# AGREEMENT FOR FOUR-YEAR ARCHITECT/ENGINEER DESIGN SERVICES FROM MAY 1, 2022 TO APRIL 30, 2026

**BETWEEN**

**THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA AND**

**«Legal Name»**

**THIS AGREEMENT** is made and entered into at Lincoln, Nebraska this 1st day of May 2022, by and between **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public body corporate, hereinafter called "OWNER", and **«Legal Name»** hereinafter called "FIRM” and shall apply to any Project which may during the term of this Agreement be identified in written addenda to this Agreement.

# WITNESSETH:

**WHEREAS**, the OWNER and the FIRM by this Agreement are setting forth the terms and conditions pursuant to which the FIRM may be engaged to provide professional services to the OWNER for one or more separate projects during the term of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter contained, the OWNER and FIRM agree as follows:

# TERM OF AGREEMENT

* 1. The term of this Agreement shall be for a period of four (4) years, beginning on the 1st day of May 2022, and ending at midnight on the 30th day of April, 2026, subject to automatic extension for that time necessary for completion of those phases of the FIRM’s Basic Services on a Project (as hereinafter provided), then underway, that have not been completed as of the last day of said term.

Project Type(s): <insert type>, <insert type>

# GENERAL PROVISIONS RELATING TO ARCHITECT’S/ENGINEER’S SERVICES

* 1. During the term of this Agreement, the parties may from time to time by written addendum to this Agreement (Project Addendum) describe individual Projects for which the professional services of the FIRM are required. The FIRM shall provide professional services to the OWNER for each such Project in accordance with the terms and conditions of the Project Addendum and the applicable terms and conditions of this Agreement as provided in the Project Addendum and the related Construction Documents If the Project Addendum does not specify which terms and conditions of this Agreement will be applicable to a Project, then all terms and conditions of this Agreement shall apply. The intent of the parties is that this Agreement serve as a base for engaging the services of the FIRM on individual Projects from time to time. This Agreement is not an all requirements or exclusive agreement, and the OWNER retains the ability to employ other professional services at the sole discretion of the OWNER. References in this Agreement are to be read in the context of obligations of the FIRM and other terms and conditions related to the services of the FIRM on various individual Projects. As a result, the terms and conditions of this Agreement necessarily include the pertinent Project Addendum and terms and conditions related to the FIRM in the Construction Documents for an individual Project. Unless the context clearly requires otherwise, any conflict shall be resolved favoring the terms and conditions in highest to lowest order as follows: 1) Agreement for Design Services (this agreement); 2) the correlated Project Addendum, and 3) the correlated Construction Documents for the Project.
  2. The FIRM agrees to perform all of the professional services in connection with a Project in a diligent manner in accordance with the highest standards of the architectural and engineering professions, and in accordance with the terms and conditions of this Agreement.
  3. The parties understand and agree that this Agreement is and shall be for the purpose of obtaining the professional services of the FIRM. Accordingly, the FIRM shall not delegate to other architects or engineers the duties required to be performed pursuant to this Agreement, except that the FIRM shall have the right to engage other qualified consultants, architects, engineers, or draftspersons in performing the professional services required for a Project with the prior written approval of the OWNER.
  4. The FIRM shall cause each of its employees or any person acting on behalf of the FIRM, whenever on site or otherwise on property of the OWNER under this Agreement, to carry identification, with photo, showing that the individual is an authorized employee or person acting on behalf of the FIRM. A badge or identification card worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any OWNER or law enforcement representative. In addition, the FIRM shall cause each of its employees or any person acting on behalf of the FIRM whenever on site or otherwise on property of the OWNER under this Agreement, to comply with all policies, rules and regulations of the OWNER. Employees or representatives without proper identification or otherwise in violation of any policy, rule or regulation of OWNER will not be permitted to remain on OWNER property and absence or delay caused thereby shall not be an excuse for failure to timely perform or constitute any grounds for time extensions, change orders or other modifications. Failure to comply in all material respects with the above requirements, shall be a material breach of the Agreement and shall constitute cause, at the discretion of the OWNER, for termination of this Agreement.
  5. All time limits for performance of the FIRM’s professional services provided in a Project Addendum or this Agreement are of the essence.

# ARCHITECT’S/ENGINEER’S COMPENSATION

* 1. The OWNER shall compensate the FIRM for Basic Services relating to each Project in accordance with the terms and conditions of this Agreement in such amount or amounts or at such rate of compensation as shall be provided in the Project Addendum.
  2. The OWNER shall compensate the FIRM for Additional Services authorized by the OWNER as provided in Section 5.1 in such amount or amounts or at such rates of compensation as shall be provided in the Project Addendum.
  3. Reimbursable Expenses (amounts expended as defined below in 9.1) will be billed to the OWNER at direct cost without any administrative charges or cost factors for overhead or otherwise.
  4. If through no fault of the FIRM the Basic Services covered by a Project Addendum and this Agreement have not been completed in accordance with the schedule agreed to by the FIRM and OWNER, the FIRM’s compensation as set forth in the Project Addendum shall be subject to renegotiation to reflect any added costs not reasonably foreseeable by the FIRM at the time of execution of the Project Addendum.
  5. The FIRM will receive compensation approved by the OWNER as an Additional Service for the FIRM’s necessary services in connection with Change Orders, except for any Change Orders resulting from or arising out of the wrongful or negligent acts or omissions of the FIRM, or other corrective action initiated by or on behalf of the FIRM.
  6. In the event the cost of the Project shall be changed by the OWNER by deletions, alterations and/or additions of any kind which shall not require additional drawings, specifications, and/or observation from the FIRM, then the FIRM shall not receive additional compensation.
  7. In the event there is a need of the FIRM’s services in connection with Change Orders and/or Construction Change Directives made after the OWNER's written approval of the Construction Documents Phase of a Project that result from the FIRM’s negligent acts, errors, or omissions, then such services will be provided by the FIRM at no additional cost or fee charged to the OWNER.
  8. The OWNER may, at any time, by written order, make changes in the scope of a Project. Should the scope of a Project be changed materially by the OWNER for any reason, an equitable adjustment in the FIRM’s compensation for Basic Services as provided in the Project Addendum will be made by mutual agreement of the FIRM and the OWNER at the time of such change.

# ARCHITECT’S/ENGINEER’S BASIC SERVICES

* 1. The FIRM’s Basic Services for each Project consist of the five phases described below in Sections 4.4, 4.5, 4.6, 4.7 and 4.8.

# GENERAL REQUIREMENTS

* + 1. The FIRM shall provide a listing of the FIRM’s personnel and consultants, if any, to be assigned to each Project. A workflow plan and a schedule shall be provided to the OWNER at the start of Phase II - Design Phase (See Section 4.5). Included in the workflow plan will be a profile of each consultant whose services the FIRM intends to use on the Project. Except for causes beyond the FIRM’s reasonable control or termination of employment of an employee, the FIRM shall not remove the design architect and/or engineer(s) or project coordinator originally assigned to the Project without the written consent of the OWNER.
    2. DESIGN GUIDELINES – The FIRM is required to conform to the OWNER's Design Guidelines in effect at the time of Project Addendum execution, incorporated herein by this reference.. The FIRM will be responsible for any and all costs relating to the FIRM’s negligent or intentional failure to conform to these guidelines, including but not limited to the replacement of systems or Work that does not conform to the guidelines. The FIRM may only depart from these guidelines if written permission is granted from the OWNER by the approval of a [Design Guideline Waiver Request](https://nebraska.edu/offices-policies/business-finance/facilities-planning-and-capital-programs/services/capital-construction/design-guidelines/forms/design-guideline-revision-request).
    3. The FIRM will prepare meeting minutes for every Project meeting from the Program Verification phase through the construction administration phase. The FIRM will distribute meeting minutes to all building team participants and will save such minutes in the OWNER’s project management information system within three working days after the meeting. In the meeting minutes, the FIRM will briefly document each discussion item including related decisions and/or actions required.
    4. The FIRM is required to use BIM software compatible with or translatable to the OWNER’s throughout the entire project to facilitate the electronic transmission, viewing and alteration of all drawings. Prior to submission of any BIM files to the OWNER, the FIRM will also adhere to the BIM standards set forth by the OWNER.
    5. The FIRM will not proceed with subsequent design phases until the current design phase, including any adjustments authorized by the OWNER in the Project, is approved in writing by the OWNER's Representative.

# HAZARDOUS MATERIALS

* + 1. If the FIRM encounters or reasonably anticipates encountering conditions involving hazardous, potentially hazardous, or toxic materials or substances during the performance of services on any Project, the FIRM shall immediately notify the OWNER of the same. If the OWNER has knowledge of any Project related site conditions involving hazardous, potentially hazardous, or toxic materials or substances, it will also advise the FIRM of the same. In any case, the FIRM's design of a Project shall include technical assistance for the proper remediation or abatement of existing conditions of hazardous, potentially hazardous, or toxic materials or substances to the extent required by law or applicable regulation. The FIRM shall not assume any liability for the costs of such remediation or abatement.
    2. ASBESTOS - The FIRM will notify the OWNER of the possible existence of asbestos containing materials, if during the performance of Basic Services, the FIRM should notice its possible existence. The FIRM's design of the Project will be so executed so that it will allow for proper abatement of asbestos by the OWNER. If asbestos abatement is required, the OWNER will be solely responsible for same.
  1. **PHASE I - PRELIMINARY PLANNING AND SCHEMATIC DESIGN PHASE**: The FIRM in coordination with the OWNER shall determine any preliminary site planning and schematic design elements that may be required as part of the FIRM’s Basic Services and provide for the same in writing in the Project Addendum for a Project.
  2. **PHASE II - DESIGN PHASE**: The FIRM’s Basic Services in the Design Phase of a Project shall be as provided below in Subsections 4.5.1 through 4.5.12.
     1. The FIRM shall review the Need/Program Statement and other information furnished by the OWNER for a Project to ascertain the requirements of the Project and shall meet with the OWNER to resolve any questions the FIRM may have concerning the OWNER's requirements for the Project. The FIRM shall review with the OWNER alternative approaches to design and construction of the Project.
     2. The FIRM shall not proceed with the Design Phase until the Need/Program Statement for the Project is approved in writing by the OWNER.
     3. Prior to the preparation of Design Documents, the FIRM shall provide to the OWNER a preliminary written estimate of Construction Cost of the Project using industry standard CSI format cost data and categories. The FIRM and OWNER shall thereafter jointly determine and agree upon a total project cost for the Project.
     4. Based upon the Need/Program Statement approved by the OWNER, the FIRM shall prepare, for approval by the OWNER, Design Documents consisting of drawings and other documents that 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.
     5. If available, and upon the request of the FIRM, the OWNER will furnish to the FIRM, for use in preparing Design Documents, copies of the original record drawings and related documents for any existing building or structure involved in the Project and any alterations made thereto. Such drawings are not represented by the OWNER as being complete or up-to-date, and the FIRM in the proper exercise of professional judgment may be required to supplement or verify the information in such plans by measurement or observation at the site.
     6. The FIRM shall examine existing conditions at the Project site and shall advise the OWNER of any inaccuracies or other deficiencies noted in any original record drawings and related documents provided to the FIRM and recommend changes to the same. If changes to the original project record drawings are necessary, the OWNER shall either: (a) have the FIRM update the drawings as an Additional Service, or (b) provide the revised drawings to the FIRM in accordance with Section 6.3.
     7. The FIRM shall, in coordination with the OWNER, provide informational, consulting, review and approval services to any governmental agency that has regulatory authority relating to the FIRM’s services on the Project specifically including any related planning, historic preservation, design, or environs committee.
     8. For any Project, the FIRM and the OWNER shall determine if a Design Development Submittal, and/or IDR Submittal is required for the Project.
     9. The FIRM will on request and at no additional cost to the OWNER make presentations or provide services in connection with presentations by the OWNER relating to the Design Phase of the Project.
     10. The FIRM will provide interior design services, including color selections for building finishes, required for or in connection with the selection, procurement, or installation of furniture, furnishings, signage, graphics, and related equipment as directed by the OWNER.
     11. The FIRM shall provide to the OWNER a written estimate of construction cost for the Project using industry standard CSI format cost data and categories at the completion of the Design Phase. Such cost estimate shall be prepared by a system cost estimate or a detailed unit cost estimate. If the estimate of construction cost exceeds the preliminary estimate of construction cost in Section 4.5.3 by more than ten (10) percent, then a written report of the reasons for such increase will be provided to the OWNER prior to preparation of the Construction Documents.
     12. The FIRM will verify in writing, and in a format agreeable to the OWNER, that in their opinion, the Project has been designed in compliance with the State Building Construction Act; the Nebraska Building Energy Conservation Standard and the OWNER’s Sustainable Design Policy; the Nebraska Accessibility Guidelines; the State Fire Marshal's regulations and is in conformance with applicable federal, state and local laws, orders, regulations, standards, codes and ordinances as interpreted by the governing authority during the design process. The FIRM will submit in writing whether the project in their opinion conforms to the Americans with Disabilities Act (ADA) 2010 and, if not, what portions of the project do not conform to the ADA.
     13. The FIRM shall not proceed with Phase III - Construction Documents Phase until Phase II - Design Phase is approved in writing by the OWNER.
  3. **PHASE III - CONSTRUCTION DOCUMENTS PHASE**: The FIRM’s Basic Services in Phase III - Construction Documents Phase of a Project shall be as provided below in Sections 4.6.1 through 4.6.7.
     1. The FIRM shall prepare from the approved Design Documents, for approval by the OWNER, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the base bid and FIRM initiated alternate bids for construction of the Project. The Construction Documents will include, as applicable to the Project, general work, mechanical work, electrical work, elevators, casework, energy management, IT Systems, and all other work required for construction of the Project.
     2. The FIRM shall assist the OWNER in preparation of the necessary bidding documents and the documents which will comprise the contract to be entered into between the OWNER and the Contractor for construction of the Project using OWNER approved standardized forms where practicable (the Construction Documents).
     3. The FIRM shall assist the OWNER in filing the required documents for the approval of governmental authorities having regulatory jurisdiction over the Project.
     4. The FIRM will provide the OWNER with electronic versions of all contract documents upon completion of the Construction Documents Phase.
     5. The FIRM will notify the OWNER of those items required for early order or delivery so that a Project is not delayed and will provide the OWNER with the necessary drawings and specifications required for separate bidding of such items.
     6. At the completion of Phase III - Construction Documents Phase, prior to releasing the Construction Documents for bid, the FIRM shall provide a written estimate of construction cost and total cost for the Project to the OWNER for the OWNER's written approval. Such estimates will be provided using industry standard CSI format cost data and categories on an estimate form provided by the OWNER. The estimate of construction cost shall be based on a detailed unit cost estimate.
  4. **PHASE IV - BID PHASE**: The FIRM shall provide professional services in Phase IV - Bid Phase of a Project as provided below in Sections 4.7.1 through 4.7.4.
     1. The FIRM shall assist the OWNER in obtaining bids or negotiated proposals for construction of the Project, and in awarding and preparing construction contracts. The FIRM shall be present on the occasion of the pre-bid conference and the receipt of bids for the Project.
     2. The FIRM will provide to the OWNER a set of electronic reproducible drawings and specifications for the OWNER’s use in printing and distribution.
     3. If the construction work for the Project is competitively bid, the FIRM will assist the OWNER in evaluating the project bids.
     4. In the event that the lowest responsible bid or negotiated proposal for the construction work exceeds the estimate of construction cost for the Project provided by the FIRM and approved by the OWNER pursuant to Section 4.6.6, the OWNER may in the exercise of its sole discretion:

1. Give written approval of an increase in the previously approved estimated construction cost for the Project, or
2. After conferring with the FIRM (at no additional cost to the OWNER) and the proposed Contractor, evaluate the Project to determine if change orders can be initiated to allow construction of the Project to be accomplished within the estimated construction cost, or
3. Authorize rebidding or renegotiating of the Project within a reasonable time, or
4. Direct the FIRM (at no additional cost to the OWNER) to revise the scope of the Project and/or Construction Documents on a timely basis, as directed by the OWNER, so that bids or proposals may be received within the previously approved estimated construction cost for the Project, or
5. Terminate the Project Addendum and the FIRM’s services for the Project by giving the FIRM written notice of termination, and compensate the FIRM for services performed prior to termination, except that in the event of termination of the FIRM’s services as provided in this Section, the FIRM shall not receive termination expenses provided in Section 13.4
   1. **PHASE V - CONSTRUCTION ADMINISTRATION PHASE**: The FIRM’s Basic Services in Phase V - Construction Administration Phase of a Project shall be as provided below in Sections 4.8.1 through 4.8.16.
      1. The Construction Administration Phase will commence with the award of the construction contract for the Project and will terminate on the date provided in the Project Addendum. If no termination date is stated in the Project Addendum, the Administration Phase will terminate one year after the date of Substantial Completion of the entire Project.
      2. Unless otherwise provided in the Project Addendum, the FIRM shall provide Construction Administration for the Project.
      3. The FIRM shall advise and consult with the OWNER during the Construction Administration Phase. The FIRM shall have authority to act on behalf of the OWNER only to the extent provided in this Agreement, unless otherwise provided in writing by the OWNER.
      4. A registered architect and/or registered engineer representing the FIRM shall make no less than two visits with the OWNER to the Project Site each month during the progress of construction at a time mutually agreed upon between the OWNER and the FIRM. Based on on-site observations, the FIRM shall endeavor to guard the OWNER against defects and deficiencies in construction of the Project (the Work) and shall assist the OWNER in obtaining faithful performance of the Construction Documents.
      5. The FIRM shall not be responsible for and will not have control over or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on a Project. The FIRM shall not be responsible for the Project Contractor's schedules or failure to carry out the Work in accordance with the Construction Documents. The FIRM shall not have control over or charge of acts or omissions of a Project Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
      6. The FIRM shall at all times have reasonable access to the Work on the Project, wherever it is in preparation or progress.
      7. The FIRM shall not determine the amounts owing to the Contractor on the Project and shall not issue Certificates for Payment unless the same are specifically required in the Project Addendum. See OWNER's Responsibilities, Section 6.11.
      8. The FIRM shall advise the OWNER in matters relating to rejection of Work on the Project which does not generally conform to the Construction Documents. Whenever the FIRM, in the reasonable exercise of their professional judgment, considers it necessary or advisable for the proper execution of the Work in accordance with the Construction Documents, they will advise the OWNER to require special inspection or testing of the Work in accordance with the provisions of the Construction Documents, regardless of whether such Work has been fabricated, installed or completed.
      9. The FIRM, concurrently with the OWNER, will review required Shop Drawings, Product Data, Samples, and other submissions of the Contractor for conformance with the design concept of the Work and for general compliance with the information given in the Contract Documents. On submittals in which the OWNER and FIRM disagree, the OWNER will have the final decision in regard to aesthetics, cost, or efficiency of the Work, products, materials or other submissions on the condition that it meets or exceeds the specification criteria in the Contract Documents. The FIRM will then be responsible for furnishing reviewed and stamped copies to the OWNER and to the Contractor through the OWNER’ project management information system.
      10. . The FIRM will prepare data for Change Proposal Requests and Construction Change Directives as required by the OWNER. The FIRM will have access to all executed Change Orders and Construction Change Directives prepared by the OWNER.
      11. The FIRM shall assist the OWNER and the Project Contractor in preparation of the "punch list".
      12. The FIRM will be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the OWNER and Contractor. Interpretations and decisions of the FIRM will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in written or graphic form. The FIRM will make recommendations on all claims of the OWNER or Contractor relating to the execution and progress of the Work and on all other matters or questions related thereto in a timely manner.
      13. The FIRM will assist in commissioning the building and instructing the OWNER’s operation and maintenance personnel in the initial "start-up" of mechanical, electrical, and special equipment systems.
      14. The FIRM or designee, the OWNER's Representative and others as applicable who are involved in the Project will conduct a post-occupancy inspection in the period from ten to eleven months after the date(s) of Substantial Completion. FIRM will prepare a report detailing the findings of the post-occupancy inspection and provide electronic files to the OWNER. The inspection will include:
6. Review of Warranties -Interview of appropriate operating and maintenance personnel to evaluate the performance of and inspect materials, systems, and equipment under warranty. Document defects or deficiencies and assist, as required, in administering corrective action by the Project Contractor(s).
7. Evaluation of Design Services - Interview of appropriate OWNER users to evaluate the Project program versus actual use, the functional effectiveness of the planned spaces, and the operational effectiveness of equipment, systems, and materials. Document both positive and negative aspects of the design and recommend possible solutions to problems in the design of the Project and of future projects of similar type.
   * 1. The FIRM will deliver to the OWNER one (1) complete reproducible set of the project record drawings, including all applicable disciplines, showing all work developed in the FIRM’s office, plus all change orders, revisions, details, etc., recorded on the Project site by the Contractor and/or the OWNER's Representative made during the period of construction. The Contractor will be required to deliver to the FIRM one complete set of project drawings marked up with all changes that occurred during construction at the site and reflecting exactly how the project was constructed. The FIRM will be responsible for the accuracy of drawings developed in the FIRM’s office. The FIRM will not be responsible for the changes at the site that are not provided by the Contractor.
     2. The OWNER will review the as-built record drawings for completion, accuracy, and other requirements. The drawings will be returned to the FIRM for corrections, as necessary. The FIRM will make any corrections and deliver revised as-built drawings to the OWNER.
     3. Upon OWNER’s final approval, the FIRM will provide one (1) complete set of appropriately labeled as-built drawings as follows:
8. FIRM will submit to OWNER an electronic copy of all project record drawings. The files will be in PDF, CADD, and REVIT formats. CADD files will include all support files required to display and plot the files in the same manner as their submittals. The electronic copies shall include all drawings contained in the hard copy submittal necessary for replicating a complete document set. These files will include, but are not limited to, Linetypes, plot configuration/style table files, font files, raster images, other graphic files, etc. The requirement for electronic form project record drawings will consist of all information produced for the Construction Documents, including site and floor plans, major building elevations, cross-sections, minor cross-sections, mechanical & electrical systems, detail drawings, etc.

.b The Computer Aided Design and Drafting (CADD) copy of the project record drawings in electronic form will consist of the format, organization, and type of drawings, as directed by the OWNER, and as described in the current version of the Campus Design Guidelines. The requirement for electronic form project record drawings will consist of all information produced for the Construction Documents, including site and floor plans, major building elevations, cross-sections, minor cross- sections and detail drawings. The electronic form of the project record drawings must be compatible with the OWNER’s Computer Aided Design and Drafting (CADD) system.

.c FIRM will also submit to OWNER a scanned copy of project record drawings in electronic form, which shall consist of the format, organization, and type of drawings, as directed by the OWNER, and as described in the current version of the Campus Design Guidelines. The requirement for electronic form project record drawings will consist of all information produced for the Construction Documents, including site and floor plans, major building elevations, cross-sections, minor cross-sections, and detail drawings.

d. The electronic form of all the project record drawings must be compatible with the OWNER’s current (TIF) Archive Storage File System and saved in the OWNER’s project management information system.

# ADDITIONAL SERVICES

* 1. The Additional Services described below in this Section are not included in the Basic Services of the FIRM. Such Additional Services shall be provided by the FIRM after prior written approval of the OWNER. Additional Services may consist of the following:
     1. Revisions to Drawings, Specifications, or other documents when such revisions are inconsistent with written approval or instructions previously given by the OWNER.
     2. Consultation concerning replacement of any Work damaged by fire or other cause during construction and professional services as may be required in connection with the replacement of such Work.
     3. Revisions to project record drawings as directed by the OWNER.
     4. Services to obtain adequate equipment information not provided by the OWNER as described in Section 6.5.
     5. Interior design services, excluding color selections, required for or in connection with the selection, procurement, or installation of furniture, furnishings, signage, graphics, and related equipment as directed by the OWNER.
     6. Preparation of OWNER initiated alternate bids.
     7. Change Orders as approved by the OWNER in accordance with Section 3.5.

# OWNER'S RESPONSIBILITIES FOR EACH PROJECT

* 1. The OWNER shall provide full information, including a complete Need Statement/Program Statement regarding its requirements for the Project.
  2. The OWNER shall designate a representative authorized to act on its behalf with respect to the Project. The OWNER shall examine documents submitted by the FIRM and shall render decisions pertaining thereto so as to avoid unreasonable delay in the progress of the FIRM’s Services.
  3. The OWNER shall furnish (as OWNER Provided Information) copies of the original Project record drawings, if any, and assist the FIRM in determining the location and size of all utilities serving the Project area. If changes to the original Project record drawings are necessary, the OWNER may choose to have the FIRM update the drawings as an Additional Service or provide revised drawings to the FIRM.
  4. If required by the Project Addendum, the OWNER shall furnish (as OWNER Provided Information) copies of the original Project record drawings and the legal description of the Project area, as well as the location and size of all utilities serving the Project area. If changes to the original Project record drawings are necessary, the OWNER may choose to have the FIRM update the drawings as an Additional Service or provide revised drawings to the FIRM.
  5. Early in Phase II - Design Phase the OWNER shall furnish (as OWNER Provided Information) detailed information on its equipment requirements (movable, special and technical equipment) including catalogue cuts that describe in detail all physical characteristics and requirements of each piece. This will include such information as size, weight, form and configuration, heat generation characteristics, all utility requirements, utility service locations, and any other pertinent data necessary for the FIRM’s use for proper design of the Project.
  6. Early in Phase II - Design Phase, the OWNER shall furnish the services of a geotechnical FIRM or other consultant when such services are deemed necessary by the FIRM. Such services may include test borings, test pits, soil bearing values, percolation tests, evaluations of hazardous materials, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations on or about the Project site for determining subsoil, air, and water conditions as required, including reports and professional recommendations as determined by the provider of the same and as reasonably requested by the FIRM.
  7. The OWNER shall provide its own legal, accounting, and insurance counseling services as necessary for the Project, and such auditing services as it may require ascertaining how or for what purposes the Contractor has used the money paid to the Contractor under the Construction Contract for the Project.
  8. The services, information, surveys, and reports provided for in Sections 6.3 through

6.9 (OWNER Provided Information) shall be furnished at the OWNER's expense. However, the OWNER does not represent, warrant, or guarantee the accuracy or completeness of the same either in whole or in part, and the OWNER shall have no liability therefor. To the extent the same involves existing and available information in the possession of the OWNER -- such as Project related utility locations, topographical or survey information (whether generated by the OWNER or provided by others) -- the same is provided by the OWNER only "where is" and "as is" with no representation by the OWNER that the same is accurate, current, or representative of actual site conditions or other information as it may relate to the Project. The FIRM is solely responsible to determine the site or project specific accuracy, adequacy, fitness, suitability, or coordination of any OWNER Provided Information and the FIRM may be required to supplement or verify the same in the proper exercise of the FIRM’s professional judgment.

* 1. If the OWNER or FIRM becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents, it shall give prompt verbal notice of the fault or defect followed by written notice thereof to the other party.
  2. The OWNER and FIRM shall perform this Agreement and furnish information as expeditiously as necessary for the orderly progress of the Work on a Project.
  3. The FIRM shall assist the OWNER in the OWNER’s sole determination of amounts owing to the Contractor on a Project based upon observation at the Project site and upon the OWNER’s evaluation of the Contractor's application for payment under the Construction Documents.

# DETERMINATION OF CONSTRUCTION COST

* 1. Construction Cost, as may be required in a Project Addendum for the purpose of computing the FIRM’s compensation for services, shall be determined as provided below in this Section, with precedence for such determination to be in the order listed:
     1. For completed construction, the Contract Sum(s) approved in the Construction Contract(s) (excluding any OWNER initiated alternate bid(s) accepted) will be the Construction Cost. If the Construction Cost is less than the FIRM estimated Construction Cost at the time of bid, the Construction Cost will be defined as that received at bid. If the Construction Cost exceeds the FIRM estimated Construction Cost prior to bid, the Construction Cost will be defined as the FIRM’s estimate prior to bid.
     2. For Work not constructed, (1) the lowest responsible base bid(s) accepted by the OWNER, including any FIRM initiated alternate bid(s) accepted from a qualified bidder(s) for any or all the Work on a Project, or (2) if the Work is not bid, the bona fide negotiated proposal submitted for any or all of such Work will be considered the Construction Cost.
     3. For Work on which no bid or proposal is received, (1) the latest OWNER approved estimate of Construction Cost, if is available, or (2) the latest OWNER approved preliminary estimate of Construction Cost will be considered the Construction Cost.
  2. Construction Cost used as a basis for fee determination shall not include:
     1. Change Orders,
     2. Compensation of the FIRM and the FIRM's consultants,
     3. Cost of land, rights-of-way, financing, or other costs which are the responsibility of the OWNER as provided in Sections 6.1 through 6.11,
     4. Cost of asbestos, hazardous waste or hazardous materials abatement or remediation,
     5. Movable equipment, works of art, floor coverings, furniture and furnishings provided and installed by the OWNER, or
     6. Cost of observation or construction furnished by the OWNER, unless designed by the FIRM.
  3. The FIRM shall be compensated for OWNER initiated alternate bids as an additional service in accordance with Section 3.2.

# DIRECT SALARY EXPENSE

8.1 For the purposes of this Agreement and any Project Addendum, the term "Direct Salary Expense" is defined as the salaries of professional, technical and clerical employees engaged on a Project by the FIRM, but excluding the cost of their mandatory or customary benefits of employment, such as sick leave, holidays, vacations, pensions, retirement, employment taxes, social security, worker's compensation, unemployment compensation, disability leave or insurance, life insurance, health and accident insurance, medical and similar benefits.

# REIMBURSABLE EXPENSES

* 1. For the purposes of this Agreement and any Project Addendum, "Reimbursable Expenses" shall be in addition to compensation for Basic and Additional Services and include reasonable expenses of the FIRM and FIRM’s employees and consultants in the interest of a Project only to the extent that such expenses are necessarily incurred for the Project, where allowed by OWNER as follows:
     1. Cost and expense of transportation and living (not including Direct Salary Expense) approved by the OWNER in writing when traveling in connection with the Project over and above such expenses required to perform basic services.
     2. Cost and expense of reproductions, postage and handling of drawings and specifications, excluding the cost of (1) reproductions for the office use of the FIRM or the FIRMr’s consultants, (2) reproductions required at the completion of each phase of a Project for the OWNER's review, and (3) project record drawings required by Section 4.8.15.
     3. Cost and expense of overtime work requiring higher than regular rates, if authorized in advance by the OWNER in writing.
     4. Cost and expense of renderings, models and mock-ups requested by the OWNER that have not been included in the Project Addendum as part of the FIRM’s Basic Services.
     5. Professional consultant's services that have been approved in writing by the OWNER in advance of performance of such services.

# PAYMENTS TO THE ARCHITECT/ENGINEER

* 1. Payments to the FIRM for Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each Phase, except when the compensation is on the basis of Direct Salary Expense, shall equal the following percentages of the total Compensation unless otherwise provided in the Project Addendum:

Program Verification Phase 5%

Schematic Design Phase 25%

Design Development Phase and Demolition Documents 50%

Construction Documents Phase 70%

Bid Phase 80%

Construction Administration Phase

(At Substantial Completion) 95%

(Upon Completion of Project Record Drawings) 100%

* 1. No payment will be made to the FIRM until the OWNER: (i) executes a Project Addendum which has been executed by FIRM including the completed the OWNER’s Certificate of Insurance form, and(ii) issues a Notice to Proceed.
  2. Payments for additional services of the FIRM listed in Section 5.1 and for reimbursable expenses as defined in Section 9.1 shall be made monthly upon presentation of the FIRM’s Application and Certificate for Payment and the submission of any associated documentation requested by OWNER.
  3. No portion of the FIRM’s compensation shall be withheld on account of penalty, liquidated damages, or other sums withheld from payment to contractors for a Project, or on account of the cost of changes in the Work other than those for which the FIRM is liable.
  4. Payment to the FIRM for services rendered shall be made by OWNER within forty-five (45) calendar days of receipt of the FIRM’s Application for Payment Form and completion of the OWNER's Certificate for Payment.

# ARCHITECT’S/ENGINEER’S ACCOUNTING RECORDS

11.1 Records of reimbursable expenses and expenses pertaining to additional services on a Project and for services performed on the basis of direct salary expense shall be kept on a generally recognized accounting basis and shall be made available to the OWNER for examination during normal business hours of the FIRM.

# MEDIATION OF DISPUTES BETWEEN OWNER AND ARCHITECT/ENGINEER

12.1 Should the OWNER and the FIRM fail to resolve any dispute between them relating to the contractual requirements for the FIRM’s services on a Project or the compensation to be paid to the FIRM for services on a Project, they shall choose a third party mutually agreeable to each to provide non-binding mediation services to assist in a further attempt to resolve the matter(s) in dispute. The mediator shall direct the mediation process. The OWNER and the FIRM agree to participate in the mediation process in a good faith attempt to reach a mutually acceptable solution. The costs of mediation services shall be shared equally between the OWNER and the FIRM, unless the mediator finds that a party has engaged in conduct which unduly and unreasonably protracts the mediation process, in which case the offending party shall bear a higher portion, or all of the mediation costs as determined by the mediator. Other than the obligation of each party as set out herein to participate in good faith in the mediation process, this section shall not be construed as a waiver of any rights or remedies the parties may have, either by contract or by operation of law.

# TERMINATION, SUSPENSION OR ABANDONMENT

* 1. This Agreement and any Project Addendum may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement and/or a Project Addendum through no fault of the party giving notice of termination.
  2. If by action of the OWNER a Project is suspended for more than ninety (90) days or abandoned in whole or in part, the FIRM shall be compensated for services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with reimbursable expenses then due and all termination expenses as defined in Section 13.4 resulting from such suspension or abandonment. If a Project is resumed after being suspended for more than three months, the Project Addendum shall be subject to renegotiation.

13.2.1 If a Project is suspended for more than two years, said determination of suspension to be made by the OWNER in good faith, then upon written notice given to the FIRM by the OWNER, this Agreement shall terminate, and any outstanding obligations remaining under this Agreement on the part of either the OWNER or the FIRM shall be deemed satisfied.

* 1. In the event of termination due to the fault of a party other than the FIRM, the FIRM shall be compensated for services performed to the termination date, including reimbursable expenses then due and all termination expenses as defined in Section 13.4.
  2. Termination Expenses are in addition to compensation for Basic and Additional Services and include expenses directly attributable to termination. Termination expenses shall be computed as a percentage of the total compensation for basic services earned to the time of termination, as follows:
     1. If termination occurs during Phase I - Preliminary Planning and Schematic Design Phase or Phase II - Design Phase of a Project, then termination expenses will be ten percent (10%) of the total compensation for basic services earned to the date of termination.
     2. If termination occurs during Phase III - Construction Documents Phase or Phase IV

- Bid Phase of a Project, then termination expenses will be five percent (5%) of the total compensation for basic services earned to the date of termination.

* + 1. If termination occurs during Phase V - Construction Administration Phase of a Project, then the FIRM will not receive any termination expenses.
  1. Termination for unavailability of funds. Any Project is contingent on the continued availability of government funds which are appropriated or allocated to the OWNER. In the event funds are not allocated and lawfully available to the OWNER to complete the Project, the Project may be terminated by the OWNER upon prompt written notice to the FIRM at the earliest possible time stating the date of termination under this section. No liquidated damages shall accrue to the FIRM in the event this provision is exercised, and the OWNER shall not be obligated or liable for any costs, expenses or other charges incurred after the date of termination, including any other damages or costs of any kind arising out of or resulting from termination under this section including any termination expenses as provided in Section 13.4. In the event of termination for unavailability of funds, the OWNER shall pay the FIRM for the cost of any Basic or Additional services provided and work completed up to the date of termination for the Project in an amount not to exceed 100% of the total compensation for the same. This provision shall not be construed to permit the OWNER to terminate a Project in order to acquire similar services from another party.
  2. The FIRM warrants that they are not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this Agreement and that they have 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 award or making of this Agreement. Violation of the provisions of this section by the FIRM shall constitute a material breach of this Agreement. In the event of such breach, the OWNER shall have the right to terminate this Agreement and any Project Addendum then in effect without liability to the FIRM of any kind whatsoever and may at its discretion withhold payment of the FIRM’s fees, or otherwise recover the full amount of such fees in an appropriate action at law or in equity.

# OWNERSHIP OF INTELLECTUAL PROPERTY

* 1. Drawings, specifications, and other deliverables including any intellectual property incorporated therein or related to the services that is reduced to tangible form shall become the property of the OWNER as soon as payment for the same has been tendered by the OWNER and regardless of whether the Project for which they are made has been completed. The FIRM may retain copies of the same for the FIRM’s records and use. It is mutually agreed that the FIRM will not be responsible or liable in the event the OWNER elects or permits any of the same to be used for any purpose other than the specific purpose for which they were prepared. Project drawings and other intellectual property related to the same shall be delivered or transmitted to the OWNER before final payment is made. The FIRM shall include consistent provisions (or obtain the same through separate agreement) regarding the intellectual property and ownership of documents in any agreement with subcontractors, consultants or other parties engaged to provide services related to the same. This section does not restrict the FIRM from using stock or standardized elements incorporated into the Project drawings for other work.
  2. The FIRM shall provide an electronic version of the Specifications, Drawings and other deliverables in electronic format or such other format the OWNER may reasonably request based on equipment and software compatibility for the OWNER's information and use. Because electronic information can be unintentionally or otherwise modified by others besides the FIRM, the FIRM shall have the right to remove all indicia of ownership and/or involvement from electronic files provided to the OWNER. The original electronic data will be retained by the FIRM. The information set forth in the electronic files may be used by the OWNER For additions to a Project or completion of a project by another design professional, or on another project, and in such event the OWNER agrees to waive and release any and all claims, causes of actions or related liability against the FIRM arising out of such use.

# INDEMNITY AND INSURANCE

* 1. The FIRM shall be liable to and agrees to indemnify and hold harmless the OWNER, and its governing board members, officers and employees, against all claims against any of them for personal injury or wrongful death or property damage arising out of any wrongful or negligent act, error, or omission of the FIRM in the performance of services for any Project, or arising out of wrongful act, error, or omission by a consultant to the FIRM in the performance of services for any Project.
  2. The FIRM shall insure and shall require each of the FIRM’s consultants to insure against the following risks to the extent stated below:
     1. Comprehensive general liability insurance including blanket contractual liability, broad form property damage, personal injury, premises medical payments, interest of employees as additional insureds, and broad form general liability endorsement, written on an occurrence basis covering as insureds the FIRM and the OWNER with not less than $3,000,000 combined single limit for bodily injury and property damage. Consultants of the FIRM shall maintain the same insurance coverage covering each consultant. The OWNER shall be named as an additional insured on a consultant's policy. Each such policy of comprehensive general liability insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the FIRM and the OWNER.

FIRM’s professional liability insurance written on a claims made or occurrence basis covering legal liability caused by errors and omissions arising out of professional services by the FIRM on any Project and providing coverage for the FIRM and any consultants of the FIRM with minimum limits of liability approved by the OWNER for each Project and stated in the Project Addendum, but in no case less than the limits as set forth in the OWNER’s Certificate of Insurance Instructions [UNFP 6.3.1.1.3](https://nebraska.edu/docs/facilities/CertificateofInsurancePreparationInstructions.pdf). Each such policy of professional liability insurance shall be kept in force for a period of at least two (2) years after the date of substantial completion of a Project.

* + 1. Comprehensive automobile liability insurance covering all owned, non-owned or hired automobiles to be used by the FIRM and any consultants of the FIRM in the amount of $1,000,000 of combined single limit. Each such policy of comprehensive automobile liability insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the FIRM and the OWNER.
    2. Workers' compensation insurance as required by Nebraska Statute 18-101, covering the FIRM and any consultant of the FIRM. Each such policy of workers' compensation insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the FIRM and the OWNER.
    3. Employers' liability insurance covering the FIRM and any consultants of the FIRM, including all states endorsement, in the minimum amount that is equal to or greater than the Nebraska Statutory Limits, required by law. Each such policy of employers' liability insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the FIRM and the OWNER.

15.3 All insurance required by Section 15.2 shall be maintained with responsible insurance carriers licensed to do business in the State of Nebraska. As soon as practicable after executing any Project Addendum and before commencing any performance of services under the Project Addendum, the FIRM shall deposit, and shall cause any FIRM’s consultant to deposit, with the OWNER, certificates of insurance on a form prescribed by the OWNER evidencing the insurance required by Section 15.2. Each certificate of insurance shall contain a statement certifying to the OWNER that the OWNER will be given at least thirty (30) days prior written notice of any material change in, or cancellation of the insurance coverage shown in the certificate.

# EQUAL EMPLOYMENT OPPORTUNITY

* 1. During the term of this Agreement the FIRM certifies that it will comply with the provisions of the Nebraska Fair Employment Practice Act (41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a), as amended, and that the FIRM and any consultants of the FIRM shall not discriminate against any qualified individuals based on their status as protected veterans or individuals with disabilities, and shall not discriminate against any individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.
  2. The FIRM shall include in any contract with a consultant performing services for the FIRM relating to any Project covered by this Agreement a clause containing language that is substantially the same as the language of Section 16.1, above.

# GENERAL PROVISIONS

* 1. Estimates of construction costs prepared by the FIRM represent the FIRM’s best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the FIRM nor the OWNER has control over the cost of labor, materials or equipment, the Contractor's methods of determining bid prices, or competitive bidding or market conditions.
  2. Preliminary to or during construction of a Project, the FIRM agrees to devote such time as may be necessary for conferences with the OWNER, or with any committee, officer, or attorney of the OWNER to act or to make presentations or recommendations on matters relating to the Project.
  3. Architectural services as referred to in this Agreement and a Project Addendum are complete for the Project which is proposed by the OWNER. If additional consultants are required by the FIRM for the design of a Project, such consultants shall be paid for by the FIRM at no additional cost to the OWNER unless the cost of such services are agreed to in writing by the OWNER.
  4. The FIRM agrees that the compensation provided in a Project Addendum shall be the complete compensation for Basic Services rendered by the FIRM for the Project, and no additional charges will be made by the FIRM for such services unless otherwise specifically agreed upon in writing by the OWNER.
  5. The FIRM and the OWNER each bind themselves and their respective partners, associates, successors, assigns and legal representatives to the faithful performance of the terms and conditions of this Agreement and any Project Addendum between the parties. Neither the OWNER nor the FIRM shall assign or transfer their respective interests in this Agreement without the written consent of the other.
  6. This Agreement together with any Project Addendum that may be executed by the parties represents the entire and integrated Agreement between the OWNER and the FIRM with regard to the Project described in the Project Addendum, and supersedes all prior negotiations, representations or agreements, either written or oral for the Project described in the Project Addendum.
  7. This Agreement and any Project Addendum that may be executed by the parties may be amended only by written instrument duly signed by both the OWNER and FIRM.
  8. No waiver of any of the conditions or provisions of this Agreement or any Project Addendum shall be implied; and no waiver expressed in writing shall affect any provision or condition of this Agreement or a Project Addendum other than the particular one specified in the written waiver, and that particular one only for the time and in the manner specifically stated in the written waiver.
  9. Terms in this Agreement not otherwise defined shall have the same meaning as those in the OWNER’s General Conditions, as modified by the OWNER's Supplementary Conditions of the Contract for Construction, current as of the date of this Agreement.
  10. 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 FIRM.
  11. This Agreement shall be governed by and construed according to the laws of the State of Nebraska.
  12. In the event that any provision of this Agreement, not essential to its overall purpose, shall be found or declared illegal for any reason, the balance of this Agreement shall nevertheless be severable and remain enforceable.
  13. Time is of the essence with respect to all provisions of this agreement and any Addendum hereto.
  14. FIRM agrees to indemnify and hold harmless the OWNER and their officers, regents, agents, and employees from and against all claims or losses including reasonable attorneys’ fees, arising out of or resulting from the negligence or omissions of FIRM, its partners, directors, officers, employees, licensee, subcontractors or agents, in the performance or nonperformance of services under this Agreement.

# ELECTRONIC VERIFICATION

18.1 FIRM shall use an electronic verification system to determine the work eligibility status of any new employees physically performing services within the State of Nebraska, as required pursuant to Neb. Rev. Stat. §§4-108 to 4-114 as of the effective date of this Contract, or as such law may be amended from time-to-time. Compliance with these Nebraska statutes shall be considered a material term of this Agreement.

**IN WITNESS WHEREOF** this Agreement was made effective on the date first written above.

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| **LEGAL NAME OF COMPANY** |  |  | **THE BOARD OF REGENTS OF THE** |
|  |  |  | **UNIVERSITY OF NEBRASKA** |
|  |  |  |  |
|  |  |  |  |
| Signature |  |  | Signature |
|  |  |  |  |
| Printed Name |  |  | Printed Name |
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| Title |  |  | Title |

**CERTIFIED COPY OF RESOLUTION**

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of **<<**Legal Name of Company**>>** to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees (List names below):

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BE IT FURTHER RESOLVED, that any such contract, agreement or release executed by any of the above-name employees in the name of **<<**Legal Name of Company**>>** should be considered a contract, agreement, or release of **<<**Legal Name of Company**>>** and shall be binding upon it.

BE IT FURTHER RESOLVED, that any similar authority heretofore granted by the Board of Directors of the Company to employees other than those named above be and hereby is terminated as of this date, and the authority granted above shall commence this date and shall continue until revoked by resolution of the Board of Directors.

I hereby certify that I am Secretary of **<<**Legal Name of Company**>>**, that as such I have access to the books and records of the Corporation; that the foregoing is true and accurate according to the minutes of the Board of Directors' Meeting of **<<**Legal Name of Company**>>** a **<<**State**>>** Corporation, held on the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_\_\_, a quorum being present; and that no action has been taken by the Board of Directors of said Corporation since said date that would have effect of changing or altering the authority granted therein.

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|  |  |  |  | Secretary of the Corporation |
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| Corporation | |  |  | Date |

**CERTIFIED COPY OF RESOLUTION**

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of **<<**Legal Name of Company**>>** to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees (List names below):

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BE IT FURTHER RESOLVED, that any such contract, agreement or release executed by any of the above-name employees in the name of **<<**Legal Name of Company**>>** should be considered a contract, agreement, or release of **<<**Legal Name of Company**>>** and shall be binding upon it.

BE IT FURTHER RESOLVED, that any similar authority heretofore granted by the Members/Managers of the Company to employees other than those named above be and hereby is terminated as of this date, and the authority granted above shall commence this date and shall continue until revoked by resolution of the Members/Managers.

I hereby certify that I am Secretary of **<<**Legal Name of Company**>>**, that as such I have access to the books and records of the Company; that the foregoing is that the foregoing is true and accurate according to minutes of the Members/Managers' Meeting of **<<**Legal Name of Company**>>** a **<<**State**>>** Limited Liability Company, held on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, a quorum being present; and that no action has been taken by the Members/Managers of said Company since said date that would have effect of changing or altering the authority granted therein.

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| LLC/Partnership | |  |  | Date |

**CERTIFIED COPY OF RESOLUTION**

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of **<<**Legal Name of Company**>>** to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees: (List individual name(s) below)

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BE IT FURTHER RESOLVED, that any such contract, agreement or release executed by any of the above-name employees in the name of **<<**Legal Name of Company**>>** should be considered a contract, agreement, or release of **<<**Legal Name of Company**>>** and shall be binding upon it.

BE IT FURTHER RESOLVED, that any similar authority heretofore granted by the Sole Proprietor of the Company to employees other than those named above be and hereby is terminated as of this date, and the authority granted above shall commence this date and shall continue until revoked by resolution of the Sole Proprietor.

I hereby certify that I am the Sole Proprietor of **<<**Legal Name of Company**>>**, that as such that no action has been taken by the Sole Proprietor of said Company that would have effect of changing or altering the authority granted therein.

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| Sole Proprietor | |  |  | Date |

**Miscellaneous Terms & Conditions**

1. General. The Agreement may not be changed in any way except by an instrument in writing signed by both parties. The Contract Documents cancel and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its right under the Contract Documents shall not constitute a waiver of such rights or of any other rights under the Contract Documents.

2. Termination for Cause. OWNER may terminate the Agreement at any time if FIRM fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, OWNER shall provide FIRM with a thirty (30) day written notice of the terms in breach. If after such notice, FIRM fails to remedy the breach within those 30 days, OWNER may immediately cancel the Agreement.

3. Contract Assignment. The Agreement shall not be transferred or assigned without prior written consent of OWNER.

4. Indemnity, General and Patent. FIRM shall indemnify, and save harmless, OWNER and its respective officers, agents and employees, from and against any and all liabilities, and losses whatsoever, including without limitation, costs and expenses, in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the Agreement, except for that liability and loss, arising from the acts or omissions, of OWNER or its agents. With respect to anything provided to OWNER by FIRM, FIRM shall indemnify OWNER and its respective officers, agents, and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery, and use of such by OWNER.

5. Governing Law; Venue. The laws of the State of Nebraska shall govern. Any dispute arising under the Agreement, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

6. Force Majeure. Neither party shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees’ demands are reasonable or within the party’s power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as a influenza pandemic) which in the judgment of OWNER poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the Agreement in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

7. Compliance with Laws and Regulations; Gramm Leach Bliley; University of Nebraska Policies. This Agreement must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by FIRM, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 which requires specific FIRM contract provisions; and all other applicable policies of the OWNER. FIRM agrees to indemnify OWNER against any loss, cost, liability, or damage by reason of FIRM’s violation of any applicable law or regulation. FIRM must be qualified to conduct the business necessary to the performance of the Agreement in the State of Nebraska throughout the duration of the Agreement term or any renewal thereof. FIRM shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of FIRM’s business.

8. Sexual Harassment. State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibit sexual harassment of members of the OWNER community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. Consultants, sub-consultants and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of the OWNER’s employees, students and other members of the OWNER community. The employer of any person who, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the project site and from OWNER’s premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

9. Drug Free Workplace. FIRM agrees that in the performance of this Agreement, neither FIRM nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. OWNER reserves the right to request a copy of FIRM’s Drug Free Workplace Policy. FIRM further agrees to insert a provision similar to this statement in all subcontracts or services hereunder.

10. Weapons Policy. Possession of dangerous weapons (concealed or unconcealed) on the OWNER’s property, on the work site, in OWNER vehicles, or in personal vehicles when on the OWNER’s property shall be a violation of OWNER’s policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by OWNER, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should the OWNER in its reasonable judgment, determine that FIRM, or its employee or agent, has committed an act in violation of this policy, the FIRM agrees as a term and condition of the Agreement, to cause such person and weapon, to be removed from the project site, and from the OWNER’s premises, and to take such other action as may be reasonably necessary, to ensure compliance with this weapons policy.

11. Equal Opportunity in Procurement and Contracts. The OWNER recognizes the importance of a strong culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. The OWNER assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska. Accordingly, the OWNER reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged, and women owned business enterprises in all aspects of the OWNER’s procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and License agreements. It is also the OWNER’s policy that any person or business seeking the opportunity to do business with the OWNER shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability, marital status, or veteran status. The OWNER conducts its procurement and contracting activities in a manner designed to prevent unlawful discrimination. OWNER policies are consistent with applicable state and federal laws and regulations prohibiting unlawful discrimination.

12. Proprietary Information; Confidential Employee Information; HIPAA; FERPA. It is to be expected that the parties to the Agreement may find it necessary to reveal certain proprietary information to each other. The Agreement may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the Agreement should result in the sharing of employee information protected by the law or OWNER policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the Agreement agree to maintain the confidentiality of such information to the extent and manner required by the law and OWNER policy.

13. Sub-Consultant. FIRM shall not subcontract all or substantially all of any facet of the Work without the prior written approval of OWNER. FIRM shall be fully responsible for the acts and omissions of its sub-consultant and of the persons directly or indirectly employed by them. Every sub-consultant shall be bound by the terms of the Contract Documents; provided however, that no contractual relationship shall exist between any sub-consultant and OWNER, unless it is evidenced in a separate contract independent of the Agreement with FIRM.

14. Legislative Funding Out Clause. Notwithstanding any provision in the Agreement to the contrary, if the legislative body appropriating funds, does not allocate sufficient funds to allow OWNER to make any periodic payment agreed to in the Agreement for any future fiscal period, OWNER will not be obligated to pay the Agreement balance remaining at the time of the governmental funding short-fall.

15. Parking. OWNER shall not be responsible for providing parking for FIRM’s parking needs. FIRM and/or its employees and agents will be solely responsible for any fines resulting from parking violations occurring on OWNER’s property. It is recommended that FIRM and any temporary employees contact the OWNER’s parking and transit services to obtain information regarding parking and to obtain permits.

16. Building Rules and Regulations; Tobacco Use. Employees of FIRM and any sub-consultants shall comply with all OWNER rules and regulations pertaining to conduct in OWNER’s facilities. OWNER reserves the right to request the removal or replacement of FIRM or sub-consultant employee who fails to comply with such rules and regulations. All Buildings, Property and OWNER owned vehicles are tobacco-free. Use of tobacco products is not permitted in or on any OWNER Facility/Property. The FIRM is expected to respect this tobacco-free policy and fully comply with it.

17. Use of Premises. To the extent that the Agreement requires FIRM or its employees or agents to be present on or within OWNER’s properties, then FIRM shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the Agreement. The FIRM shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to FIRM’s activities within the scope of the Agreement and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the Agreement.

18. Hazardous Waste Generated by Vendors. Any hazardous waste, which is generated from the performance of the Agreement, shall be properly disposed of by FIRM, in a timely fashion, and in accordance with applicable hazardous waste laws and regulations. The cost for hazardous waste management and disposal is FIRM’s responsibility. Should OWNER deem it prudent to dispose of any hazardous waste left on its property, as a result of FIRM’s failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the FIRM and/or billed to the FIRM. University Environmental Health Services is to be notified of all hazardous waste issues. Any non-hazardous waste generated in the performance of this Agreement must be disposed of off campus by FIRM.

19. Delivery; F.O.B.; Shipping. FIRM shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered pursuant to the Agreement. FIRM shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination: University of Nebraska. Unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at the OWNER delivery point.

20. Quantity. With respect to quantity of any good purchased under the Agreement, OWNER need not accept any variation in quantity except as specified in the Contract Documents. Over-shipments may be returned to FIRM at its expense, which shall include a reasonable cost for OWNER handling, or be retained by OWNER at no increase in price.

21. Inspection. OWNER may, at any time in the course of the Agreement, inspect and test materials and supplies being used in the performance of the Agreement, including at the point of manufacture. If inspection and tests are made on FIRM's premises, FIRM without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the Agreement shall be subject to final inspection and acceptance by OWNER at the delivery destination.

22. Defective Goods or Work. OWNER, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies, or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the Agreement. All supplies furnished under the Agreement shall be subject to inspection at F.O.B. destination, and FIRM shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the goods, equipment, and supplies, along with all records of delivery. OWNER may, in addition to any rights it may have by law, prepare for shipment and ship the defective goods, equipment, and supplies to FIRM, require FIRM to remove them, or direct a correction in place. The expense of any such remedy shall be borne by FIRM, including any excess cost.

23. Liens. FIRM warrants that it has title to any goods delivered under the Agreement and shall deliver same free of all liens, claims, and encumbrances.

24. Federal, State and Local Sales Taxes; Federal Excise Taxes. Purchases made by the OWNER are exempt from the payment of State Sales and Use Taxes and Federal Excise Taxes. Certification of these exemptions will be provided to FIRM following the execution of the contract documents.

25. Ambiguities. Should FIRM perceive an ambiguity in the Contract Documents, FIRM shall request an interpretation from OWNER before proceeding. If FIRM fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

26. Recycling Policy. When purchasing products, materials, or supplies for use, OWNER, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of OWNER to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.

27. Vendor Identification. FIRM shall cause each of its employees or any person acting on behalf of the FIRM, while providing goods/services to OWNER under this Agreement and working on OWNER’s property, to carry identification, with photo, showing that the individual is an employee or person acting on behalf of the FIRM. A badge worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any OWNER representative, in order to confirm that the FIRM's representative is authorized to be present on OWNER’s property and/or performing as authorized by the Agreement. Whereas campus security is of utmost importance, failure of any FIRM representative to produce the requisite identification upon request, shall be a material breach of the Agreement and shall be cause, at the discretion of OWNER, for immediate termination of the Agreement. For those who commonly wear a work uniform, such uniform shall be worn while providing the services related to this Agreement in order that OWNER may quickly and clearly identify FIRM's service representatives when necessary. A uniform, however, does not take the place of a photo identification badge.

28. Legal Relationship. FIRM shall under no circumstances be considered as an agent or employee of OWNER and shall have no right or authority to, in any manner, obligate OWNER to any person or company except as authorized in writing by OWNER.

29. Use of University Names and Logos. FIRM shall not use any OWNER name, sign, logo, symbol, etc. for any purpose, without the prior written approval of OWNER. Use of OWNER brands generally requires licensing.

30. Improper Business Relationships and Conflict of Interest Prohibited. In connection with this Agreement, FIRM shall ensure that no improper, unethical, or illegal relationships, or conflict of interest exists between or among FIRM, the OWNER and any staff and faculty, and any other party to this Agreement. OWNER reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not cancellation of award shall result. Such cancellation shall be at no fault or liability whatsoever to OWNER.

31. Electronic and Information Technology Accessibility. All electronic and information technology procurements, agreements, and contracts shall comply with Americans with Disabilities, Section 508 or the Rehabilitation Act of 1998 as amended and the Nebraska Accessibility Policy to be found at: https://nitc.nebraska.gov/standards/2-Chapter.pdf.

32. LB403 Compliance. FIRM, on behalf of itself and any sub-consultant to the Agreement, agrees that it shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. 4-108 to 4-114 as amended.

33. Equal Opportunity Clause Certification of Non-Segregated Facilities, Executive Order 11246. This form will be provided and shall be executed by the Vendor upon notice of award.

34. Vendor's Certificate of Insurance. FIRM will be required to furnish a certificate of insurance with bodily injury/personal injury/liability coverage, property damage liability coverage, and workman's compensation coverage. This certificate must be on file prior to any commencement of Work. It is necessary that the “Board of Regents of the University of Nebraska is listed as an additional insured” be added to the face of the certificate for all coverage except worker's compensation. The above statement must be worded in this manner. It is also necessary that a “Completed Operations Coverage” must be included as part of FIRM’s General Liability.

35. Debarment. FIRM certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction (Agreement), by any governmental department or agency. If FIRM cannot certify this statement, submit a written explanation for review by OWNER.

36. Equal Opportunity. Client shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

37. Use of Name or Intellectual Property. Architect, Contractors, Subcontractors, and Subconsultants will not use the name or any intellectual property of OWNER, including, but not limited to, any OWNER trademarks or logos in any manner, including commercial advertising or as a business reference, without the express prior written consent of OWNER. Architect, Contractor. Subcontractors and Subconsultants will not use OWNER’s name in any manner that acts as an endorsement or is an appearance of any endorsement in any promotion, advertisement, solicitation or other communication, especially as it relates to Architect’s, Contractor’s, Subcontractor’s, and Subconsultant’s business.

38. Taxpayer Transparency Act. Pursuant to Nebraska's Taxpayer Transparency Act (Neb. Rev. Stat. §84-602.01, as may be amended), OWNER is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any amendments and documents incorporated by reference in the contract. Copies of all such contracts and documents will be published by the Nebraska Department of Administrative Services at https://statecontracts.nebraska.gov/. It shall be the sole responsibility of Provider to notify OWNER of any requested redactions to the Agreement under Neb. Rev. Stat. § 84-712.05(3) at the time of execution. In addition, Provider agrees to defend any challenge to such redactions at its own expense.