLANS</u>	<u>6/14/19</u>
<u>C2.1</u>	<u>MISC. DETAILS</u>	<u>6/14/19</u>
<u>C2.0</u>	<u>MISC. DETAILS</u>	<u>6/14/19</u>
<u>M1.0</u>	<u>MECH. WELL FIELD</u>	<u>6/14/19</u>
<u>M2.0</u>	<u>MECH. SCHEM. DET.</u>	<u>6/14/19</u>
<u>S1.1</u>	<u>STOOP DETAILS</u>	<u>6/14/19</u>
<u>Building 5</u>		
<u>5D1.0</u>	<u>FLOOR PLAN DEMO</u>	<u>6/14/19</u>
<u>5D1.i</u>	<u>CEILING PLAN DEMO</u>	<u>6/14/19</u>
<u>5A1.1</u>	<u>FLOOR PLAN</u>	<u>6/14/19</u>
<u>5A1.2</u>	<u>PLAN &amp; INT. ELEV.</u>	<u>6/14/19</u>
<u>5A2.1</u>	<u>SCHEDULES</u>	<u>6/14/19</u>

<u>5A2.2</u>	<u>ROOM FINISH SCHED.</u>	<u>6/14/19</u>
<u>5A3.1</u>	<u>CEILING PLAN</u>	<u>6/14/19</u>
<u>5A5.1</u>	<u>EXTERIOR ELEV.</u>	<u>6/14/19</u>
<u>5A6.1</u>	<u>BUILD. SECTIONS</u>	<u>6/14/19</u>
<u>5MD.0</u>	<u>MECH. DEMO</u>	<u>6/14/19</u>
<u>5M1.0</u>	<u>HVAC</u>	<u>6/14/19</u>
<u>5M2.0</u>	<u>PLUMB. AND PIPING</u>	<u>6/14/19</u>
<u>5M3.0</u>	<u>PLANS AND RISERS</u>	<u>6/14/19</u>
<u>5M4.0</u>	<u>MECH. DETAILS</u>	<u>6/14/19</u>
<u>5M4.1</u>	<u>MECH. DETAILS</u>	<u>6/14/19</u>
<u>5M4.2</u>	<u>MECH. DETAILS</u>	<u>6/14/19</u>
<u>5M5.0</u>	<u>MECH. SCHEDULES</u>	<u>6/14/19</u>
<u>5M5.1</u>	<u>MECH. SCHEDULES</u>	<u>6/14/19</u>
<u>5ED.0</u>	<u>ELEC. DEMO</u>	<u>6/14/19</u>
<u>5E1.0</u>	<u>LIGHTING</u>	<u>6/14/19</u>
<u>5E2.0</u>	<u>POWER</u>	<u>6/14/19</u>
<u>5E3.0</u>	<u>SPECIAL SYSTEMS</u>	<u>6/14/19</u>
<u>5E4.0</u>	<u>ELEC. SYMB. &amp; SCHD.</u>	<u>6/14/19</u>
<u>5E5.0</u>	<u>ELEC. DETAILS</u>	<u>6/14/19</u>
<u>Building 6</u>		
<u>6D1.1</u>	<u>DEMO PLAN</u>	<u>6/14/19</u>
<u>6A1.1</u>	<u>FIRST FLOOR PLAN</u>	<u>6/14/19</u>
<u>6A1.2</u>	<u>INT. ELEV.</u>	<u>6/14/19</u>
<u>6A4.1</u>	<u>ROOF PLAN</u>	<u>6/14/19</u>
<u>6A5.1</u>	<u>EXT. ELEV.</u>	<u>6/14/19</u>
<u>6MD.0</u>	<u>MECH. DEMO</u>	<u>6/14/19</u>
<u>6M1.0</u>	<u>HVAC</u>	<u>6/14/19</u>
<u>6M2.0</u>	<u>PLUMB. &amp; PIPING</u>	<u>6/14/19</u>
<u>6M3.0</u>	<u>ENLARGED PLANS</u>	<u>6/14/19</u>
<u>6M4.0</u>	<u>MECH. DETAILS</u>	<u>6/14/19</u>
<u>6M4.1</u>	<u>MECH. DETAILS</u>	<u>6/14/19</u>
<u>6M5.0</u>	<u>MECH. SCHEDULES</u>	<u>6/14/19</u>
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<u>6ED.0</u>	<u>ELEC. DEMO</u>	<u>6/14/19</u>
<u>6E1.0</u>	<u>LIGHTING</u>	<u>6/14/19</u>
<u>6E2.0</u>	<u>POWER &amp; SYSTEMS</u>	<u>6/14/19</u>
<u>6E3.0</u>	<u>ELEC. SYM. &amp; SCHED.</u>	<u>6/14/19</u>

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	<u>B. 00 01 10 - Table of Contents</u>		
	<u>C. 00 11 13 - Advertisement for Bids</u>		
	<u>D. Attestation Form</u>		
	<u>E. 00 21 13 - Instructions to Bidders</u>		
	<u>F. 00 31 00 - Available Project Information</u>		
	<u>G. 00 41 13 - Bid Form</u>		
	<u>H. 00 52 13 - Contract</u>		
	<u>I. 00 63 63 - Change Order Form</u>		
	<u>J. 00 72 00 - General Conditions</u>		
	<u>K. Project Special Conditions</u>		
	<u>L. State of Nebraska Form 13</u>		

M. State of Nebraska Form 17

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- A. 01 10 00 - Summary
- B. 01 23 00 - Alternates
- C. 01 30 00 - Administrative Requirements
- D. 01 70 00 - Execution and Closeout Requirements

**2.02 DIVISION 02 -- EXISTING CONDITIONS**

- A. 02 41 00 - Demolition

**2.03 DIVISION 03 -- CONCRETE**

- A. 03 30 00 - Cast-in-Place Concrete

**2.04 DIVISION 04 -- MASONRY (NOT USED)**

**2.05 DIVISION 05 -- METALS**

- A. 05 52 13 - Pipe Railings

**2.06 DIVISION 06 -- WOOD, PLASTICS, AND COMPOSITES**

- A. 06 10 00 - Rough Carpentry

- B. 06 20 00 - Finish Carpentry

**2.07 DIVISION 07 -- THERMAL AND MOISTURE PROTECTION**

- A. 07 21 00 - Thermal Insulation

- B. 07 22 00 - Composite Roof Panels

- C. 07 31 13 - Asphalt Shingles

- D. 07 46 46 - Fiber Cement Siding

- E. 07 62 00 - Sheet Metal Flashing, Trim, Gutters and Downspouts

- F. 07 84 00 - Firestopping

- G. 07 92 00 - Joint Sealants

**2.08 DIVISION 08 -- OPENINGS**

- A. 08 12 13 - Hollow Metal Frames

- B. 08 14 16 - Flush Wood Doors

- C. 08 43 13 - Aluminum-Framed Fixed Windows and Aluminum Doors

- D. 08 71 00 - Door Hardware

- E. 08 80 00 - Glazing

**2.09 DIVISION 09 -- FINISHES**

- A. 09 21 16 - Gypsum Board Assemblies

- B. 09 30 00 - Tiling

- C. 09 51 00 - Acoustical Ceilings

- D. 09 65 00 - Resilient Flooring

- E. 09 68 13 - Tile Carpeting

- F. 09 90 00 - Painting and Coating

**2.10 DIVISION 10 -- SPECIALTIES**

- A. 10 21 13.19 - Plastic Toilet Compartments

- B. 10 28 13 - Toilet Accessories

**2.11 DIVISION 12 -- FURNISHINGS**

- A. 12 36 61 - Solid Surfacing Sills

**2.12 DIVISION 21 -- FIRE SUPPRESSION**

- A. 21 01 00 - General Requirements for fire Suppression

- B. 21 10 00 - Water-Based Fire-Suppression System

**2.13 DIVISION 22 -- PLUMBING**

- A. 22 01 00 - General Requirements for Plumbing

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- C. 22 07 20 - Pipe Insulation for Plumbing

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- I. 22 40 00 - Plumbing Fixtures

**2.14 DIVISION 23 -- HEATING, VENTILATING, AND AIR-CONDITIONING**

**(HVAC)**

- A. 23 01 00 - General Requirements for Mechanical Systems
- B. 23 05 00 - Basic Mechanical Materials and Methods
- C. 23 05 05 - Basic Mechanical Piping Materials and Methods
- D. 23 05 23 - Valves for HVAC
- E. 23 05 93 - Testing, Adjusting, and Balancing
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**2.15 DIVISION 26 -- ELECTRICAL**

- A. 26 01 00 - General Electrical Requirements
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- G. 26 43 13 - Surge Protective Devices (SPD's)
- H. 26 51 00 - Lighting
- I. 26 52 00 - Lighting Control
- J. 26 81 00 - Fire Alarm

**2.16 DIVISION 27 -- COMMUNICATIONS**

- A. 27 15 00 - Communication Cabling Systems

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~~[ ]~~ — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204 2017 incorporated into this Agreement.)*

\_\_\_\_\_

~~[ ]~~ — The Sustainability Plan:

Title	Date	Pages
-------	------	-------

~~[ ]~~ — Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

~~.9~~ — Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™ 2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal*

*requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, John Hathaway, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:11:18 ET on 06/14/2019 under Order No. 5039404812 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

 **AIA<sup>®</sup> Document A201<sup>™</sup> – 2017**

**General Conditions of the Contract for Construction**

**for the following PROJECT:**

*(Name and location or address)*

DAS/State Building Division - Hastings Regional Center Facility Improvements  
Hastings, Nebraska

**THE OWNER:**

*(Name, legal status and address)*

Nebraska Department of Administrative Services  
1526 K Street, Suite 200  
PO Box 94940  
Lincoln, NE 68509

**THE ARCHITECT:**

*(Name, legal status and address)*

Architectural Design Associates  
7501 'O' Street, Suite 105  
Lincoln, NE 68510

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3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

**ADDITIONS AND DELETIONS:**

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503<sup>™</sup>, Guide for Supplementary Conditions.

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15 CLAIMS AND DISPUTES

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### ARTICLE 2 OWNER

#### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

#### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

**§ 2.3 Information and Services Required of the Owner**

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor

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disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

#### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning

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construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

#### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the

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Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

#### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

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### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### ARTICLE 4 ARCHITECT

##### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

##### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

##### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance

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with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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**ARTICLE 5 SUBCONTRACTORS**

**§ 5.1 Definitions**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

##### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

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- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be

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in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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## § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

## § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

## § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract

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Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

#### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or

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utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5)

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documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been

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rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall not commence work under this Contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the Owner nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Owner (or Contractor). Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

##### § 11.1.1.1 WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this Contract the statutory Workers' Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. Where applicable, this policy shall provide USL&H coverage. This policy shall include a waiver of subrogation in favor of the Owner. The amounts of such insurance shall not be less than the limits stated hereinafter .

##### § 11.1.1.2 COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of this Contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operation be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

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The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverages. The policy shall include the Owner, and others as required by the Contract Documents, as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the Owner shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

§ 11.1.1.3 INSURANCE-BUILDER'S RISK

Unless otherwise provided, the Contractor shall purchase and maintain Builder's Risk Insurance for the entire value of the project and work site, from a company or companies lawfully authorized and licensed to do business in the jurisdiction in which the Project is located. This insurance shall be written to cover all risks of direct physical loss, and shall include interests of the Owner, the Contractor, and Sub-contractors in the Work. A loss insured under this insurance shall be adjusted with the Owner and made payable to the Owner as fiduciary for the insured, as their interests may appear.

§ 11.1.1.4 INSURANCE COVERAGE AMOUNTS REQUIRED

§ 11.1.1.4.1 Workers' Compensation and Employer's Liability

Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee

Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.

§ 11.1.1.4.2 Commercial General Liability

General Aggregate	\$2,000,000 per occurrence / \$4,000,000 aggregate
Products/Completed Operations	Aggregate \$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one person
Damage to Rented Premises	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse and Underground Damage)	Included

§ 11.1.1.4.3 Commercial Automobile Liability

Bodily Injury/Property Damage	\$1,000,000 combined single limit (Symbol 1)
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§ 11.1.1.4.4 Umbrella/Excess Liability

Over primary insurance	\$4,000,000 per occurrence
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§ 11.1.1.4.5 Builder's Risk

100% of work completed values.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

#### § 11.1.3 EVIDENCE OF COVERAGE

The Contractor shall furnish the Owner with a certificate of insurance coverage, which shall be submitted in duplicate to the Department of Administrative Services, Risk Management Division, 301 Centennial Mall South, Lincoln, NE 68509. These certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage

afforded. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

§ 11.1.3.1 The following clauses or endorsements must be added to the certificates for the required types of insurance. If the clause or endorsement is placed on the reverse side of such certificate, the signature of the official of the company who signs the certificate should follow it. All certificates must contain the following two clauses or endorsements:

§ 11.1.3.1.1 "The insurance contract referred to herein provides complete coverage within the limits stated for the types of insurance mentioned covering all the insured's operations in connection with the insured's contract on the (Project Name)."

§ 11.1.3.1.12 "Said insurance contract also provides that it cannot be canceled by the insurer in less than thirty days after the insured has been given written notice of such cancellation."

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or

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maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the

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proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

##### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law,

Init.

but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision

Init.

shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending

mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

#### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## **Additions and Deletions Report for** **AIA® Document A201™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:04:55 ET on 06/18/2019.

### **PAGE 1**

DAS/State Building Division - Hastings Regional Center Facility Improvements  
Hastings, Nebraska

...

Nebraska Department of Administrative Services  
1526 K Street, Suite 200  
PO Box 94940  
Lincoln, NE 68509

...

Architectural Design Associates  
7501 'O' Street, Suite 105  
Lincoln, NE 68510

### **PAGE 2**

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents, not commence work under this Contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the Owner nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Owner (or Contractor). Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

§ 11.1.1.1 WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this Contract the statutory Workers' Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. Where applicable, this policy shall provide USL&H coverage. This policy shall include a waiver of subrogation in favor of the Owner. The amounts of such insurance shall not be less than the limits stated hereinafter .

§ 11.1.1.2 COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of this Contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operation be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverages. The policy shall include the Owner, and others as required by the Contract Documents, as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the Owner shall be considered excess and non-contributory.

The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

§ 11.1.1.3 INSURANCE-BUILDER'S RISK

Unless otherwise provided, the Contractor shall purchase and maintain Builder's Risk Insurance for the entire value of the project and work site, from a company or companies lawfully authorized and licensed to do business in the jurisdiction in which the Project is located. This insurance shall be written to cover all risks of direct physical loss, and shall include interests of the Owner, the Contractor, and Sub-contractors in the Work. A loss insured under this insurance shall be adjusted with the Owner and made payable to the Owner as fiduciary for the insured, as their interests may appear.

§ 11.1.1.4 INSURANCE COVERAGE AMOUNTS REQUIRED

§ 11.1.1.4.1 Workers' Compensation and Employer's Liability

Coverage A Statutory

Coverage B

Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee

Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.

§ 11.1.1.4.2 Commercial General Liability

General Aggregate \$2,000,000 per occurrence / \$4,000,000 aggregate

Products/Completed Operations Aggregate \$2,000,000

Personal/Advertising Injury \$1,000,000 any one person

Bodily Injury/Property Damage \$1,000,000 per occurrence

Fire Damage \$50,000 any one fire

Medical Payments \$10,000 any one person

Damage to Rented Premises \$300,000 each occurrence

Contractual Included

XCU Liability (Explosion, Collapse and

Underground Damage) Included

§ 11.1.1.4.3 Commercial Automobile Liability

Bodily Injury/Property Damage \$1,000,000 combined single limit  
(Symbol 1)

§ 11.1.1.4.4 Umbrella/Excess Liability

Over primary insurance \$4,000,000 per occurrence

§ 11.1.1.4.5 Builder's Risk 100% of work completed values.

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§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. **EVIDENCE OF COVERAGE**

**The Contractor shall furnish the Owner with a certificate of insurance coverage, which shall be submitted in duplicate to the Department of Administrative Services, Risk Management Division, 301 Centennial Mall South, Lincoln, NE 68509. These certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage afforded. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.**

**§ 11.1.3.1 The following clauses or endorsements must be added to the certificates for the required types of insurance. If the clause or endorsement is placed on the reverse side of such certificate, the signature of the official of the company who signs the certificate should follow it. All certificates must contain the following two clauses or endorsements:**

**§ 11.1.3.1.1 "The insurance contract referred to herein provides complete coverage within the limits stated for the types of insurance mentioned covering all the insured's operations in connection with the insured's contract on the (Project Name)."**

**§ 11.1.3.1.12 "Said insurance contract also provides that it cannot be canceled by the insurer in less than thirty days after the insured has been given written notice of such cancellation."**

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, John Hathaway, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:04:55 ET on 06/18/2019 under Order No. 5039404812 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*

*Note: In accordance with LB249, Contracts for Services are public records which are generally subject to statutory public disclosure and public website posting requirements. Social security numbers and federal tax identification numbers will be redacted prior to any required disclosure.*



Appendix B  
Construction Proposal and Agreement  
(for Projects from \$15,000-\$705,000)

Business Unit \_\_\_\_\_  
Object Code \_\_\_\_\_

CONTRACT  
**\*\*Project Title\*\***

**1. Definitions**

- (a) **"Approved"**, **"Approval"**, or **"As Selected"** means approval or selected by the Consultant and/or Project Manager.
- (b) **"Architect/Engineer"** is the Architect or Engineer for DAS/State Building Division. He or she may act personally or by and through such assistants as may be duly authorized to act for the Architect or Engineer; however, in this Contract where the term Architect or Engineer is used, it shall be understood as referring to the Architect or Engineer appointed by the Owner and not to an assistant.
- (c) **"Consultant"** is the consulting architect or engineer that the Owner may have employed to perform professional services required for the planning and construction of the Project.
- (d) The **"Contractor"** is named as such in the Contract.
- (e) **"DAS/SBD"** is the Department of Administrative Services, State Building Division of the State of Nebraska, sometimes referred to as Owner or Department.
- (f) **"Plans"** or **"Drawings"** are used synonymously in this Contract.
- (g) **"Project Manager"** is the State's designated representative and Contractor's primary point of contact.
- (h) **"Subcontractor"** includes any person, firm, partnership or corporation having a direct contract with Contractor to supply labor, materials or both for Work of the Contractor, but does not include those who merely furnish materials not fabricated to a special design according to the Plans and specifications of this Work.
- (i) **"Surety"** includes any person, firm, partnership or corporation that has executed, as Surety, the Contractor's performance bond securing the performance of the Contract.
- (j) **"Work"** or **"Work of the Contractor"** includes labor or materials or both, equipment, transportation, and other facilities necessary to complete the Contract.

**CONTRACT PERFORMANCE**

**2. Work of this Contract**

Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**3. Location**

The Work shall be undertaken at:  
Legal description / Address / other necessary detail to identify the location

**4. DAS/SBD Project Manager**

DAS/SBD shall assign a Project Manager to manage this project who shall have the authority to represent the State. The Project Manager will be the primary point of contact for the Consultant, Contractor, and/or Superintendent.

**5. Consultant Services**

**\*\*Optional\*\* Consultant Services for DAS/SBD will be provided by (Name of consulting firm(s) or SBD representative)**

The Consultant has prepared the plans and specifications and shall make written interpretations of them. Consultant shall approve all samples of material which are specified to be submitted for approval, approve the use of any equipment offered in lieu of that mentioned in the specifications and shall check and approve all shop drawings and details. Consultant shall make periodic inspections of the project work and shall decide the quality of the work and material incorporated therein. Consultant shall decide all questions which may arise as to the fulfillment of the Contract by the Contractor. Decisions by

the Consultant with regard to plans and specifications, work and materials, and contract questions, shall be made after consultation with the Owner.

**6. Contractor's Superintendent**      **\*\*Optional - other option is to use the POC in Notice clause\*\***  
**During the course of the work on the site, the Contractor shall employ a competent superintendent and any necessary assistants, all satisfactory to the Consultant. The Superintendent shall not be changed except with the consent of the Consultant, unless the Superintendent proves to be unsatisfactory to the Contractor and ceased to be in his employ. The Superintendent shall represent the Contractor in his absence and all directions given by him shall be as binding as if given by the Contractor. Important decisions shall be confirmed in writing to the Contractor. Other directions shall be confirmed in writing upon written request.**

**7. Notice.**

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or ten (10) calendar days following deposit in the mail.

John Doe  
Vice President  
Name of Company  
1234 A Street  
Lincoln, Nebraska 68508

Jane Smith  
Contract Manager  
DAS/SBD  
1526 K Street  
Lincoln, Nebraska 88508

Either party may change its representative or address for notification purposes by giving advanced written notice of the change, and setting forth the new representative or address and an effective date.

**8. Contract Documents**

The Contract may consist of some or all of the following documents: 1) the Request for Proposal; 2) the Contractor's Proposal but only to the extent it does not conflict with the State's documents; 3) Contract; 4) Plans; 5) Drawings; 6) Specifications; 7) Amendments; 8) Addenda; 9) Change Orders ; 10) Bid, Payment and Performance Bonds; and, 11) Certificate of Insurance. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. In the event of conflicts the documents shall control in the following order of precedence:

- (1) Contract with latest, Addenda, Amendments, or Change Orders
- (2) Request for Proposal with latest Amendments
- (3) Plans, Drawings, and Specifications
- (4) Contractor's Proposal

**9. Shop Drawings**

All work on which shop drawings are required must be in strict accordance with such drawings. No work for which shop drawings are required will be started until after the shop drawings are approved. Each shop drawing shall be submitted to the Consultant in the quantity specified by the Consultant. Three sets of all approved submittals shall be supplied to the Owner.

All shop drawings must be checked and completed in every respect, numbered consecutively, have the name of the project printed thereon, and each lot must be submitted accompanied by a letter of transmission referring to the number of drawings and the name of project for identification and especially drawing the Consultant's attention to any modification of plans and specifications that may have been made.

The Contractor shall make any corrections required by the Consultant and resubmit corrected sets to the Consultant for approval in the same quantity as the initial submittal.

## **10. Plans and Specifications – Correlation**

The work shall be executed in strict conformity with the plans, drawings, and specifications. Plans, drawings, and specifications are cooperative and supplementary. Portions of the work which can best be illustrated by the plans and drawings may not be included in the specifications. Portions of the work best described by the specifications may not be depicted on the plans or drawings. All items necessary to construct or erect a complete improvement, project, building or structure shall be furnished whether called for in the specifications or shown on the plans and drawings. Special conditions shall take priority over General Conditions. Detailed Specifications shall take priority over General Specifications and large scale drawings shall take priority over small scale drawings. In case of disagreement between the plans, drawings and specifications, or within any document itself, the better quality or quantity of work shall be estimated and the matter drawn to the attention of the Consultant for decision.

The State shall provide Contract a written Notice to Proceed with construction.

## **11. Construction Schedule**

The Contractor shall submit a detailed complete construction project schedule to the Consultant for review and approval within two (2) weeks of receipt of the signed Contract. The schedule shall include proposed construction start and completion dates, as well as all major construction project milestones. Schedule shall include all project work including Subcontractor work.

## **12. Preconstruction Conference**

A preconstruction conference shall be scheduled before starting construction, no later than two weeks after the date of receipt of the signed Contract. It shall be held at the project site, or other convenient location. The meeting shall review responsibilities and personnel assignments of the Owner, Contractor, and the Consultant.

Authorized representatives of the Owner, Contractor, and the Consultant shall attend the preconstruction conference, as will the Contractor's superintendent, major subcontractors, manufacturers, suppliers, and other parties integral to the completion of the Work. All participants shall be familiar with the project and authorized to make decisions for the entities they represent.

The preconstruction conference will include discussion of items necessary for project progress and successful completion, such as: construction scheduling; critical work sequencing; designation of responsible personnel; procedures for processing field decisions and change orders; procedures for processing Applications for Payment; distribution of Contract Documents; submission of Shop Drawings and product data a samples; preparation of record documents; use of the premises; parking availability; office, work, and storage areas; equipment deliveries and priorities; safety and first aid procedures; security; housekeeping; working hours; and other matters deemed important by the Owner.

## **13. Prosecution of the Work and Completion Date**

The Work to be performed by the Contractor under this Agreement shall officially commence with the date of this Agreement evidenced in the "Affidavit and Execution of Contract" section of this contract. The Contract Time shall be measured from this date of commencement, and the work shall be carried on regularly and uninterrupted thereafter, with such personnel and by such means as will insure final completion of the entire Contract on or before the completion date set in the documents. The time of beginning, rate of progress, and time of completion are essential conditions of the Contract.

The Contractor expressly agrees that in undertaking to complete the work within the Contract period fixed in the Contract, they have taken into consideration and made allowances for all delays and hindrances incidental to such work, whether growing out of delays in securing materials or workmen, or otherwise.

Should the Contractor be delayed in the prosecution and completion of the work by a cause beyond his control, Contractor shall have no claim or right of action for damages from the Owner for any such cause or delay unless the cause or delay is the result of active interference by the Owner. The Contractor may be granted an extension of time specified for completion of the work as the Owner may

award in writing on account of such delay; provided however, that claim for extension of time is made by the Contractor to the Owner, through the Consultant, in writing, within two weeks from the time when such alleged cause for delay occurred. The Owner reserves the right to withhold granting of any time extensions until the stipulated Contract period is about to expire.

An extension of the Contract period may be granted by the Owner for any of the following reasons:

- (a) Additional work resulting from modification of the plan for the project.
- (b) Delays caused by the Owner.
- (c) Other reasons beyond the control of the Contractor which in the Owners' judgement would justify such extension.

If adverse weather conditions or other natural phenomenon are the basis for a Claim for additional time, such Claim shall be documented by the Contractor using data substantiating that weather conditions were abnormal for the period of time, based upon National Weather Service records, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

No extension of the Contract period will be allowed for variation between contract quantities and actual quantities which cannot be predetermined and which amount to less than twenty-five percent (25%) of the contract quantities.

#### **14. Waiver of Breach**

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

#### **15. Progress Meetings**

After start of on-site construction work, progress meetings shall be scheduled at dates and times agreeable to the Contractor, Consultants, and representatives of the facility. Meetings may be held for purposes of discussion of issues including but not limited to construction progress, resolving construction problems, schedule, security, and changes.

### **MATERIALS**

#### **16. Materials – Tests and Standards**

Samples of materials selected by the Consultant to be tested must be furnished by the Contractor. Tests will be made at no cost to the Contractor. Where not otherwise specified, all materials shall meet the A.S.T.M. Standard or tentative specifications for that material. The Contractor, when requested, shall furnish a sample of all material which shall be kept on the job as basis for comparison of material incorporated in the Work.

#### **17. Substitute Material Specifications**

If the Contractor desires to substitute any material for that specified in these project documents, the Contractor shall submit specifications for such substitute material to Consultant for approval before bid opening. Such submittals shall be made in time to be received by Consultant a minimum of seven (7)

working days before the bids due date to allow for examination and notification of action to prospective bidders.

### **18. Obsolete Equipment**

It is important that the DAS/SBD be protected as much as possible against the discontinuance of the model of equipment to be purchased, and that repair parts, and services of expert factory representatives, be made available if desired. Contractor shall not utilize equipment, materials, or systems that are not currently in production, for which parts cannot be obtained, or that are no longer supported by the manufacturer.

## **CONTRACTOR'S OBLIGATIONS**

### **19. Permits, Inspections, and Fees**

The Contractor shall be responsible for acquisition of and payment for all permits required by Authorities having jurisdiction over this project site. The Contractor shall also be responsible for scheduling and attendance of all Inspections required upon completion of the work and shall pay all fees associated with such inspections.

### **20. Bonds.**

Contractor must submit performance and payment (labor and materials) bonds for any contract with a total cost greater than \$15,000. Each bond shall be issued by a corporate surety in an amount not less than the contract price. The State of Nebraska must receive, approve, and secure the bonds prior to entering into the contract. Failure to provide the bonds within **\*\*10\*\*** days of the **\*\*notice of award\*\*** of the contract is grounds to withdraw the award and award the contract to another bidder.

### **21. Contractor's Insurance   **\*\*The agency should consider the risk to the State and determine which coverage and what limits are necessary\*\*****

The Contractor shall maintain insurance as specified herein throughout the term of the contract and shall provide the State the most current Certificate of Insurance/Accord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place and the State has reviewed and approved the COI. If Contractor subcontracts any portion of the Contract, the Contractor must, throughout the term of the contract, either:

- (a) Provide equivalent insurance for each subcontractor and provide a COI verifying coverage of the subcontractor;
- (b) Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
- (c) Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance coverage. Approval of the insurance by the State shall not limit, relieve, or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the full amount of the limits of the insurance coverages or bonds required herein.

#### **a. Workers' Compensation** (Statutory)

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the

statutory requirements for the state in which the work is to be performed, including Occupational Disease. **This policy shall include a waiver of subrogation in favor of the State.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

**b. Commercial General Liability Insurance and Commercial Automobile Liability Insurance**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, ~~agency to determine any additional insureds besides the State~~ as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

**c. Builder's Risk Insurance** **\*\*Consider the risk and the size of the project\*\***

The Contractor shall purchase and maintain Builder's Risk Insurance for the entire value of the project and work site, from a company or companies lawful authorized and licensed to do business in the State of Nebraska. This insurance shall be written on an "all-risk" policy form and shall include interests of the Owner, the Contractor, and Sub-contractors in the Work, and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief. A loss insured under Contractor's property insurance shall be adjusted with the Owner and made payable to the Owner as fiduciary for the insured, as their interests may appear.

**\*\*Delete this section if no additional coverage is needed** Agencies should add any other coverage unique to the type of services here. Such coverage might include Professional Liability, Medical Malpractice, Builder's Risk, etc. Delete any coverage that is not needed. If medical malpractice is required, it is recommended that agencies state that, "medical providers shall, at the time of award, be qualified and shall, for the duration of the contract, remain qualified under the Nebraska Hospital-Medical Liability Act. By submitting a proposal, bidders certify that they are so qualified." Such qualification will be confirmed with the Nebraska Department of Insurance. Any disqualification from the fund may result in disqualification of the bidder or immediate termination of an awarded contract.)\*\*

**c. Required Insurance Coverage** **\*\*COVERAGES AND THE AMOUNT OF COVERAGE SHOULD BE ADJUSTED BASED ON NATURE OF THE CONTRACT / SERVICE / COMMODITY / RISK (see risk assessment matrix - See Risk Management's Insurance Manual)\*\***

<b>BUILDERS RISK</b>	
All Risk Insurance – Cost of the Job including Soft Costs	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one person
Damage to Rented Premises	\$300,000 each occurrence

Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
Abuse & Molestation	Included
<b><i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i></b>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000
<b>COMMERCIAL CRIME</b>	
Crime/Employee Dishonesty Including 3rd Party Fidelity	**\$1,000,000 [Optional]**
<b>CONTRACTOR'S POLLUTION LIABILITY</b>	
Each Occurrence/Aggregate Limit	**\$2,000,000 [Optional]**
Includes Non-Owned Disposal Sites	
<b>SUBROGATION WAIVER</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>LIABILITY WAIVER</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall be primary and any insurance or self-insurance carried by the State shall be considered excess and non-contributory." "State of Nebraska is an additional insured."	

If the subrogation waiver or liability waiver on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

d. Evidence of Coverage

The Contractor should furnish the State, with their proposal, a certificate of insurance coverage complying with the above requirements to the attention of the Contract Manager.

State Buildings Division  
1526 K Street, Suite 200  
Lincoln, NE 68508

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

e. Deviations

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contract.

If the Contractor has claims-made coverage the Contract must provide an extended claims reporting period so that the State can file claims for \*\*XX\*\* years after the termination of the insurance policy or the Contract, whichever is later.

## **22. Protection of Persons and Property**

The Contractor shall take all reasonable and proper precautions to protect persons and property from injury or damage resulting from his or her operation under this Contract. The requirements of the Nebraska Safety Codes adopted by the Nebraska State Department of Labor shall be applicable.

The Contractor shall protect all existing buildings, roadways, landscaping, and utilities against damage or interruption of services. It shall be the responsibility of the Contractor to correct health or safety hazards and repair property damage that results from their work. Such corrections shall be performed to restore conditions to at least the quality that existed at the time of commencement of this Work.

## **23. Indemnity**

### a. General

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

### b. Patented Products

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information (collectively called Patented Products) of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Patented Product without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any Patented Product for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the Patented Product or Products which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this RFP.

### c. Personnel

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

### d. Self-insurance

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the

provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

e. All Remedies at Law

\*\* (ONLY if contract involves two (2) political entities that cannot indemnify each other) \*\* Nothing in this agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third parties for property loss or damage or death or personal injury arising out of and during the performance of this lease. Any liabilities or claims for property loss or damages or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons shall be determined according to applicable law.

f. Attorney General's Authority

The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

**24. Labor**

All labor shall be performed in best and most workmanlike manner by individuals skilled in their respective trades. The standards of the work required throughout shall be of such quality as will produce only first class results.

Individuals whose work is unsatisfactory to the Consultant or Project Manager, or are considered to be unskilled or otherwise objectionable, shall be instantly dismissed from the work upon notice to the Contractor from the Consultant or Project Manager.

Contractors and subcontractors employed upon the work shall be required to conform to the labor laws of the State of Nebraska, and the various acts amendatory and supplementary thereto; and to all other laws, ordinances, and legal requirements applicable thereto.

**25. Worker Verification**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the proposal.

If the Contractor indicates on such attestation form that Contractor is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

## **26. Other Contracts and Contractors**

DAS/SBD may award contracts for additional work and the Contractor shall fully cooperate with such other contractors and carefully fit their own work to that provided under the other contracts as may be directed by the Consultant. If the Contractor commits or permits any act which interferes with the performance of work by any other contractor, this shall be grounds for termination of the contract.

## **27. Drug Free Workplace**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy upon request by the State.

## **28. Defective Work or Material**

Work or material not in accordance with the Plans and Specifications, or in any way defective shall be removed at once on order of the Consultant. The Contractor shall replace or rebuild at Contractor's own expense with satisfactory material and in a workmanlike manner any work so removed and shall reimburse DAS/SBD or any expense that it is put to by reason of extra work, and shall reimburse any other contractor who may incur expense caused by removal of the defective work.

## **29. Hazard Material**

The Contractor shall abide by all applicable laws, regulations, and rules concerning hazardous material. Contractor shall:

1. Provide for the proper storage, handling, and use of hazardous material;
2. Provide reasonable protection from injury or death to persons and damage to property due to hazardous material;
3. Halt work and provide notice to the Owner, Architect, sub-contractors, workers, and proper authorities upon discovery of the presence of hazardous waste or what appears to be hazardous material;
4. Pay the cost of laboratory testing of potential hazardous wastes for which Contractor or their sub-contractors are responsible for;
5. Contain, remediate, and remove hazardous material;
6. Responsible for any costs, fines, penalties, and judgements resulting from Contractor's or their sub-contractors storage, handling and use of hazardous material,
7. Indemnify the State in accordance with clause **\*\*XX\*\*** with regard to hazardous material.

Contractor shall not be responsible for hazardous material introduced by the State, that was already present through no fault of the Contractor or their sub-contractors, or for contamination caused by the State.

## **30. Use of Job Site**

The Contractor shall confine his or her equipment, apparatus, the storage of materials, and operations of his or her workers to limits indicated by law, ordinance, permits, or directions of DAS/SBD and shall not unnecessarily encumber the premises with his materials. Contractor and subcontractor shall abide by all site rules and regulations. DAS/SBD shall provide a written copy of the site rules and regulations.

The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce the Consultant's instructions regarding signs, advertisement, fires, and smoke.

The Contractor shall clean up daily and remove from the project rubbish and debris resulting from his work, and shall at completion of the Work remove all construction materials and equipment, leaving the project and site clean.

### **31. Sanitary Facilities**

Arrangements shall be made by the Contractor for provision of a sanitary facilities for use by the workmen. Approval by Owner of arrangements shall be required.

### **32. Utilities**

Water and electrical service is available for the Contractor's use at no extra cost the Contractor. The Contractor shall furnish his own connecting lines, pipes, hoses, etc.

### **33. Survey Stakes and Levels**

The Contractor, unless otherwise specified, will stake out the project work and shall furnish and maintain the batter boards, level, etc. The Contractor must carefully preserve bench marks and reference points established by the Consultant; in case of their destruction, the Contractor will replace them and be responsible for any mistakes that may be caused by their loss or disturbance.

### **34. Guarantee of Work**

Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one year from the date of final completion of the Contract.

If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, as a result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the Contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner:

- (1) Place in satisfactory condition all of such guaranteed work, correct all defects therein;
- (2) Make good all damages to the building or project work, or equipment or contents thereof, which, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and,
- (3) Make good any work or materials, or the equipment and contents of said building or project work disturbed in fulfilling any such guarantee.

In any case where fulfilling the requirements of the Contract, and guarantees, the Contractor disturbs any work guaranteed under another contract, Contractor shall restore such disturbed work to a condition satisfactory to the State and guarantee such restored work to the same extent as it was guaranteed under such other contract.

If the Contractor, after notice, fails to comply with the terms of the guarantee in the time or by the date stated in the notice, the Owner may have defects corrected and the Contractor and his Surety shall be liable for all expenses incurred.

All special guarantees applicable to definite parts of the work that may be required by the Contract Documents shall be subject to the terms of this paragraph.

## **SUBCONTRACTS AND SUBCONTRACTORS**

### **35. Subcontracting**

The Contractor shall be fully responsible to the State for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by the subcontractors. The Contractor shall be responsible for assigning, coordinating, and achieving completion of all subcontracted work to satisfy all requirements of the Contract Documents. All subcontracted work shall be subject to all requirements of the Contract Documents except those legal contractual duties for which only the Contractor has exclusive responsibility. All subcontracts shall include a clause that incorporates this contract in any subcontract applicable to this project. Nothing contained in the Contract shall create any Contractual relation between any subcontractor and the State. The attention of the Contractor and

subcontractors are called to the Contract Documents which are part of this Contract. The Contractor must notify Project Manager of each subcontract Contractor intends to award, providing:

- (a) Name and address of subcontractor
- (b) Branch of work concerned
- (c) Total price of subcontract

No part of this Contract shall be sublet without prior approval of the Project Manager.

### **DAS/SBD RIGHTS**

#### **36. Inspection**

DAS/SBD, through its authorized representatives and agents, shall be permitted to inspect all work, materials and equipment regardless of location, sites, payrolls, personnel records, invoices of materials, data and records.

The Consultant and the State shall, at all times, have access to the work and the premises used by the Contractor and to all places of manufacture where materials are being made for use under this Contract, and shall have full facilities for determining that such materials are being made strictly in accordance with the plans and specifications.

#### **37. Owner's Right to Stop Work**

Owner may a written order to stop work if the Contractor fails to correct work or repeatedly fails to carry out Work in accordance with the Contract. Work shall not resume until the work is corrected or Contract gives written assurance that Contract will complete work in accordance with the Contract. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The State shall not be obligated to extend the time for performance due to stoppages caused by the Contractor.

#### **38. Owner's Right to Complete Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

#### **39. Termination for Breach**

In event that any of the provisions of this Contract are violated by the Contractor or any of the subcontractors, the State may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor such violation shall cease or satisfactory arrangements for correction be made, the Contract shall, upon the expiration of said ten (10) days cease and terminate. In the event of any such termination, DAS/SBD shall immediately serve notice thereof upon the Surety and the Contractor. The Owner may take over the work and prosecute the same to completion of Contract for the account and at the expense of the Contractor. The Contractor and the Surety shall be liable to DAS/SBD for any excess cost occasioned DAS/SBD thereby and in such event DAS/SBD may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore. Neither the Owner nor their employee shall be in any way liable to the Contractor or the surety for the method by which the completion of the work, or any portion thereof, may be accomplished or for the price paid therefore.

#### **40. Termination for Convenience.**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner may take over the work and prosecute the same to completion at the Owner's discretion. Owner may take possession of and utilize such materials, appliances, and plant as may be on the site of the work and necessary for completion of the work.

#### **41. Loss of Appropriation**

The State's obligation to pay amounts due on the Contract for the current or fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, or withdrawn, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice of the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

#### **42. Contract Close-out Upon Termination**

Upon receipt of written notice of termination from the Owner, Contractor shall:

- (a) Cease operations as directed by Owner in the notice; and,
- (b) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of termination the Contractor shall be entitled to receive payment for Work executed, and reasonable costs incurred as a direct result of such termination. However, in no case shall Contractor receive payment for any Work not executed, and Contractor shall not receive payment for overhead and profit on the Work not executed.

### **ASSIGNMENT**

#### **43. Assignment of Contract**

The Contractor shall not assign this Contract or any part hereof without the written consent of DAS/SBD, and a binding agreement by the assignee to be bound by the Contract as agreed to by the Parties. Such consent shall not unreasonably be withheld. No assignment of this Contract shall be valid unless it contains a provision that the funds to be paid to the Assignee under the Assignment are subject to a prior lien in favor of all persons, businesses, or corporations having rendered services or supplied materials in the performance of this.

#### **44. Successors and Assignees**

This Contract shall inure to the benefit of and be binding upon the Parties and their respective successors and assignees,

### **COMPLETION OF WORK**

#### **45. Partial Completion and Occupancy**

The Owner and Contractor may agree upon partial completion of the work, and Owner may take early possession and occupy that portion of the work that is partially completed. The owner shall direct the completion of a punch list and a final inspection of the area that the Owner will occupy based on the partial completion. The Owner shall have responsibility for the portion of the work occupied by the Owner, and the Contractor shall be relieved of responsibility, except for the negligence of the Contractor and the Contractor's subcontractors. Contractor's guarantee under clause 34 shall include the portion of the work occupied early by the Owner. Time of the Guarantee shall begin upon written notice of substantial completion of the entire project or upon partial completion and occupancy of partially completed portion of the project by the Owner.

#### **46. Substantial Completion**

Substantial Completion of the entire Work by the Contractor shall be made not later than **\*\*XX\*\*** calendar days from the date of commencement, subject to approved changes in the Contract Time as provided in the Contract Documents.

#### **47. Final Inspection**

When the work has been substantially completed, the Contractor shall notify the Consultant, in writing, that the work is ready for final inspection and testing on a definite date and time as stated in such notice. The notice shall be given at least ten (10) days in advance of said date.

After the final inspection has been completed, the Consultant shall present to the Contractor and DAS/SBD a report ("punch list") listing all deficiencies found in the inspection of the Contractor's work which are to be corrected. The Contractor shall immediately make the required corrections to remove the deficiencies reported by the Consultant. When the deficiencies have been removed, the Contractor shall request in writing a re-inspection of the work by the Consultant.

#### **48. Clean Up**

On or before the completion of the work, the Contractor shall clean all parts of the Work under the Contract. Contractor shall remove all rubbish and all his materials, tools, and equipment from the construction site, leaving the site in a condition as good as or better than existed at commencement of the Work.

### **PAYMENT**

#### **49. Contractor's Payments for Labor and Materials**

The Contractor shall pay for all labor and materials used or furnished in the performance of this Contract. Before final payment, the Contractor must certify that all bills for labor and materials have been paid. In event Contractor is requested and fails to furnish satisfactory evidence, DAS/SBD may withhold any payments until it is satisfied that all such claims have been paid.

#### **50. Taxes**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor. The State can provide the Contract with a tax exemption certificate when appropriate.

#### **51. Contract Sum**

The Owner shall pay the Contractor for the performance of the Work, subject to approved additions and deductions as provided in the Contract Documents, the Contract Sum of:

Words (\$##) **\*\*If alternate bids are involved delete this single price line and use the following\*\***

Base bid amount: Words (\$##)

Alternate Bid #1: Words (\$##) **\*\*Repeat for each Alternate Bid\*\***

Total Contract Sum: Words (\$##)

Unit prices are as follows: Words (\$##). **\*\*If applicable\*\***

#### **52. Construction Reports - Payment Estimates**

The Contractor shall submit to the Owner a schedule of values and quantities of materials and of other related items. The schedule(s) shall be in a form that correlates to the estimates upon which they are based, or as the Owner may require.

The Contractor shall submit to the Owner the following records on forms to be supplied by the Contractor (Notice - AIA Document forms shall be the latest edition):

- (a) AIA Document G702, Application and Certification for Payment
- (b) AIA Document G703, Continuation Sheet (Schedule of Values)

### **53. Payment**

So long as the work herein contracted for is carried out in accordance with the provisions of the Contract, the Contractor may, on or before the 25th day of each month, make an appropriate estimate of the value of the work performed during the month and the materials suitably stored on the work site, and shall prepare an **"Application And Certification For Payment and the Continuation Sheet"** and submit them to the Consultant. After such application and certification for payment is approved by the Consultant, DAS/SBD will pay to the Contractor in State warrants and in accordance with the payment provisions in the contract, ninety percent (90%) of the amount thereof. DAS/SBD may at any time reserve and retain payment. However, prior to final payment, the total paid to the Contractor shall not exceed ninety percent (90%) of the estimated value of the work performed and materials stored at the site.

Payments and late payments shall be made in accordance with the Nebraska Prompt Payment Act, Neb. Rev. Stat. §§ 81-2401 et seq.

Upon receipt of payment from the State, the Contractor shall pay all employees, subcontractors, material and equipment providers, and any other persons or entities to whom Contractor is indebted for the charges invoiced to and paid for by the State.

### **54. Extra, Additional, or Omitted Work – Payment For**

DAS/SBD shall have the right, at any time and without notice to the Sureties, to alter and modify the Plans and Specifications, making specific changes in the construction, details, or execution of the work. All changes in plans and specifications will be approved by DAS/SBD in writing.

The Contractor shall make such alterations as may be ordered by DAS/SBD and in case these changes increase or decrease the amount of work to be done under this Contract, equitable amounts in price and time will be added to or deducted from the Contract price and Contract time. The cost for any such work shall be determined by agreement between the Owner and the Contractor before the extra work is commenced, either on the basis of unit price, lump sum price, or a not to exceed amount. Contractor shall not submit the cost for extra work as on a cost plus basis. The amount of such cost increase or decrease shall be agreed upon between the Owner and the Contractor **BEFORE** the changes are made.

When directed in writing by the Consultant and with approval of DAS/SBD, the Contractor shall furnish all material and labor not otherwise provided for by the terms of this Contract, but which may be connected with or necessary to the proper completion of the Work. Such material and labor shall be furnished and completed as part of this Contract and subject to the Contracts provisions.

No claims for payment for extra work will be allowed unless accompanied by a written change order from the Consultant approved by DAS/SBD authorizing such extra work and specifying the cost.

### **55. Owner's Right to Withhold Payment and Make Application Thereof**

In addition to the payment to be retained by DAS/SBD under the preceding provisions of these Contract, DAS/SBD may withhold a sufficient amount of any payment otherwise due to the Contractor to cover:

- (a) payments that may be earned or due for just claims for labor or materials furnished in and about the performance of the work on the project under this Contract;
- (b) for defective work not remedied, and for damage to existing conditions or new work not remedied; and,

(c) for failure of the Contractor to make proper payments to his subcontractor.

DAS/SBD shall disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment. DAS/SBD will render to the Contractor a proper accounting of all such funds disbursed on behalf of the Contractor.

#### **56. Final Payment**

As soon as practical after completion and acceptance of the Work, the Contractor and Consultant shall prepare a final payment statement showing the final payment due. After approval by the Contractor and DAS/SBD, the final payment shall be processed in accordance with the payment provisions in the contract.

### **MISCELLANEOUS**

#### **57. Law**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska pursuant to state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations, as amended, including, but not limited to:

Nebraska Consultants' Competitive Negotiations Act, Neb. Rev. Stat. §§ 81-1716 - 81-1719  
Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 et seq.  
Title VI of the Civil Rights Act of 1964  
Federal Rehabilitation Act of 1973, as amended  
Americans With Disabilities Act of 1990, as amended  
Section 5043 of the Rehabilitation Act of 1973, as amended  
Age Discrimination Act of 1975, as amended  
Fair Labor Standards Act

#### **58. Dispute Resolution**

Disputes shall be submitted in writing to the DAS/SBD Administrator for resolution. Appeal of the SBD Administrator's decisions may be appealed in writing to the Director of Administrative Service or their designee for review.

Contractor shall continue contract performance during the dispute resolution process unless continued performance depends upon the resolution of the dispute.

Contractor may submit monetary claims to the State Claims Board in accordance with statute.

### **PROPOSAL REQUIREMENTS**

#### **59. Ownership of Proposal Content/Indemnification**

Bidder represents and warrants that the content of this response to Request for Proposal and all figures, illustrations, photographs, charts, and other supplementary material herein are original and do not libel anyone or infringe upon any patent, copyright, proprietary right, or any other right whatsoever of any other party. Bidder represents and warrants that he or she has full power and authority to execute this Copyright Release and to grant the State of Nebraska and/or its agencies the right granted herein.

Bidder agrees to indemnify, defend, and hold harmless the State of Nebraska and/or its agencies against any and all claims, suits, and/or judgments, including costs, expenses, damages, and reasonable legal fees based upon and arising from Bidder's violation of the rights of others and/or by reason of a breach of any of the foregoing warranties.

**60. Posting Contract/Copyright Waiver**

Bidder hereby grants permission to the State of Nebraska and/or its Agencies to reprint or republish any and all copyrighted documents related to this response to Request for Proposal and any and all figures, illustrations, photographs, charts, and other supplementary material online pursuant to Neb. Rev. Stat. §84-602. This waiver does not apply any and all proprietary information properly submitted in a separate sealed package that is clearly marked "Proprietary."

**61. Nebraska Transparency in Government Procurement Act**

Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

**AFFIDAVIT AND CONTRACT EXECUTION**

This Agreement is entered into as of the date shown below and executed in three (3) originals for the Owner, the Contractor, and the Consultant.

**Nebraska Contractor Affidavit:**

Contractor hereby attests that bidder is a Nebraska contractor. "Nebraska contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this RFP.

**Contractor Name**

\_\_\_\_\_  
Name/Title

Dated: \_\_\_\_\_

**DAS/SBD**

\_\_\_\_\_  
Amber Brannigan, Administrator

Dated: \_\_\_\_\_

**Note: In accordance with LB249, Contracts for Services are public records which are generally subject to statutory public disclosure and public website posting requirements. Social security numbers and federal tax identification numbers will be redacted prior to any required disclosure.**

Appendix C  
STATE OF NEBRASKA AGENCY



**Construction Proposal and Agreement**

Business Unit \_\_\_\_\_

(for Projects under \$15,000)

Object Code \_\_\_\_\_

Submitted to: Administrative Services – State Building Division “AS/SBD”		Submitted by:	
Street 1526 K Street                      PO Box 98940 Suite 200		Street	
City, State and Zip Lincoln, NE 68508-2707                      Lincoln, NE 68509-8940		City, State and Zip	
Contact:		Contact:	
Phone	Email	Phone	Email
Project Name		Project Location	
Consultant		Date of Plans	Date of Quote
We hereby submit a quotation for the above described project as follows:			
We propose to furnish material and labor, complete in accordance with the above plans and/or specifications, for the sum of : <span style="float: right;">Dollars \$</span>			
<input type="checkbox"/> <b>NEBRASKA CONTRACTOR AFFIDAVIT:</b> Bidder hereby attests that bidder is a Nebraska contractor. “Nebraska contractor” shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six months immediately preceding the posting date of this RFP.			
<b>Payment Terms:</b> Payment will be made by the AS/SBD in conjunction with the State of Nebraska Prompt Payment Act Neb. Rev. Stat. §81-2401 through 2408. The State may request payment be made electronically instead of by State warrant.			
<b>General Conditions:</b> This agreement shall be governed by the terms and conditions contained in the AS/SBD General Conditions of the Contract for Small Projects, included with this Construction Agreement Proposal as pages (2 of 2).		Authorized Signature _____ <p align="center"><b>Contractor</b></p> Note: This proposal may be withdrawn if not accepted within 45 days of Date of Quote, above.	
<b>Acceptance of Proposal:</b> The above prices, specifications and conditions are satisfactory and are accepted. The Contractor is authorized to do the work as specified.		Authorized Signature _____ <p align="center"><b>Funding Agency (Authorized Signature)</b></p> Date of Acceptance	

**Administrative Services State Building Division**  
**General Conditions of the Contract for Projects under \$15,000**

- 1. The attached bid is accepted by the State of Nebraska, Department of Administrative Services/State Building Division (DAS/SBD) for the fixed price indicated.**
  - 2. Plans, Specifications, and Drawings:** Plans, specifications and drawings are cooperative and supplementary. All labor, material, and work necessary to complete the work shall be furnished by Contractor. In case of disagreement between documents DAS/SBD shall resolve the disagreement.
  - 3. Construction Schedule:** Work should begin within 15 days of the date of the written notice to proceed and be completed in [REDACTED] calendar days. Extensions of time will be addressed as a Change Order.
  - 4. Change Orders:** Either Party may request an in-scope change order. Contractor shall provide a cost estimate for the change order (+/-). The State reserves the right to deny any change order. No Change Order shall be executed until approved in writing by DAS/SBD.
  - 5. Materials:** DAS/SBD must approve all substitute material. Contractor must have DAS/SBD's written approval to utilize used or obsolete equipment or material. DAS/SBD may request to test materials, which tests shall be at no cost to DAS/SBD.
  - 6. Permits, Inspections, and Fees:** Shall be the responsibility of the Contractor.
  - 7. Contractor's Insurance:** The Contractor shall maintain insurance as specified herein throughout the term of the contract and shall provide the State the most current Certificate of Insurance/Accord Form (COI) verifying the coverage prior to commencing work:
    - Builders Risk: Equal to cost of project (including Soft Costs)
    - General Commercial Liability: \$1 Million per occurrence / \$2 Million aggregate
    - Auto Liability: \$1 Million combined single limit
    - Workers' Compensation: Statutory limits - Employer Liability \$500K/\$500K/\$500K
    - Umbrella: \$1 Million to \$5 Million
- State must be endorsed under GCL and Auto as an additional insured with the State's self-insurance and insurance being excess and non-contributory, and there must be a subrogation waiver endorsement in favor of the State of Nebraska for Workers Compensation.
- 8. Indemnity:** Contractor agrees to defend, indemnify, and hold harmless the State and its employees against all third party claims, liability, judgments, costs, and expenses for personal injury, death, or property loss or damage resulting from the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors and agents, arising out of this contract,
  - 9. Applicable Law, Regulations, and Policies:** The Parties must comply with all applicable federal, state and local laws, regulations, and policies. The contract and contract performance shall be controlled by the laws of the State of Nebraska. Any action arising out of this contract must be brought in the State of Nebraska pursuant to laws regulating claims against the state.
  - 10. Sovereign Immunity:** Contractor acknowledges that the State of Nebraska is a sovereign state and its authority to contract is therefore subject to the State's Constitution, statutes, common law, and regulation. Nothing in this contract shall waive any rights of the State as a sovereign entity.
  - 11. Defective Work or Material:** Defective work or material shall be removed and replaced or repaired at no additional cost.
  - 12. Miscellaneous:** Contractor and contractor's employees, and agents shall abide by all site rules, regulations, and security measures, maintain the site in a clean and orderly manner, shall not interfere with other individuals working at the site, and the Contractor shall coordinate with DAS/SBD regarding the use of State utilities, facilities, and equipment.
  - 13. Guarantee of Work:** Contractor guarantees the work against defects resulting from the use of inferior materials, equipment or workmanship for one year from the date of final completion of the Contract. Contractor shall make necessary repairs or replacements at no additional cost. Manufacturer warranties shall apply where applicable.
  - 14. DAS/SBD's Rights:** DAS/SBD reserves, at no additional cost, the right to: 1) inspect all work, material, equipment and project records; 2) stop work if the Contractor fails to correct work or repeatedly fails to carry out work as required; 3) complete work if Contractor defaults or breaches the contract; 4) terminate the contract for breach, convenience, or loss of appropriation after written notice and a ten (10) day cure period (except for loss of appropriation); 5) Serve notice of termination on Contractor and Surety; and, 6) charge Contractor for any additional costs of completing the work upon breach or termination.
  - 15. Final Inspection:** DAS/SBD reserves the right to do a final inspection and complete a "punch list" of all deficiencies, which shall be corrected prior to final payment. DAS/SBD may then do another Final Inspection.
  - 16. Taxes:** The State is not required to pay taxes and assumes no such liability.
  - 17. Right to Withhold Payment and Make Application Thereof:** DAS/SBD may withhold payment and apply the monies to pay claims for labor or materials, defective work not remedied, damage to new work, and other claims against the contractor related to contract performance.
  - 18. Drug Free Workplace:** Contractor certifies it maintains a drug free work place and will provide a copy of the policy upon request from the DAS/SBD.
  - 19. Subcontractors:** Contractor shall include all terms and conditions of this contract in any contract with a subcontractor or other entity performing work on this project.

## Appendix D

### **GENERAL CONDITIONS**

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## GENERAL CONDITIONS

### 1. DEFINITIONS

The "AS/State Building Division," sometimes referred to as the Owner or Department, and the "Contractor" is named as such in the Contract.

The "AS/State Building Division" is the Department of Administrative Services, State Building Division of the State of Nebraska.

The "Architect/Engineer" is the Architect/Engineer of the AS/State Building Division. He may act personally or by and through such assistants as may be duly authorized to act for him; but whenever in these conditions the word "Architect/Engineer" is used, it shall be understood as referring to the Architect/Engineer appointed by the AS/State Building Division and not to any assistant.

The "Consultant" is the consulting architect or engineer that the Department may have employed to perform professional services required for the planning and construction of this project.

The term "the work" or "Work of the Contractor" includes labor or materials or both, equipment, transportation, and other facilities necessary to complete the Contract.

The term "Subcontractor" as employed herein, includes any person, firm or corporation having a direct contract with the Contractor to supply labor or materials or both for work of the Contractor, but does not include those who merely furnish material or materials not fabricated to a special design according to the plans and specifications of this work.

The term "Surety" includes any person, firm or corporation that has executed, as surety, the Contractor's performance bond securing the performance of the Contract.

The words "Plans" and "Drawings" are used synonymously in this Contract.

Wherever the word "Approved", "Approval", "As selected", appear in the specifications, it shall mean approval or selection by the Consultant or Engineer.

### 2. DEFINITION OF NOTICE

Where in any of the Contract Documents there is any provision with respect to the giving of notice, such notice shall be deemed to have been given; as to the AS/State Building Division, when written notice shall be delivered to the Administrator of the AS/State Building Division, or shall have been placed in the United States Mail, first class postage prepaid, addressed to the Administrator of the AS/State Building Division, as to the Contractor, when written notice shall be delivered to the chief representative of the Contractor at the site of the project or by mailing such written notice in the United States Mail, first class postage prepaid, addressed to the Contractor at the place stated as the address of his permanent place of business in the Proposal Form; as to the Surety on the performance bond, when a written notice is placed in the United States Mail, first class postage prepaid, addressed to the Surety at a home office of such Surety or to its agent or agents who executed such performance bond on behalf of such surety.

### 3. AUTHORITY OF THE CONSULTANT OR ARCHITECT/ENGINEER

The AS/State Building Division may for professional service required for certain projects employ consulting architects or engineers -- in these documents referred to as the Consultant. The AS/State Building Division on certain other projects may direct that the professional services be performed by the staff of the AS/State Building Division under the direction of the Architect/Engineer. It will clearly be stated in the Advertisement for Bids, Special Conditions, and Contract, whether professional services are being performed by a Consultant or the Architect/Engineer.

Plans and Specifications. The Consultant or Architect/Engineer, working to serve the interests of the Owner, has prepared the plans and specifications and shall make written interpretations of them. He or she shall approve all samples of material which are specified to be submitted for approval, approve the use of any equipment offered in lieu of that mentioned in the specifications and shall check and approve all shop drawings and details. He or she shall make periodic inspections of the project work and shall decide the quality of the work and material incorporated therein. He or she shall decide all questions which may arise as to the fulfillment of the Contract by the Contractor. Decisions by the Consultant or Architect/Engineer with regard to plans and specifications, work and materials, and contract questions, shall be made after consultation with the Owner.

### 4. CONTRACTOR'S SUPERINTENDENT

During the course of the work on the site, the Contractor shall employ a competent superintendent and any necessary assistants, all satisfactory to the Consultant or the Architect/Engineer. The Superintendent shall not be changed except with the consent of the Consultant or the Architect/Engineer, unless the Superintendent proves to be unsatisfactory to the Contractor and ceased to be in his employ. The Superintendent shall represent the Contractor in his absence and all directions given by him shall be as binding as if given by the Contractor. All decisions by the Superintendent shall be confirmed in writing to the Contractor. Other directions by the Superintendent shall be so confirmed on written request in each case.

### 5. PLANS AND SPECIFICATIONS -- CORRELATION

The work shall be executed in strict conformity with the plans and specifications.

Plans, drawings, and specifications are cooperative and supplementary. Portions of the work which can best be illustrated by the plans and drawings may not be included in the specifications and portions of the work best described by the specifications may not be depicted on the plans or drawings. All items necessary to construct or erect a complete improvement, project, building or structure shall be furnished whether called for in the specifications or shown on the plans and drawings. Special conditions shall take priority over General Conditions: Detailed Specifications shall take priority over General Specifications and large scale drawings shall take priority over small scale drawings. In case of disagreement between the plans, drawings and specifications, or within any document itself, the better quality or quantity of work shall be estimated and the matter drawn to the attention of the Consultant or Architect/Engineer for decision.

### 6. SHOP DRAWINGS

All work on which shop drawings are required must be in strict accordance with such drawings when approved and no work for which shop drawings are required is to be started until after the approval of

said drawings. Each shop drawing shall be submitted to the Consultant or Architect/Engineer in the quantity specified by the Consultant or Architect/Engineer. Sufficient quantity shall be submitted to provide three sets of all approved submittals to the Owner.

All shop drawings must be checked and completed in every respect, numbered consecutively, have the name of the project printed thereon, and each lot must be submitted accompanied by a letter of transmission referring to the number of drawings and the name of project for identification and especially drawing the Consultant's or Architect/Engineer's attention to any modification of plans and specifications that may have been made.

The Contractor shall make any corrections required by the Consultant or Engineer and resubmit corrected sets to him for approval in the same quantity as the initial submittal.

After the shop drawings have been approved, any portion of shop drawings which modify the plans shall be rejected as soon as such modification is discovered unless said modification has been specifically pointed out to the Consultant or Architect/Engineer as stipulated above and specific approval secured. The approval of such shop drawings will be only general in character and shall in no way relieve the Contractor from any responsibility for the accuracy of the shop drawings or from proper fitting and construction of the work, or from the necessity of furnishing all materials and workmanship required by the drawings and specifications which may not be indicated on shop drawings when approved.

#### 7. MATERIALS -- TESTS AND STANDARDS

Samples of materials selected by the Consultant or Architect/Engineer to be tested must be furnished by the Contractor. Tests will be made at no cost to the Contractor. Where not otherwise specified, all materials shall meet the American Standards for Testing of Materials (A.S.T.M.) Standard or tentative specifications for that material. The Contractor, when requested, shall furnish a sample of all material which shall be kept on the job as basis for comparison of material incorporated in the Work.

#### 8. OBSOLETE EQUIPMENT

It is important that the AS/State Building Division be protected as much as possible against the discontinuance of the make of equipment to be purchased, and that repair parts, and services of expert factory representatives, be made available if desired. Under these conditions the Contractor shall not furnish equipment not currently in production.

#### 9. PATENTS

The Contractor and his Surety shall hold harmless the AS/State Building Division, its officers, agents, and employees from liability of any nature or kind including costs and expenses, for or on account of any patented invention, articles or appliances manufactured or used in the performance of this Contract unless otherwise specifically stipulated in this Contract.

#### 10. OTHER CONTRACTS

The AS/State Building Division may award contracts for additional work and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under the other contracts as may be directed by the Consultant or Architect/Engineer. If the Contractor commits or permits any act which interferes with the performance of work by any other contractor, this shall be

grounds for termination of the contract.

11. ASSIGNMENT OF CONTRACT

The Contractor shall not assign this Contract or any part hereof without the written consent of the AS/State Building Division. No assignment of this Contract shall be valid unless it contains a provision that the funds to be paid to the Assignee under the Assignment are subject to a prior lien for services rendered or materials supplied for the performance of work called for in said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

12. SUBCONTRACTING

The Contractor shall be fully responsible to the AS/State Building Division for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them. The Contractor shall be responsible for assigning, coordinating, and achieving completion of all subcontracted work to satisfy all requirements of the Contract Documents in a timely and proper manner. All subcontracted work shall be subject to all requirements of the Contract Documents except those legal contractual duties for which only the Contractor has exclusive responsibility as specifically assigned by the Contract Documents. Nothing contained in the Contract shall create any Contractual relation between any subcontractor and the AS/State Building Division. The attention of the Contractor and subcontractors are called to the Contract Documents which are part of this Contract. The Contractor must notify the AS/State Building Division of each subcontract he intends to award, giving:

Name and address of subcontractor  
Branch of work concerned  
Total price of subcontract

No part of this Contract shall be sublet without prior approval of the AS/State Building Division.

13. CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the Owner nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Owner (or Contractor). Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

(a) WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this Contract the statutory Workers' Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work. This policy shall be written

to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. Where applicable, this policy shall provide USL&H coverage. This policy shall include a waiver of subrogation in favor of the Owner. The amounts of such insurance shall not be less than the limits stated hereinafter.

(b) COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of this Contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operation be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverages. The policy shall include the Owner, and others as required by the Contract Documents, as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the Owner shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

(c) INSURANCE-BUILDER'S RISK

Unless otherwise provided, the Contractor shall purchase and maintain Builder's Risk Insurance for the entire value of the project and work site, from a company or companies lawfully authorized and licensed to do business in the jurisdiction in which the Project is located. This insurance shall be written to cover all risks of direct physical loss, and shall include interests of the Owner, the Contractor, and Sub-contractors in the Work. A loss insured under this insurance shall be adjusted with the Owner and made payable to the Owner as fiduciary for the insured, as their interests may appear.

(d) INSURANCE COVERAGE AMOUNTS REQUIRED

.1	Workers' Compensation and Employer's Liability Coverage A Coverage B Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.	Statutory  \$1,000,000 each accident \$1,000,000 policy limit \$1,000,000 each employee
.2	Commercial General Liability General Aggregate aggregate Products/Completed Operations Aggregate	\$2,000,000 per occurrence / \$4,000,000 \$2,000,000

Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one person
Damage to Rented Premises	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse and Underground Damage)	Included
.3 Commercial Automobile Liability	
Bodily Injury/Property Damage	\$1,000,000 combined single limit (Symbol 1)
.4 Umbrella/Excess Liability	
Over primary insurance	\$4,000,000 per occurrence
.5 Builder's Risk	100% of work completed values.
.6 Cyber Liability	**\$2,000,000 [Optional]**

#### 14. EVIDENCE OF COVERAGE

The Contractor shall furnish the Owner with a certificate of insurance coverage, which shall be submitted in duplicate to the Department of Administrative Services, Risk Management Division, 301 Centennial Mall South, Lincoln, NE 68509. These certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage afforded. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

The following clauses or endorsements must be added to the certificates for the required types of insurance. If the clause or endorsement is placed on the reverse side of such certificate, the signature of the official of the company who signs the certificate should follow it. All certificates must contain the following two clauses or endorsements:

"The insurance contract referred to herein provides complete coverage within the limits stated for the types of insurance mentioned covering all the insured's operations in connection with the insured's contract on the  (Project Name)."

"Said insurance contract also provides that it cannot be canceled by the insurer in less than thirty days after the insured has been given written notice of such cancellation."

#### 15. PROTECTION OF PERSONS AND PROPERTY

The Contractor shall take all reasonable and proper precautions to protect persons and property from injury or damage resulting from its operation under this Contract. The requirements of the Nebraska Safety Codes adopted by the Nebraska State Department of Labor shall be applicable.

The Contractor shall protect all existing buildings, roadways, landscaping, and utilities against damage or interruption of services. It shall be the responsibility of the Contractor to correct health or safety

hazards and repair property damage that results from their work. Such corrections shall be performed to restore conditions to at least the quality that existed at the time of commencement of this Work.

#### 16. PROSECUTION OF THE WORK AND COMPLETION DATE

The work embraced in this Contract shall be started on the earliest possible date after the signing of contracts by both parties, and shall be carried on regularly and uninterruptedly thereafter, with such forces and by such means as will insure final completion of the entire Contract on or before the completion date set in the documents. The time of beginning, rate of progress and time of completion are essential conditions of the Contract.

The Contractor expressly agrees that in undertaking to complete the work within the Contract period fixed in the Contract Documents, he has taken into consideration and made allowances for all delays and hindrances incidental to such work, whether growing out of delays in securing materials or workmen, or otherwise.

Should the Contractor be delayed in the prosecution and completion of the work by a cause beyond his control, he shall have no claim or right of action for damages from the Owner for any such cause or delay. The Contractor may in such case be granted an extension of time specified for completion of the work as the Owner may award in writing on account of such delay; provided however, that claim for extension of time is made by the Contractor to the Owner, through the Consultant or Architect/Engineer, in writing, within two weeks from the time when such alleged cause for delay occurred. The Owner reserves the right to withhold granting of any time extensions until the stipulated Contract period is about to expire.

The Owner, at his discretion, may waive the above requirements and grant extensions of time for any reasons he deems valid. Time extensions will not be considered for weather delays unless the Contractor provides documentation of the days and hours his or her forces could not be on the job site due to the weather.

An extension of the Contract period may be granted by the Owner for any of the following reasons:

- (a) Additional work resulting from modification of the plan for the project.
- (b) Delays caused by the Owner.
- (c) Other reasons beyond the control of the Contractor which in the Owners' judgment would justify such extension.

No extension of the Contract period will be allowed for variation between contract quantities and actual quantities which cannot be predetermined and which amount to less than twenty-five percent (25%) of the contract quantities.

#### 17. SURVEY STAKES AND LEVELS

The Contractor, unless otherwise specified, will stake out the project work and shall furnish and maintain the batter boards, level, etc.

The Contractor must carefully preserve bench marks and reference points established by the Consultant or Architect/Engineer; in case of their destruction, the Contractor will replace them and be responsible for any mistakes that may be caused by their loss or disturbance.

#### 18. USE OF JOB SITE

The Contractor shall confine his or her equipment, apparatus, the storage of materials, and operations of his or her workers to limits indicated by law, ordinance, permits, or directions of the AS/State Building Division and shall not unnecessarily encumber the premises with his materials.

The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce the Consultant's or Architect/Engineer's instructions regarding signs, advertisement, fires, and smoke.

#### 19. LABOR

All labor shall be performed in best and most workmanlike manner by mechanics skilled in their respective trades. The standards of the work required throughout shall be of such quality as will produce only first class results.

Mechanics whose work is unsatisfactory to the Consultant or Architect/Engineer, or are considered to be unskilled or otherwise objectionable, shall be instantly dismissed from the work upon notice to the Contractor from the Consultant or Architect/Engineer.

Contractors and subcontractors employed upon the work shall be required to conform to the labor laws of the State of Nebraska, and the various acts amendatory and supplementary thereto; and to all other laws, ordinances, and legal requirements applicable thereto.

#### 20. INSPECTION

The AS/State Building Division, through its authorized representatives and agents, shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and any data and records.

The Architect/Engineer shall, at all times, have access to the work and the premises used by the Contractor and to all places of manufacture where materials are being made for use under this Contract, and shall have full facilities for determining that such materials are being made strictly in accordance with the plans and specifications.

#### 21. DEFECTIVE WORK OR MATERIAL

Work or material not in accordance with the Plans and Specifications, or in any way defective shall be removed at once on order of the Consultant or Architect/Engineer. The Contractor shall replace or rebuild at Contractor's own expense with satisfactory material and in a professional manner any work so removed and shall reimburse the AS/State Building Division or any expense that it is put to by reason of extra work, and shall reimburse any other contractor who may incur expense caused by removal of the defective work.

#### 22. TERMINATION FOR BREACH

In event that any of the provisions of this Contract are violated by the Contractor or any of his subcontractors, the AS/State Building Division may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor such violation shall cease and satisfactory arrangements for correction be made, the Contract shall, upon the expiration of said ten (10) days cease and terminate. In the event

of any such termination, the AS/State Building Division shall immediately serve notice thereof upon the Surety and the Contractor. The Owner may take over the work and prosecute the same to completion of Contract for the account and at the expense of the Contractor. The Contractor and his Surety shall be liable to the AS/State Building Division for any excess cost occasioned the AS/State Building Division thereby and in such event the AS/State Building Division may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore. Neither the Owner nor any member or employee thereof shall be in any way liable or accountable to the Contractor or his surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid therefore.

### 23. CONSTRUCTION REPORTS -- PAYMENT ESTIMATES

The Contractor shall submit to the Owner a schedule of values and quantities of materials and of other related items. The schedule(s) shall be in a form that correlates to the estimates upon which they are based, or as the Owner may require.

The Contractor shall submit to the Owner the following records on forms to be supplied by the Contractor (Notice - AIA Document forms shall be the latest edition):

- (a) AIA Document G702, Application and Certification for Payment
- (b) AIA Document G703, Continuation Sheet (Schedule of Values)

### 24. PAYMENT

So long as the work herein contracted for is carried out in accordance with the provisions of the Contract, the Contractor will, on or before the 25th day of each month, make an appropriate estimate of the value of the work performed during the month and the materials suitably stored on the work site, and shall prepare an Application And Certification For Payment and the Continuation Sheet and submit them to the Consultant. Within seven days after receipt of such Application And Certification For Payment it shall be approved either in whole or in part by the Consultant or Architect/Engineer, or disapproved. If disapproved, the Pay Application shall be corrected by the Contractor. Once a payment is approved, then the AS/State Building Division will pay to the Contractor in State warrants, and in accordance with the payment provisions in the Agreement and these General Conditions, the amount approved, which shall be ninety percent (90%) of completed work and stored materials. The AS/State Building Division may at any time reserve and retain payment as authorized in Provision #27 of these General Conditions. However, prior to final payment, the total paid to the Contractor shall not exceed ninety percent (90%) of the estimated value of the work performed and materials stored at the site.

The Contractor shall pay:

(1) for all transportation and utility services not later than the 20<sup>th</sup> day of the calendar month following that in which such services are rendered;

(2) for all articles, tools, and other expendable equipment for at least 90% of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered to and properly stored at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in which such materials, tools, and equipment are incorporated or used; and

(3) to each of his subcontractors not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his

subcontractors, to the extent of each such subcontractor's interest therein.

25. EXTRA, ADDITIONAL OR OMITTED WORK -- PAYMENT FOR

The AS/State Building Division shall have the right at any time and without notice to the Sureties, to alter and modify the Plans and Specifications, thus making specific changes in the construction, details, or execution of the work. All changes in plans and specifications will be made by the AS/State Building Division in writing. The Contractor shall make such alterations as may thus be ordered by the AS/State Building Division and in case these changes increase or decrease the amount of work to be done under this Contract, equitable amounts in price and time will be added to or deducted from the Contract price and Contract time. The amount of such increase or decrease shall be agreed upon between the Owner and the Contractor BEFORE the changes are made.

When directed in writing by the Consultant or Architect/Engineer and with approval of the AS/State Building Division, the Contractor shall furnish all material and labor not otherwise provided for by the terms of this Contract, but which may be connected with or necessary to the proper completion of the Work. Such material and labor shall be furnished and completed as part of this Contract and subject to its provisions. The payment for any such work shall be determined by agreement between the Owner and the Contractor before the extra work is commenced, either on the basis of the unit price, or a lump sum price, or on a limited cost-plus basis not to exceed the specified limit.

The payment for extra, additional or omitted work to be performed by the contractor or subcontractors using their own forces shall be as follows: for all labor and foreman in direct charge of the specific operations, including liability and workers' compensation, the Contractor shall receive the wage rate agreed upon in writing before starting such work, for each hour that said labor, teams and foreman are actually engaged in such work, to which shall be added an amount for profit and overhead combined equal to 10% of the sum thereof. The wages of any foreman or time keeper who is employed partly on "cost-plus" work and partly on other work, shall be prorated between the two classes of work according to the number of employees employed on each class of work as shown by the payroll.

For all materials being permanently incorporated or installed into the Work, the Contractor shall receive the actual cost of such material delivered to the Work, including freight and handling charges as shown by original receipted bills, to which cost shall be added a sum equal to an amount of 10% thereof for profit and overhead combined as agreed to in advance by the Owner.

If it is necessary for the Contractor to rent equipment in the performance of such work, he will be allowed the actual rental price paid, if reasonable, for the actual time that such equipment is in use on the work and to which sum 10% shall be added for profit and overhead combined.

For contractors and subcontractors, prices submitted by their respective subcontractors for labor, materials, rentals, overhead and profit may be marked up a maximum of 5%.

No claims for extra work will be allowed unless accompanied by a written Change Order from the Consultant or Architect/Engineer and approved by the AS/State Building Division authorizing such extra work and defining the agreed basis of payment.

The Contractor shall, immediately after completing extra work, file with the Architect/Engineer, in writing, all claims for extra work performed. If the Contractor fails to make such claims within 30 days, Contractor's right to extra pay for such work shall be deemed to have been waived and forfeited and he or she shall not be entitled to any payment on account of such extra work.

## 26. CONTRACTOR'S PAYMENTS FOR LABOR AND MATERIALS

The Contractor shall pay for all labor and materials used or furnished in the performance of this Contract. Before final payment, the Contractor must certify that all bills for labor and materials have been paid. In event he is requested and fails to furnish satisfactory evidence, the AS/State Building Division may withhold any payments until it is satisfied that all such claims have been paid.

## 27. OWNER'S RIGHT TO WITHHOLD PAYMENT AND MAKE APPLICATION THEREOF

In addition to the payment to be retained by the AS/State Building Division under the preceding provisions of these General Conditions, the AS/State Building Division may withhold a sufficient amount of any payment otherwise due to the Contractor to cover:

(a) payments that may be earned or due for just claims for labor or materials furnished in and about the performance of the work on the project under this Contract;

(b) for defective work not remedied, and for damage to existing conditions or new work not remedied; and

(c) for failure of the Contractor to make proper payments to his subcontractor.

The AS/State Building Division shall disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. The AS/State Building Division will render to the Contractor a proper accounting of all such funds disbursed on behalf of the Contractor.

## 28. CLEAN UP

On or before the completion of the work, the Contractor shall clean all parts of the Work under his Contract. He or she shall remove all rubbish and all his materials, tools, and equipment from the construction site, leaving the site in a condition as good or better than that existing at commencement of the Work.

The Contractor shall from time to time clean up and remove from the project rubbish and debris resulting from his work, and shall at completion of the Work remove all construction materials and equipment, leaving the project and site clean.

## 29. FINAL INSPECTION

When the work has been substantially completed, the Contractor shall notify the Consultant or Architect/Engineer, in writing, that the work is ready for final inspection and testing on a definite date and time as stated in such notice. The notice shall be given at least ten (10) days in advance of said date.

After the final inspection has been completed, the Consultant or Architect/Engineer shall present to the Contractor and the AS/State Building Division a report ("punch list") listing all deficiencies found in the inspection of the Contractor's work which are to be corrected. The Contractor shall immediately make the required corrections to remove the deficiencies reported by the Consultant or Architect/Engineer. When the deficiencies have been removed, the Contractor shall request in writing a re-inspection of the work by the Consultant or Architect/Engineer.

### 30. FINAL PAYMENT

As soon as practical after completion and acceptance of the Work, the Contractor shall prepare a final payment statement showing the final payment due. After approval by the Contractor, the Consultant or Architect/Engineer and the AS/State Building Division, the final payment shall be processed in accordance with the payment provisions of the Agreement and the General Conditions.

### 31. GUARANTEE OF WORK

(a) Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one year from the date of final completion of the Contract.

(b) If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which, in the opinion of the Consultant or Architect/Engineer are rendered necessary as a result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the Contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner:

- (1) Place in satisfactory condition all of such guaranteed work, correct all defects therein, and
- (2) Make good all damages to the building or project work, or equipment or contents thereof, which, in the opinion of the Consultant or Architect/Engineer is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- (3) Make good any work or materials, or the equipment and contents of said building or project work disturbed in fulfilling any such guarantee.

(c) In any case where fulfilling the requirements of the Contract, and guarantees, the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Consultant or Architect/Engineer and guarantee such restored work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, 30 days after notice, fails to comply with the terms of the guarantee, the Owner may have defects corrected and the Contractor and Contractor's Surety shall be liable for all expenses incurred.

(e) All special guarantees applicable to definite parts of the work that may be required by the Contract Documents shall be subject to the terms of Provision #31(a) through (e) during the first year of the life of such guarantee.

### 32. UNEMPLOYMENT COMPENSATION FUND

The Contractor shall make payments to the Unemployment Compensation Fund of the State of Nebraska all contributions and interest due under the provisions of Section 48-601 to 48-669, Revised Reissue Statute of Nebraska, on wages paid to individuals employed in the performance of this Contract as required by Section 48-657, Revised Reissued Statute of Nebraska.

Under the requirements of Section 48-657, Revised Reissue Statute of Nebraska, the AS/State Building

Division cannot make payment to the Contractor on the final three percent (3%) of the Contract without first receiving from the Contractor a written clearance from the Commissioner of Labor certifying that all payments then due for contributions or interest which may have arisen under such Contract have been made by the Contractor, or his subcontractors, to the Unemployment Compensation Fund.

### 33. PRECONSTRUCTION CONFERENCE

A preconstruction conference shall be scheduled before starting construction, no later than 15 days after the date of the Agreement. It shall be held at the project site, or other convenient location. The meeting shall review responsibilities and personnel assignments of the Owner, Contractor, and the Consultant.

Authorized representatives of the Owner, Contractor, and the Consultant shall attend the preconstruction conference, as will the Contractor's superintendent, major subcontractors, manufacturers, suppliers, and other parties integral to the completion of the Work. All participants shall be familiar with the project and authorized to make decisions for the entities they represent.

The preconstruction conference will include discussion of items necessary for project progress and successful completion, such as: construction scheduling; critical work sequencing; designation of responsible personnel; procedures for processing field decisions and change orders; procedures for processing Applications for Payment; distribution of Contract Documents; submission of Shop Drawings and product data a samples; preparation of record documents; use of the premises; parking availability; office, work, and storage areas; equipment deliveries and priorities; safety and first aid procedures; security; housekeeping; working hours; and other matters deemed important by the Owner.

### 34. WORK ELIGIBILITY STATUS OF EMPLOYEES

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

### 35. REPRINT OR REPUBLISH

If awarded this contract, bidder hereby grants permission to the State of Nebraska and/or its agencies to reprint or republish any and all copyrighted documents related to this response to Request for Proposal and any and all figures, illustrations, photographs, charts, and other supplementary material online pursuant to Neb. Rev. Stat. §84-602. This waiver does not apply any and all proprietary information properly submitted in a separate sealed package that is clearly marked "Proprietary."

### 36. WARRANTS THE CONTENT

Bidder represents and warrants that the content of this response to Request for Proposal and all figures, illustrations, photographs, charts, and other supplementary material herein are original and do not libel anyone or infringe upon any patent, copyright, proprietary right, or any other right whatsoever of any other party. Bidder represents and warrants that he/she has full power and authority to execute this Copyright Release and to grant the State of Nebraska and/or its agencies the right granted herein.

### 37. INDEMNIFY, DEFEND AND HOLD HARMLESS

Bidder agrees to indemnify, defend, and hold harmless the State of Nebraska and/or its agencies against any and all claims, suits, and/or judgments, including costs, expenses, damages, and reasonable legal fees based upon and arising from Bidder's violation of the rights of others and/or by reason of a breach of any of the foregoing warranties.

END OF GENERAL CONDITIONS

Appendix E

STATE OF NEBRASKA  
AGENCY

Construction Contract Change Order

Project:

Change Order Number:

Date:

Contractor:

Project Number:

Contract Date:

Contract For:

Description of change is as follows:

The original Contract Sum was

Net change from previously authorized Change Orders

The total contract sum prior to this Change Order was

The Contract Sum will be (increased) (decreased) by this

Change Order in the amount of

The new Contract Sum including this Change Order is

The Contract Time will be (increased) (decreased) by

( ) days.

\$  
\$  
\$  
\$  
\$  
\$

Architect

Contractor

Owner

Address

Address

Address

By

By

By

Date

Date

Date

File

# AIA Document G702™ – 1992

Sample

## Application and Certificate for Payment

<b>TO OWNER:</b>    <b>FROM CONTRACTOR:</b>	<b>PROJECT:</b> Sample forms  <b>VIA ARCHITECT:</b>	<b>APPLICATION NO:</b> 001 <b>PERIOD TO:</b> <b>CONTRACT FOR:</b> General Construction <b>CONTRACT DATE:</b> <b>PROJECT NOS:</b> / /	<b>Distribution to:</b> OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
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### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM .....	\$	0.00
2. Net change by Change Orders .....	\$	0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2).....	\$	0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) .....	\$	0.00
<b>5. RETAINAGE:</b>		
a. 0 % of Completed Work (Column D + E on G703)	\$	0.00
b. 0 % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703).....	\$	0.00
6. TOTAL EARNED LESS RETAINAGE .....	\$	0.00
(Line 4 Less Line 5 Total)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT .....	\$	0.00
(Line 6 from prior Certificate)		
8. CURRENT PAYMENT DUE .....	\$	0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE .....		
(Line 3 less Line 6)	\$	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
<b>TOTALS</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>NET CHANGES by Change Order</b>	<b>\$</b>	<b>0.00</b>

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:**  
 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 State of: \_\_\_\_\_  
 County of: \_\_\_\_\_  
 Subscribed and sworn to before  
 me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public:  
 My Commission expires: \_\_\_\_\_

### ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED** ..... \$ 0.00  
*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)*

**ARCHITECT:**  
 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

Appendix G

State of Nebraska  
Agency Code Numbers

Code	Agency Name
03	Legislative Council
05	Supreme Court
07	Governor
08	Lieutenant Governor
09	Secretary of State
10	Auditor of Public Accounts
11	Attorney General
12	State Treasurer
13	Department of Education
14	Public Service Commission
15	Board of Pardons and Board of Paroles
16	Department of Revenue
17	Department of Aeronautics
18	Department of Agriculture
19	Department of Banking and Finance
20	N/A
22	Department of Insurance
23	Department of Labor
24	Department of Motor Vehicles
25	Health and Human Services
26	N/A
28	Department of Veterans' Affairs
29	Department of Natural Resources
30	State Electrical Board
31	Military Department
32	Board of Educational Lands and Funds
33	Game and Parks Commission
34	Nebraska Library Commission
35	Nebraska Liquor Control Commission
36	State Racing Commission
37	Nebraska Workers' Compensation Court
38	N/A
40	Nebraska Motor Vehicle Industry Licensing Board
41	Real Estate Commission
45	Board of Barber Examiners
46	Department of Correctional Services
47	Nebraska Educational Telecommunications Commission
48	Coordinating Commission for Post-Secondary Education
50	Nebraska State College System
51	University of Nebraska
52	State Board of Agriculture
53	Real Property Appraiser Board
54	Nebraska State Historical Society
56	Nebraska Wheat Board

57	Oil and Gas Conservation Commission
58	Board of Engineers and Architects
59	Board of Geologists
60	Nebraska Ethanol Board
61	Dairy Industry Development Board
62	Board of Examiners for Land Surveyors
63	State Board of Public Accountancy
64	Nebraska State Patrol
65	Department of Administrative Services
66	Abstracters Board of Examiners
67	Equal Opportunity Commission
68	Commission on Latino Americans
69	Nebraska Arts Council
70	Foster Care Review Office
71	State Energy Office
72	Department of Economic Development
73	State Board of Landscape Architects
74	Power Review Board
75	Nebraska Investment Council
76	Nebraska Commission on Indian Affairs
77	Commission of Industrial Relations
78	Nebraska Commission on Law Enforcement and Criminal Justice
81	Commission for the Blind and Visually Impaired
82	Commission for the Deaf and Hard of Hearing
83	Aid to Community College Areas
84	Department of Environmental Quality
85	Public Employees Retirement Board
86	Dry Bean Commission
87	Nebraska Accountability and Disclosure Commission
88	Nebraska Corn Development, Utilization and Marketing Board
91	Nebraska Tourism Commission
92	Nebraska Grain Sorghum Development, Utilization and Marketing Board
93	Tax Equalization and Review Commission
94	Commission on Public Advocacy

## Appendix H

# Nebraska Arts Council One Percent for Art Regulations

### Purpose – 001

The Legislature recognizes the responsibility of the state to foster culture and the arts and its interest in the viable development of its artists. The Legislature declares it to be the policy of this state that a portion of all appropriations made after January 1, 1979, for capital expenditures be set aside for the acquisition of art works to be used in public buildings. (Neb. Rev. Stat. Section 82-317)

### Definitions – 002

002.01 – Project Any new construction of a public building or facility including a series of buildings (or addition to existing buildings) in excess of five hundred thousand dollars (\$500,000), or remodeling or renovation of a public building in excess of two hundred and fifty thousand dollars (\$250,000).

002.02 – 1% for Art This is a required minimum amount of an appropriation to be used for the acquisition of works of art. An agency may expend more than this amount for the art work in any project under this law.

002.03 – Public Buildings State buildings and facilities used by or open to the public as guests or business invitees excluding repair shops, garages, warehouses, and buildings of a similar nature.

002.04 – Project Agency The state agency which has received an appropriation for a project.

002.05 – 1% for Art Committee A committee established for each project. The committee shall consist of the project architect, three representatives from the project agency, the Nebraska Arts Council Percent for Art Coordinator and two individuals selected by the Nebraska Arts Council.

### Determinant of Amount Available for Art for the Project – 003

The formula for calculating the minimum amount to be used for art is as follows: Start with the actual total amount of money set by the Legislature for a public building, subtract \$500,000 if the

amount is for new construction or \$250,000 if the amount is for remodeling. From this figure, subtract the amount of money spent of planning, land acquisition and the site work, and multiply by one percent. The product of this calculation is to be used not only for the cost of the works of art, but also to provide for administration by the contracting agency, the architect, and the Nebraska Arts Council and for all costs of installation of the works of art.

Once a capital construction amount is set by the Legislature, the project agency will notify the Nebraska Arts Council. The Nebraska Arts Council will send the 1% for Art Budget Verification Form (Attachment A) to the project agency. The project agency will complete the form and send it to DAS Building Division for verification. Once DAS Building Division has confirmed the project figures, it will forward the form to the Nebraska Arts Council for approval of the 1% Art budget.

## Selection Process – 004

The Nebraska Arts Council, in consultation with the 1% Art Committee, will be responsible for the “selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project” (Neb. Rev. Stat. section 82-320).

004.01 – Determination of Suitable Art Form, Location, and Project Budget After the 1% for Art amount has been determined, the Nebraska Arts Council, in consultation with 1% for Art Committee, will then determine suitable art forms, locations, and a budget, taking into consideration the administrative costs of the project agency, the Nebraska Arts Council, and the architect.

004.02 – Artist Selection Criteria The following factors will be considered by the 1% for Art Committee when reviewing applications from individual artists: 1) quality of art work, 2) past exhibition record, and, when a work is to be commission, 3) previous commission experience (including evidence of successful and timely completion of past commissions) and 4) evidence that a commissioned work of art can be produced for the funds available and according to the project timeline.

004.03 – Eligibility of Artists Staff members of the Nebraska Arts Council are ineligible to submit proposals or to be selected for the 1% for Art project if the is valued at \$2,000 or more in any one year unless the contract is awarded through a public process. Nebraska Arts Council members are ineligible to submit proposals, since, as state officers, they are barred from receiving any additional compensation from the state.

004.04 – Method of Selection After the budget and suitable art forms and locations have been determined, the Nebraska Arts Council, in consultation with the 1% for Art Committee, will select the artist(s) and/or work(s) of art. The artist(s) and/or work(s) of art must be selected through Open Competition (004.04A below) unless the conditions in 004.04B and 004.04C apply.

004.04A – Open Competition The project will be widely publicized by the Nebraska Arts Council through press releases to Nebraska and regional newspapers, announcements in the Nebraska Arts Council Newsletter, and special mailings to Nebraska college and university art departments, individuals and organizations on the Nebraska Arts Council’s 1% for Art mailing list, and other organizations that might be interested in receiving information about the 1% for Art project. All announcements shall include a description of the project, the project site, the amount available for art work, artist eligibility requirements and where application forms can be obtained. A public notice with this same information will be published in a newspaper of general circulation thirty (30) days before the application deadline unless the funds available for purchasing a single piece of art work or for a single artist commission are less than \$10,000. The committee may select the artist(s) and/or work(s) of art directly from the entries or it may elect to do one of the following: 1) invite a limited number of the applicants to submit proposals and slides of completed works as described in Limited Competition below, or 2) hold another open competition.

004.04B – Limited Competition When the 1% for Art is less than \$10,000, or if the project timeline does not allow for the publication of a public notice 30 days prior to the artist application deadline, the 1% for Art Committee may elect to invite a limited number of artists to submit proposals and representative slides of completed works (in the case of a commission) or slides of completed works available for purchase (when an existing art work is to be purchased). When a work is to be commissioned, each artist entering the competition is paid a fee for the necessary time, materials, research, site visitation, travel, and production and delivery of sketches or maquettes. If, in the opinion of the committee, a satisfactory proposal is not made, the process may begin again, or another method of selection may be adopted (see 005 below).

004.04C – Direct Selection When the 1% for Art is less than \$10,000, or if the project timeline does not allow for the publication of a public notice 30 days prior to the artist application deadline, the 1% for Art Committee may elect to select the artist or completed work without sponsoring a competition.

004.005 – Approval The Nebraska Arts Council, in consultation with the 1% for Art Committee, shall be responsible for approving the selection of the artist(s) and/or the work(s) of art for the project. (Neb. Rev. Stat. section 82-320.

## Negotiation Process for Commissioned Works – 005

When a work is to be commissioned, the Nebraska Arts Council and the project agency will first meet with the selected artist to discuss the project. If no agreement can be reached, the artist may be requested to resubmit alternative examples of designs for the project to the 1% for Art Committee. If these designs do not meet with the approval of the 1% for Art Committee and/or if the artist is unable to meet the requirements of the project timeline, negotiations with the artist

will be terminated. Negotiations will then begin with the second most qualified artist out of the original group of applicants. If an agreement cannot be reached with the second most qualified artist, negotiations with the artist will be terminated and negotiations will begin with the third most qualified artist and so on. Should the Nebraska Arts Council fail to negotiate a satisfactory contract with any of the selected artists from the original group of applicants, the project may be referred to another round of selections or another method of selection may be used.

## Responsibilities – 006

### 006.01 – The Nebraska Arts Council

006.01A – Will approve the budget for each project.

006.01B – Will have oversight responsibility for the “selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project” (Nebr. Rev. Stat. section 82-320).

006.01C – Will provide the 1% for Art Budget Verification Form (Attachment A) to the project agency. The Nebraska Arts Council will use the completed form to establish the 1% for Art project budget.

006.01D – Will appoint three members to the 1% for Art Committee for each project.

006.01E – Will serve as a liaison between the project agency and the artist(s) and will be available to assist the project agency in presenting the selections to governing boards.

006.01F – Shall inform the Director of Administrative Services the Neb. Rev. Stat. sections 82-317 to 82-329 have been complied with for each project subject to section 82-319 before a warrant is issued for payment.

006.01G – Shall notify both the project agency and the Director of Administrative Services in writing as to when payment should be to the artist(s).

006.01H – Will publicize the program, coordinate the open competitions, and provide standardized identification plaques and labels for the art work with the administrative funds it receives from each project.

006.01I – Shall maintain an inventory of all works of art purchased under this program and shall inspect each work of art once a year to determine its condition.

006.01J – Will recommend procedures for regular maintenance, preservation, and security and for the repair of any damaged work of art. These recommendations include: 1) Where possible the artist shall be consulted as to his/her recommendations with regard to all repairs and restorations which are made during the lifetime of the artist; 2) to the

extent practicable, and in accordance with accepted principles of professional conservation, the artist may be given the opportunity to accomplish said repairs and restorations; and 3) the project agency may, at its option, hire a professional conservator to repair any said damage.

#### 006.02 – The Project Agency

006.02A – Is responsible for notifying the Nebraska Arts Council of any projects which are subject to this law.

006.02B – Is responsible for completing the 1% for Art Budget Verification Form (Attachment A) for each project.

006.02C – Appoints three representatives to the 1% for Art Committee for the project.

006.02D – Designates 10% of the total amount set aside for the 1% for Art project, up to a maximum of \$1,500 on any single project, to be paid to the Nebraska Arts Council for administrative expenses.

006.02E – Establishes a separate program within the budget for each project. Expenditures for each 1% for Art project will be coded to the appropriate subprogram.

006.02F – Will enter into contract with the selected artist(s) for either the purchase of an existing work or the commissioning of a new work of art. The contract will include a payment schedule worked out with the artist(s).

006.02G – Will issue payment to the artist(s) when instructed to do so in writing by the Nebraska Arts Council.

006.02H – Is responsible for the permanent exhibition, maintenance, repair, and security of the work(s) of art.

006.02I – Plans a public dedication of the art work(s) to further the involvement of the entire community and to increase public awareness of the art work(s).

006.02J – Pays the architect for design services to be rendered in connection with the commissioning of the work(s) of art that become necessary after the contract with the architect has been completed.

#### 006.03 – The Board of Regents of the University of Nebraska

006.03A – The Board of Regents of the University of Nebraska, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchase of art for each project under its supervision.

006.03A – The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Regents in consultation with the Nebraska Arts Council. Any recommendation given by the Nebraska Arts Council to the Board of Regents with respect to these projects will be based on the same construction or remodeling projects subject to Neb. Rev. Stat. section 82.319.

006.03 – The Board of Trustees of the Nebraska State Colleges

006.04A – The Boards of Trustees of the Nebraska State Colleges, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available to the purchase of art for each project under its supervision.

006.04B – The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Trustees in consultation with the Nebraska Arts Council. Any recommendation given by the Nebraska Arts Council to the Board of Trustees with respect to these projects will be based on the same standards used in selecting artists and art work for new construction or remodeling projects subject to Nebr. Rev. Stat. section 82-319.

## Inclusions – 007

The following items will be covered by the artist's commission fee:

007.01 – The cost of the art work When the artist is commissioned to produce a new work, the following are to be covered by the fee paid to the artist:

007.01A – Artist's professional design fee and maquette.

007.01B – Labor of assistants, and materials required for production.

007.01C – Studio and operating costs of the artist, including rent, depreciation utilities, communications, insurance and other direct and indirect costs.

007.01D – Travel of the artist for site visitation and research.

007.01E – Transportation of the work to the site.

007.01F – Installation of the completed work.

007.01G – Sales tax when applicable.

007.02 – Waterworks and electrical and mechanical devices or equipment which are integral parts of the work of art.

007.03 – Frames, mats, or pedestals necessary for the proper presentation of the works of art. If a base is required as an integral part of the art work, the artist is responsible for the cost.

## Exclusions – 008

1% for Art funds may not be expended for the following items, because they do not fall under the definition of “works of art.” The project agency is responsible for these items.

008.01 – Reproductions by mechanical or other means of original works of art except limited editions – controlled by the artist – of original prints, cast sculpture, photographs, etc.

008.02 – Decorative, ornamental, functional or architectural elements which are designed by the project architect or consultants engaged by the architect for the project.

008.03 – Those elements generally considered to be components of a landscape architectural design: plant materials, pools, path benches, receptacles, fixtures, planters, etc.

008.04 – “Art objects” which are mass produced of standard design, such as playground equipment, fountains, or statuary object.

008.05 – Directional, or other functional elements, such as supergraphics, signage, color coding, maps, etc., except when produced by an artist selected by the Nebraska Arts Council in consultation with the 1% for Art Committee.

008.06 – Preparation of the site necessary for the art work. The project agency is responsible for the cost of a base which is not and integral part of the art work.

008.07 – Electrical, water, or mechanical service for activation of the work.

008.08 – Art exhibitions and educational activities.

008.09 – In connection with the works of art: lighting, registration, dedication, unveiling, insurance (when title passes from the artist to the project agency), publicity or publications, security and maintenance (preservation, conservation, restoration, repair).

## Ownership – 009

All works of art acquired under the 1% for Art program become the property of the State of Nebraska. The artist shall retain no ownership, control, or authority of any kind over the work(s) of art or their future disposition. In the event the State makes a net profit through the sale of reproductions of the work of art, it may pay a portion of that profit to the artist.

## Display – 010

All works of art acquired under this program must be displayed in areas open to the public.

## Effective Date – 011

This rule shall take effect five days after it has been filed with the Secretary of State, as provided by the Administrative Procedures Act.

## Annotation – 012

Neb. Const., Article III, Section 22; and Neb. Rev. Stat. sections 81-1712(1), 82-317 to 82-329, 85-106 to 85-106.03, 85-304 to 85-304.03 (Reissue 1987) and section 49-14.02 (Reissue 1988)

## Form – 013

Refers to 1% for Art Budget Verification Form

1% FOR ART  
BUDGET VERIFICATION FORM

Project Agency: \_\_\_\_\_

Construction Project Title: \_\_\_\_\_

1. Total set by Legislature for new construction or remodeling in the following legislative bills: \$ \_\_\_\_\_  
\_\_\_\_\_

2. Deductibles:

Standard (\$500,000 New Construction or \$250,000 Remodeling) \$ \_\_\_\_\_

Planning \_\_\_\_\_ \$ \_\_\_\_\_

Land Acquisition \_\_\_\_\_ \$ \_\_\_\_\_

Site Work \_\_\_\_\_ \$ \_\_\_\_\_

Total Deductibles \$ \_\_\_\_\_

3. Balance remaining to be used for calculating 1% for Art project budget. [Total amount set for the project (Line 1) minus deductibles (Line 2)] \$ \_\_\_\_\_

4. Project budget for acquisition of work(s) of art (Line 3 multiplied by .01 remaining appropriation). \$ \_\_\_\_\_

\_\_\_\_\_  
Project Agency Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
DAS Building Division Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
NAC 1% for Art Coordinator Signature

\_\_\_\_\_  
Date

Appendix I



309 Task Force  
for Building Renewal



# 309 Task Force for Building Renewal Handbook

Refer to this link for more current version:

<http://das.nebraska.gov/309/309%20Task%20Force%20Handbook%20FINAL%203-14-14%20with%20bookmarks.pdf>

## Appendix J

### A reminder to all agencies with capital construction appropriations

This note is simply a reminder of required submittals and approvals for all capital construction projects with a total project cost **in excess of the current threshold for capital construction projects** from any and all fund sources. Detailed instructions for each of the review steps, below, may be found in the Procedural Manual for Capital Construction Projects, located at the State Building Division (SBD) website at:

<http://das.nebraska.gov/building/Construction%20Projects/Prodedural%20Manual,%20web%20version.pdf>

A brief description of the required reviews and approvals is as follows:

1. SBD review and approval of the design consultant contract. This is unnecessary if the project fits within the parameters of the open-end consultant contract process and one of the contracted consultants is utilized.\*
2. SBD review of the Program Statement (or Need Statement) with subsequent approval by the Governor. Often, Program Statements are submitted along with the agency Capital Construction Budget Request, but these documents are not approved until project funding has been approved. Upon receipt of funding, the agency must (re)submit the Program Statement for SBD review and the Governor's approval, prior to commencing with any design or construction.
3. SBD review of Design Development Documents. This is an informational process whereby the agency must submit preliminary plans and specifications for review and comment.
4. SBD review and approval of 95% complete Construction Documents. These must be reviewed and approved by both SBD and the Task Force for Building Renewal (for 309 eligible projects) prior to receipt of construction bids.
5. SBD review and approval of the Construction Contract including supporting information. The contract must be approved prior to the award of the project to the selected construction firm.\*
6. As soon as expenditures of project funds begin, agencies are required to submit quarterly reports to SBD. Generally, the quarterly submittals include contract amounts along with any change orders executed during the period along with the project financial summary.
7. Any individual payments to contractors exceeding \$100,000 must be submitted for SBD approval prior to payment processing. Note that this requirement is not currently addressed in the Procedural Manual, but is required under state law.
8. SBD review and approval of project close-out documentation prior to final payments to contractors and consultants.

A graphic representation of the capital construction review and approval process, including key review and approval points, is shown on Page I-7 of the Procedural Manual.

\*For 100% federally funded projects, only items #1 and #5 (Design Consultant Contract and Construction Contract) are required to be submitted for review.

APPENDIX K

**DAS Capital Construction Quarterly Progress Report**

Project Name

Project Manager Name

Reporting Period: Month Year										NIS Business Units: Agency Name
NIS Subsidiary	Description	A Original Budget Amount	B Revised Budget Amount	C Original Contract Amount	D Change Orders/ Reimbursables	E Revised Contract Amount C + D	F Actual Expenditure to Date	G Amount Remaining In Contract E- F	H Budget Variance B - E	Comments
10	Program Planning	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
20	Professional Fees	\$104,400	\$104,423	\$104,423	\$5,700	\$110,123	\$109,589	\$534	-\$5,700	
30	Construction	\$939,800	\$939,800	\$939,800	\$900	\$940,700	\$696,562	\$244,138	-\$900	
40	Fixed Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
50	Moveable Equipment	\$160,900	\$160,900	\$160,900	\$0	\$160,900	\$0	\$160,900	\$0	
60	Special or Technical Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
70	Land Acquisition	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
80	Artwork	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
90	Other Costs- Moving, Printing, Submittal Exchange, Plan Review, Testing, etc	\$4,000	\$4,000	\$0	\$0	\$0	\$0	\$0	\$4,000	
100	Project Contingencies	\$25,300	\$25,277						\$25,277	
	<b>Total (not incl programming)</b>	<b>\$1,234,400</b>	<b>\$1,234,400</b>	<b>\$1,205,123</b>	<b>\$6,600</b>	<b>\$1,211,723</b>	<b>\$806,151</b>	<b>\$405,572</b>	<b>\$22,677</b>	

Page K-1

Submitted to LFO in January, April, July, October

**Summary** Total Budget Variance =  
Appropriation has not been exceeded

\$22,677

**Input Cells**  
**Formula Cells**


## Appendix L

### Guidelines for Tree Removal/Replacement on State Lands

#### A. Intent

Since Nebraska has such a small percentage of tree cover and trees can provide so many benefits, the intent of these guidelines is to prevent needless and destructive removal of tree cover on State lands. Cutting of trees for management purposes is encouraged and these guidelines therefore are not intended to stop all tree removal on State-controlled land. Trees causing hazardous conditions or those required to be removed for emergency reasons to permit access, such as dam repair, power line repair, highway damage repair or to prevent the spread of insect and/or disease destructive epidemics are exempted. Volunteer weed trees resulting from wild growth in fences and drainage ditches are also exempted.

#### B. Definitions

1. State lands – lands owned, leased or controlled by the State of Nebraska.
2. Tree – a woody perennial with the potential to reaching a total height of 20 feet or greater.
3. Tree removal – cutting, bulldozing or any other mechanical or chemical method of removing or felling trees.
4. Minimum size – trees of 2” in diameter or 6” in circumference and larger, measuring 4.5’ above the ground, will be covered by these guidelines.
5. Minimum size area – area covered by a single tree.

#### C. Replanting

1. For each tree removed:
  - a. Trees will be replanted on property controlled by that State agency according to the following table:

Deciduous Trees Caliper (inches)	Coniferous Trees Height (feet)	Minimum Number of Trees to Plant
2 to 4	5 to 10	1
4 to 8	10 to 20	2
8 to 12	20 to 30	4
12 to 20	30 and over	6
Over 20	30 and over	10

b. Tree Type

Deciduous Trees meeting the aforementioned definitions which are approved for removal shall be replaced with sufficient trees of minimum 2" caliper.

Coniferous trees approved for removal shall be replaced with sufficient coniferous trees of 5' minimum height.

c. Replacement of planted trees will be repeated until there is a 50 percent survival rate (of the original required number) at the end of five years.

d. No non-hazardous live trees are to be removed prior to approval. Dead or hazardous trees (based on condition, not location) will be exempt from these guidelines. Trees and shrubs removed by thinning or other approved management practice to improve tree growth or habitat conditions will be excluded from these replanting guidelines, provided such removal is covered in an approved management plan.

D. Management Plans

The preparation of a management plan is encouraged. These guidelines are designed to prevent unnecessary removal of trees, but not to restrict good management techniques.

E. Applicability

These guidelines shall apply to all agencies, boards and commissions which have the responsibility of managing State-owned real property with the following exceptions.

1. The Department of Roads shall be exempt from this policy as long as a current policy statement exists and is followed that addresses the unique concerns and requirements of highway rights-of-way.
2. Research and demonstration projects need only to have the approval of the agency head responsible and do not require approval of the Governor.
3. Historical and arboretum areas are exempted provided an acceptable master landscape plan has been developed.

F. Tree Removal/Replacement Review and Approval

1. State Building Division review

a. Information to be submitted by the agency shall include, but not be limited to the following:

- (1) Project description. A brief description of the project and the reason for the tree removal.
- (2) Site Plan. A scale drawing of the site showing all pertinent site features with the caliper and species of the trees planned for removal. This site plan shall be submitted prior to completion of preliminary architectural/engineering design documents.
- (3) Replanting list. A list of replacement trees indicating quantity and species.
- (4) Replanting plan. A scale drawing showing the location of all trees listed on replanting list. This plan must be submitted to the State Building Division within six months of the tree removal approval.

b. Items (1), (2) and (3) will be included in the State Building Division report recommendations. Item (4) will be included in the report if submitted with items (1) through (3); if not, item (4) will be attached to the original report when received.

2. Distribution of State Building Division's report and recommendations

a. Review by DAS Budget Division;

b. Review by DAS Director;

c. Review by Governor for approval or disapproval.

3. Report filed. Copies of the State Building Division's report and recommendations are filed with requesting agency along with a notice of how to proceed (approval/disapproval).

Appendix M  
STATE COMPREHENSIVE CAPITAL FACILITIES PLANNING  
**GUIDELINES**  
Budget Instructions  
For The Current Biennium

**Applies to all agencies' capital construction requests**  
except the University of Nebraska and the State Colleges, since they are subject to the  
Coordinating Commission for Postsecondary Education Statewide Planning Process.

In accordance with Revised Statute 81-1108.41 the Department of Administrative Services/State Building Division is to develop a State Comprehensive Capital Facilities Plan for each biennium, utilizing a Committee appointed by the Governor. The Plan is to be submitted on November 15<sup>th</sup> of even years and is to include a prioritization of capital construction project requests submitted for the biennium. The Committee, made up of state agency personnel and citizens, develops the planning process, guidelines for implementation, and the project prioritization system to be used in evaluating the project requests. Details and instructions for this process are incorporated into the following Guidelines:

For the current version of the Budget Instructions, see Section III Capital Construction and Building Renewal Requests at this link:

<http://budget.nebraska.gov/instructions.html>

## APPENDIX N

### Official Rules and Regulations Governing Procedures for Facility Construction Projects by the DAS State Building Division

These will be added after they have been officially filed with the Secretary of State's Office.

## Appendix O

### Energy Code Compliance per Nebraska Energy Code

Refer to this link for more current version:

[https://www.energycodes.gov/sites/default/files/documents/90-1\\_iecc\\_comparison\\_final\\_12-16-2009.pdf](https://www.energycodes.gov/sites/default/files/documents/90-1_iecc_comparison_final_12-16-2009.pdf)

## Appendix P

### Procedure for Procurement of Contractual Services

Refer to this link for more current version:

[http://das.nebraska.gov/materiel/purchase\\_bureau/docs/manuals/2017%20Procurement%20Manual.pdf](http://das.nebraska.gov/materiel/purchase_bureau/docs/manuals/2017%20Procurement%20Manual.pdf)

Appendix Q  
CAPITAL CONSTRUCTION THRESHOLDS

CONSTRUCTION	AMOUNT	STATUTE
<b>STATE VERSUS PRIVATE CONTRACTORS</b>		
State employees may provide labor for construction projects	Up to \$85,000 in construction costs	81-1108.43
State must hire outside Contractors	Over \$85,000 in construction costs	81-1108.43
<b>HIRING PRIVATE CONTRACTORS</b>		
	Under \$15,000 in total project costs	
-Competitive bidding not required		
-Agency may contract directly with a responsible Contractor		
	\$15,000 to \$50,000 in total project cost	
-Three or more quotes shall be solicited from responsible bidder		
-Agency shall require the successful bidder to furnish bonds for labor and materials		52-118
-A fixed bid receipt date or public opening is not required		
-A formal contract shall be executed		
-All resulting quotations or refusals shall be documented by the agency for reference-		
	\$50,000 to \$705,000 in total project costs	
- Formal set of plans and specs must be prepared by an AE		73-504
- 5% bid bond is required		72-803
- Bonds for performance and material and payment are required		52-118
- Public notice is required		72-803
- Sealed bids are required		72-803
-A formal contract shall be executed		
- Contract must be reviewed and approved by the Attorney General's office or the agencies legal designee and the SBD		
	Over \$705,000 in total project costs	
<b>Major Capital Construction Projects</b>		
- Formal set of plans and specs must be prepared by an AE		81-1108.43
- 5% bid bond is required		72-803
- Bonds for performance and labor and material payment are required		52-118, 72-803
- Public notice is required		81-1712, 72-803
- Sealed bids are required		72-803
- Contract must be reviewed and approved by the Attorney General's office or the agencies legal designee and the SBD		81-1114.02
-A program statement must be prepared by the agency funding the project and it must be approved by the Governor		81-1108.41

CONSULTANT	AMOUNT	STATUTE
A professional architect or engineer must be hired	\$50,000 in construction costs and above	73-504
Agency architect or engineer may prepare bid documents for projects	Up to \$70,000 in fees or construction cost estimate over \$705,000	81-1108.43, 81-1712
Professional consultant selection process is required for all outside architects and engineers	Over \$70,000 in fees or construction cost estimate over \$705,000	81-1712 / 13
Open End Agreement may be utilized to shorten the selection process	Up to \$2,000,000 in total project cost	