

UNIVERSITY OF NEBRASKA

FIXED PRICE DESIGN AND CONSTRUCTION AGREEMENT

THIS AGREEMENT between Owner and Design/Builder (the "Agreement") is made and entered into by and between **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public body corporate of the State of Nebraska, (the "Owner") and (the "Design/Builder").

This Agreement shall be effective on the date executed by the last party to execute it.

This Agreement is for the design and construction of a project identified as:

(the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Design/Builder agree as follows:

ARTICLE 1

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract: The Contract between Design/Builder and Owner, of which this Agreement is a part, consists of the Contract Documents. The Contract shall be effective on the date this Agreement is effective.

1.2 The Contract Documents: The Contract Documents consist of this Agreement, the Design Scope Specification, all Design Documents hereafter prepared by Design/Builder and approved by Owner in accordance with this Agreement, Change Orders and Field Orders issued hereafter, any other written amendments executed by Owner and Design/Builder, as well as the following (if any):

Item, date.

all of which are hereby incorporated herein by reference and made a part hereof.

1.3 Enumerated Documents Form Entire Contract: Documents not specifically enumerated in Section 1.2 of this Agreement are not Contract Documents.

1.4 Complete Agreement: The Contract, together with Design/Builder's and Surety's performance and payment bonds for the Project constitute the entire and exclusive agreements between Owner and Design/Builder with reference to the Project. The Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

1.5 Contract Interpreted As A Whole: The Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall be required.

1.6 Provision Of All Things Required: Anything that may be required, implied or inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Design/Builder for the Contract Price.

1.7 Privity Only With Design/Builder: Nothing contained in the Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Design/Builder.

1.8 Agreed Interpretation Of Contract Terms: When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

1.9 Term "Include" Intended To Be Encompassing: "Include", "includes", or "including", as used in the Contract, shall be deemed in all cases to be followed by the phrase, "without limitation".

1.10 Use Of Singular And Plural: Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.11 Definition Of Material Breaches Not Exhaustive: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

1.12 Order Of Precedence: In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large scale plans and small scale plans, the large scale plans shall govern;
- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.

ARTICLE 2

DESIGN/BUILDER'S REPRESENTATIONS

2.1 Specific Representations: In order to induce Owner to execute this Agreement and recognizing that Owner is relying thereon, Design/Builder, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement or the Contract, or implied by operation of law, makes the following express representations to Owner:

- (1) Design/Builder is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design/Builder or the Project;

(2) Design/Builder will maintain all necessary licenses, permits or other authorizations necessary to act as Design/Builder for the Project until Design/Builder's duties hereunder have been fully satisfied;

(3) Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of the Contract;

(4) Prior to the execution of this Agreement, Design/Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated, and Design/Builder has performed such tests, if any, as are necessary to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Work site and has taken those conditions into account in entering into the Contract;

(5) Design/Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project.

ARTICLE 3

REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

3.1 Generally: Design/Builder shall perform all Design Services described in, contemplated by, inferable from, or necessary or desirable to achieve the objectives stated in the Design Scope Specification and the Contract, including all Design Services necessary for the Project to be properly constructed by Design/Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. "Design Services" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services. "Design Scope Specification" means the document prepared by Owner dated which specifies the general scope of the Design Services to be performed by Design/Builder under the Contract. A copy of the Design Scope Specification is attached hereto as Exhibit "A" and is incorporated herein by reference. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design/Builder's Design Services as provided in Section 3.8 of this Agreement.

3.2 Owner's Review Of Design Services: Subject to Section 13.7 of this Agreement, Design/Builder shall submit all documents produced as part of the Design Services to Owner's Representative for review and approval in accordance with the terms of the Contract. However, any such review or approval by Owner or Owner's Representative shall not relieve Design/Builder of or otherwise diminish its obligations under the Contract. Owner may direct Design/Builder to make changes to any such documents in order to conform such documents to Owner's objectives. Any such changes by Design/Builder ordered by Owner shall not relieve Design/Builder of its obligations hereunder unless, and only to the extent that, Design/Builder notifies Owner in writing within seven (7) days of receipt of Owner's directive to make such changes of any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from such changes. Failure of Design/Builder to submit its notice within said seven (7) day period shall constitute a waiver by Design/Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time.

3.3 Preparation Of Site Information: Design/Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers,

location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines.

3.4 Retention Of Geotechnical Consultants: In preparing the Design Documents, Design/Builder shall retain an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design/Builder shall be responsible for designing the Project in accordance with the analyses and recommendations of its geotechnical consultant.

3.5 Quality Of Design Services: Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design/Builder shall provide for all testing and inspections required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

3.6 Compliance With Laws And Regulatory Requirements: In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, State of Nebraska, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.

3.7 Duty To Correct Errors: Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents.

3.8 Schedule Of Design Services: Design/Builder shall submit for Owner's approval the Design Schedule for the performance of Design/Builder's Design Services which shall include allowance for reasonable time required for Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. The Design Schedule, when approved by Owner, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder at any time during the course of performing the Contract, have any reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify Owner's Representative in writing. In such notice, Design/Builder shall state the reason for the delay including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time. All extensions of time shall be governed by Articles 16 and 17 of this Agreement. Subject to the provisions of Section 13.7 of this Agreement, Owner shall review and approve, where appropriate, the Design Schedule, or any portion thereof.

ARTICLE 4

PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

4.1 Determining The Project Objectives: Prior to the preparation of the Preliminary Design as required by Article 5 below, Design/Builder shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project, including but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Scope Specification.

4.2 Report On Project Requirements And Objectives: Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design/Builder shall prepare and submit to Owner a written report detailing Design/Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements. The written report of Design/Builder shall also include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design/Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Section 3.2 of this Agreement.

ARTICLE 5

PRELIMINARY DESIGN

5.1 Time For Preliminary Design: Not later than _____ (___) days after reviewing with Owner the written report required by Section 4.2 above (if the foregoing blank not filled in, then within a reasonable time so as not to delay Substantial Completion), Design/Builder shall prepare and submit to Owner a Preliminary Design for the Project.

5.2 Contents Of Preliminary Design: The Preliminary Design shall address all requirements of the Project and shall include, without limitation, the following:

- (1) Preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
- (2) Preliminary drawings which illustrate each exterior view of the Project;
- (3) Preliminary drawings which illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;
- (4) Preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;
- (5) A written description of the materials and equipment to be incorporated into the Project and the location of same;
- (6) Any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and the Contract.

5.3 To Be Reviewed With Owner: Design/Builder shall review with Owner the Preliminary Design and shall incorporate any changes ordered by Owner with respect to said Preliminary Design or with respect to the requirements of the Project.

5.4 Authorization To Proceed With Detailed Design: After review of the Preliminary Design and incorporation of any changes ordered by Owner, Owner shall authorize Design/Builder in writing to commence preparing the Detailed Design, or such part thereof as directed by Owner.

ARTICLE 6

DETAILED DESIGN

6.1 Time For Preparation: Not later than _____ (___) days after Owner has authorized Design/Builder to commence with the Detailed Design as provided in Section 5.4 above (if the foregoing blank not filled in, then within a reasonable time so as not to delay Substantial Completion), Design/Builder shall prepare and submit to Owner the complete Detailed Design.

6.2 The Detailed Design: The Detailed Design shall include all Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of Section 13.7 of this Agreement, Owner shall review and approve, where appropriate, the Design Documents, or any portion thereof.

6.3 Design Documents: "Design Documents" means all the design documents provided by Design/Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

ARTICLE 7

CONSTRUCTION SERVICES

7.1 General Intent: Design/Builder shall perform all Work necessary to construct the Project in accordance with the Contract and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

7.2 Work Defined: The term "Work" shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation, the following:

- (1) Construction of the whole and all parts of the Project in full and strict conformity with the Contract;
- (2) The provision and furnishing, and prompt payment therefor, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
- (3) The procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
- (4) The creation and submission to Owner of detailed as-built (**CADD**) drawings depicting all as-built construction;
- (5) The furnishing of any required surety bonds and insurance as required by the Contract;
- (6) The furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder;

(7) The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 9 below.

ARTICLE 8

TIME FOR CONSTRUCTION: THE CONTRACT TIME

8.1 Notice Of Commencement: After Owner has approved the Design Documents for the Detailed Design, Owner shall issue a notice to commence the Work directing Design/Builder to proceed with the Work on the date indicated in the notice (the "Commencement Date"). The notice to commence Work shall be issued at least ten (10) days prior to the Commencement Date.

8.2 Time For Completion: Design/Builder shall commence the Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Work not later than month, day, year or such other date as may by Change Order be designated (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Design/Builder shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

8.3 Liquidated Damages For Delay In Substantial Completion: Design/Builder shall pay Owner the sum of ~~---No--~~ Dollars (\$0.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Substantial Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be unexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

8.4 Liquidated Damages For Delay In Final Completion: If Design/Builder fails to achieve Final Completion within number () days of the date of Substantial Completion, Design/Builder shall pay Owner the sum of ~~-No--~~ Dollars (\$0.00) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Final Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be unexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

8.5 Time Is Of The Essence: All limitations of time set forth herein are material and time is of the essence of the Contract.

ARTICLE 9

ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN/BUILDER

9.1 Design/Builder To Perform All Work Required By The Contract: The intent of the Contract is to require complete, correct and timely execution of the design and the Work. Any and all Work that may be required, reasonably implied or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design/Builder in accordance with Article 10 of this Agreement and without increase to the Contract Price.

9.2 Strict Compliance With The Contract Documents: All Work performed by Design/Builder shall be in strict compliance with the Contract. "Substantial compliance" is not strict compliance. Any Work not in strict compliance with the Contract is defective.

9.3 Supervision Of The Work: The Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort, Design/Builder bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of Design/Builder.

9.4 Warranty Of Workmanship And Materials: Design/Builder warrants and guarantees to Owner that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first-class results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Any and all Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.

9.5 Commencement Of Guarantee And Warranty Periods: Special or specific guarantees and warranties which are required by the Contract to run for a fixed period of time shall commence running on the date of Substantial Completion of all the Work.

9.6 Design/Builder's Schedule Of Construction: Design/Builder, within fifteen (15) days after the Commencement Date, shall submit to Owner, for its information, and comply with, Design/Builder's Schedule of Construction for completing the Work by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to Owner. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner. Strict compliance with the requirements of this Section shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract.

9.7 Record Copy Of Contract Documents: Design/Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of the Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of Owner, a copy of all Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Work, or

upon Owner's request, all of the documents described in this Section shall be finally updated and delivered to Owner and shall become the property of Owner.

9.8 Review And Approval Of Submittals: Design/Builder shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract.

9.9 Owner's Option To Review Submittals: Owner shall, in its discretion, have the right to review and approve Submittals, and if Owner so elects, Design/Builder shall not perform any portion of the Work as to which Owner has required submittal and review until such Submittal has been approved by Owner's Representative. Approval by Owner, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Contract nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under the Contract. If Owner elects to review Submittals, Design/Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design/Builder do not constitute a part of the Contract.

9.10 Procurement And Review Of Warranties: Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit to Owner, all warranties required by the Contract. Design/Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirements of the Contract.

9.11 Procurement Of Operations And Maintenance Documentation: Design/Builder shall prepare or procure and shall transmit to Owner all documentation required by the Contract regarding the operation and recommended maintenance programs relating to the various elements of the Work.

9.12 As-Built Drawings: Design/Builder shall prepare and provide to Owner a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Work in strict compliance with the requirements of the Contract.

9.13 Compliance With Labor Laws: Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

9.14 Testing, Inspections, And Approvals: Design/Builder shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project, and shall assume the cost of such tests and testing. Design/Builder shall submit certified results of such tests to Owner. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be specifically inspected, tested, or approved, Design/Builder shall assume full responsibility therefor, pay all costs in connection therewith and furnish to Owner the required certificates of inspection, testing or approval.

9.15 Owner's Regulations And Applicable Laws: Design/Builder shall, during the course of the Work, comply with any regulations or guidelines prescribed by Owner. Design/Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Work to be performed under the Contract.

9.16 Compliance With Construction Regulations: Design/Builder shall perform the Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall indemnify and hold Owner harmless from all loss, damages, and expense, including attorney's fees, resulting from any such violation or alleged violation.

9.17 Permits, Licenses And Notices: All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Design/Builder. Design/Builder shall notify Owner's Representative when it has received said permits, licenses and authorizations and upon receipt shall supply Owner with copies of same. The originals of said permits, licenses and authorizations shall be delivered to Owner upon completion of the Work, and receipt of such documents by Owner shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Work.

9.18 Conditions To Site Access: While on Owner's property, all Design/Builder's employees and Subcontractors shall confine themselves to areas designated by Owner's Representative and will be subject to Owner's badge and pass requirements, if any, in effect at the site of the Work.

9.19 Site Safety And Security: Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard Owner's property and employees from injury or loss in connection with the performance of the Contract. Design/Builder shall at all times safeguard and protect its own partially or completely finished Work and that of the adjacent property and all adjacent work from damage. Design/Builder shall protect Owner's equipment, apparatus, machinery, and other property and all adjacent work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Work.

9.20 Repair Of Collateral Damages: Unless otherwise instructed by Owner, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Work, all without additional cost to Owner.

9.21 Cleaning The Site: Design/Builder shall keep the site reasonably clean during performance of the Work. Upon Final Completion of the Work, Design/Builder shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.

9.22 Off-Site Storage: The Design/Builder shall furnish and maintain a suitable storage site and proper storage conditions, which must be approved in advance by the Owner. Equipment and materials covered by a request for payment must be stored above grade, and must be protected at all times against weather, heat, cold, moisture, vandalism, theft and other hazards as the material may require. All such protection shall be provided by the Design/Builder at its expense throughout the storage period. Off-site stored materials and equipment shall be stored separately and not commingled with other similar materials and equipment, and shall be plainly labeled "PROPERTY OF THE UNIVERSITY OF NEBRASKA", with project name.

9.23 Owner's Access To Work: At all times relevant to the Contract, Design/Builder shall provide access to the Work to Owner and its designees without formality or other procedure.

9.24 Decisions Regarding Aesthetic Effect: Owner's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract.

9.25 Sales and Use Tax Exemption for Tangible Personal Property: The Project shall be exempt from payment of sales and use taxes on the price of tangible personal property to be incorporated into the Project. The Owner, acting as a state agency, will appoint the Design/Builder as a purchasing agent for the Owner in the manner prescribed by Nebraska law. Such appointment will authorize the Design/Builder and its Subcontractors to issue exempt sales certificates as provided by law to vendors when purchasing tangible personal property to be incorporated into the Project.

9.26 Notice To Those Who May Be Affected By The Work: At least 48 hours before breaking ground the Design/Builder shall give written notice to public utilities, owners of adjacent property having structures in proximity to the Work site, and other persons or entities having property or facilities that may be affected by the Design/Builder's operations in performance of the Work, so that necessary actions may be taken to protect the property and facilities of such persons or entities. Such notice shall not relieve the Design/Builder from any claims for damages to persons or property caused by the Design/Builder's negligence or wrongful acts in performing the Work.

9.27 Maintenance of Utilities and Other Services: Utilities and other services to be abandoned as part of the Work shall be maintained in service until new replacement services have been installed, tested and made ready for use. The Design/Builder shall schedule shutdown of utilities and other services with the Owner and shall accomplish shutdowns in a manner that does not necessitate long periods of service interruption.

9.28 Signs: The Design/Builder shall furnish and maintain all signs required by law for performance of the Work. The display of signs at the Project Site, other than those required by law, shall be limited to those permitted by the Contract Documents or those necessary for safety and the orderly management of the Project Site.

9.29 Royalties and License Fees: The Design/Builder shall pay all royalties and license fees. If a particular process, product or device is specified in the Contract Documents and is known to be subject to patent rights, copyright or other intellectual property rights, the existence of such rights shall be disclosed in the Contract Documents, and the Design/Builder shall be for payment of all associated royalties and license fees. To the maximum extent permitted by law, the Design/Builder shall indemnify, hold the Owner harmless, and defend all suits, claims, losses or damages resulting from infringement of patent rights, copyright, or other intellectual property rights resulting from incorporation into the Work of any design, process, product, or device specified in the Contract Documents.

9.30 Design/Builder To Remain An Independent Contractor: In the performance of the Contract, Design/Builder's status as an independent contractor shall not be modified or diminished by reason of any instructions issued by Owner or Owner's Representative to Design/Builder or any of Design/Builder's employees, Subcontractors, or representatives.

ARTICLE 10

CONTRACT PRICE

10.1 Contract Price: Owner shall pay, and Design/Builder shall accept, as full and complete payment for the Design Services, the performance of all the Work required by the Contract, and the performance of all requirements of this Agreement, the fixed price of **written dollar amount** Dollars \$ _____. The price set forth in the preceding sentence is referred to herein as the "Contract Price". The Contract Price

shall not be modified unless all conditions precedent to a change in the Contract Price have been satisfied, including the execution of a Change Order in accordance with the requirements of this Agreement.

ARTICLE 11

PAYMENT OF THE CONTRACT PRICE

11.1 Payment Procedure: Owner shall pay the Contract Price to Design/Builder in accordance with the procedures set forth in this Article 11.

11.2 Allocation Of Contract Price: The Contract Price shall be allocated between the Design Services and the Work as follows: written dollar amount (\$ _____) of the Contract Price shall be allocated to the Design Services, and written dollar amount (\$ _____) of the Contract Price shall be allocated to the Work.

11.3 Payment For Design Services: The amount of the Contract Price allocated to the Design Services shall be paid based upon Design/Builder's achievement of each of the design milestones described in Exhibit "B". Upon achievement of each of the design milestones described in Exhibit "B", Design/Builder shall submit a Pay Request with appropriate backup documentation. In its Pay Request for Design Services, Design/Builder may request payment for ninety per cent (90%) of the value allocated for such Design Services as provided in this Article 11. Owner shall pay such invoice as provided in this Article 11.

11.4 Payment For Construction Services - Schedule Of Values: Within ten (10) calendar days after the commencement of construction, Design/Builder shall prepare and present to Owner a Schedule of Values allocating among the different elements of the Work that portion of the Contract Price assigned to the Work. Design/Builder's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may, at its option, require. Design/Builder shall not front-end load its Schedule of Values, shall not imbalance its Schedule of Values nor assign a value to any element which exceeds its true value. The allocated value of each item in the Schedule of Values shall only include its total cost and proportionate share of any general overhead and profit. Any violation by Design/Builder of the requirements of this Section shall constitute a material breach of the Contract. The Schedule of Values shall be used only as a basis for Design/Builder's pay requests and shall only be so used after it has been acknowledged in writing by Owner.

11.6 Time For Construction Pay Requests: On or before the _____ day of each month after commencement of the Work, but no more frequently than monthly, Design/Builder shall submit a pay request for the Work performed through the _____ day of the _____ month.

11.7 Progress Payments For Construction Services: Based upon Design/Builder's pay requests submitted to Owner, Owner shall make progress payments to Design/Builder on account of the Contract Price less such amounts, if any, owing by Design/Builder to Owner or which Owner shall have the right to withhold as authorized by this Agreement.

11.8 Contents And Amounts Of Pay Requests: Construction pay requests shall be in such form and manner, and with such supporting data and content as Owner may require. In its construction pay request, Design/Builder may request payment for (1) ninety percent (90%) of the value allocated to that portion of the Work properly performed through the applicable date in the pay request; plus (2) ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment necessary for the Work and properly stored at the Project site (or elsewhere if approved in advance in writing by Owner); less (3) the total amount of previous payments received from Owner for the Work. A request for payment for materials and equipment stored off-site shall be accompanied by (i) a bill of sale, properly identifying the

material or equipment and transferring ownership to the University of Nebraska, and (ii) an inventory of stored materials and equipment that includes a description of the storage site by street number and city or legal description of the premises. Payment on account of stored materials or equipment shall also be conditioned upon Design/Builder's proof, satisfactory to Owner, that the materials or equipment are fully insured against loss or damage and that all required insurance regarding such materials or equipment is in full force and effect.

11.9 Design/Builder's Representations Regarding Pay Requests: Each pay request shall be signed by Design/Builder and shall constitute Design/Builder's representation that the Design Services and the Work have progressed to the level for which payment is requested in accordance with the milestones or the Schedule of Values, that the Design Services and the Work have been properly installed or performed in strict accordance with this Agreement, and that Design/Builder knows of no reason why payment should not be made as requested. The submission by Design/Builder of a pay request constitutes an affirmative representation and warranty that all Work for which payments have been received from Owner is free and clear of liens, claims, security interests or other encumbrances in favor of Design/Builder or any other person or entity whatsoever. In the event that Owner learns that any representations of Design/Builder as set in this Section are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Design/Builder until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

11.10 Owner's Review Of Pay Requests: Owner shall have the right to review all pay requests and the Design Services and the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work and the Design Services is as represented in the pay request and as required by the Contract.

11.11 Conditions Precedent To Payment: In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any pay request that Design/Builder have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement and that Design/Builder shall have furnished to Owner properly executed waivers of lien, in a form acceptable to Owner, from all Subcontractors, materialmen, Suppliers or others having lien rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any liens or lien rights relating thereto.

11.12 Amount Of Progress Payments: Owner shall pay the amount of each pay request properly due under this Agreement less such amounts, if any, owing by Design/Builder to Owner or which Owner shall have the right to withhold as authorized by this Agreement.

11.13 Time For Payment: Subject to Owner's right of review and objection, Owner shall make payment on account of the Contract Price within **written number of days ()** days following the receipt of Design/Builder's pay requests.

11.13 Title Passes Upon Payment: Design/Builder warrants and represents that upon payment of any pay request submitted by Design/Builder, title to all Work covered by the pay request shall immediately pass to Owner.

11.14 Design/Builder's Use Of Progress Payments: Upon receipt of any payment from Owner, Design/Builder shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Work covered by such payment.

11.15 Use Of Joint Checks: If Owner becomes informed that Design/Builder has not paid a Subcontractor, materialman, laborer, or Supplier as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming

Design/Builder and any such Subcontractor, materialman, laborer, or Supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

11.16 Payment Not A Waiver Or Acceptance: No payment to Design/Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Work not in strict compliance with the Contract, and Design/Builder expressly accepts the risk that defective Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design/Builder, or (3) before Owner's occupancy of the Project.

11.17 Withholding Of Payment: Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to Design/Builder in an amount then believed by Owner to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- (1) The quality of a portion, or all, of Design/Builder's Work not being in accordance with the requirements of this Contract;
- (2) The quantity of Design/Builder's Work not being as represented in Design/Builder's pay request, or otherwise;
- (3) Design/Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion, or both, may be unexcusably delayed;
- (4) Design/Builder's failure to use Contract funds, previously paid Design/Builder by Owner, to pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
- (5) Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (6) Claims made, or likely to be made, against Owner or its property;
- (7) Loss caused by Design/Builder;
- (8) Design/Builder's failure or refusal to perform any of its obligations to Owner.

In the event that Owner makes written demand upon Design/Builder for amounts previously paid by Owner as contemplated in this Section 11.17, Design/Builder shall promptly comply with such demand.

11.18 Unexcused Failure To Pay: If Owner, without cause or basis hereunder, fails to pay Design/Builder any amounts due and payable to Design/Builder within thirty (30) days after the date established herein for payment of such amounts, then Design/Builder may suspend its Design Services or, as applicable, the Work until payment is made, provided that Design/Builder first gives ten (10) days' written notice to Owner of its intent.

ARTICLE 12

SUBSTANTIAL AND FINAL COMPLETION

12.1 Substantial Completion: "Substantial Completion" means that stage in the progression of the Work, as approved by Owner in writing, when the Project is sufficiently complete in accordance with the Contract that Owner can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

12.2 Determination Of Substantial Completion: When Design/Builder believes that the Work is substantially complete, Design/Builder shall notify Owner in writing and shall submit to Owner a list of items remaining to be completed or corrected. Owner will perform an inspection and if the Work is substantially complete in the opinion of Owner, Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of Owner and Design/Builder for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the date, 30 days hence, within which Design/Builder shall complete any items of incomplete or defective Work. The Certificate of Substantial Completion shall be submitted to Design/Builder for its written acceptance of the responsibilities assigned to it in such certificate.

12.3 Payment Upon Substantial Completion: Upon Substantial Completion of the Work, and upon execution by both Owner and Design/Builder of the Certificate of Substantial Completion, Owner shall pay Design/Builder, within thirty (30) days, all sums due Design/Builder, including retainage, less **written percentage** percent (___ %) of the reasonable costs as determined by Owner for completing all incomplete Work and Design Services, correcting and bringing into strict conformance all defective and nonconforming Work, and handling all outstanding or threatened claims.

12.4 Final Completion: "Final Completion" means the completion of all Design Services and all Work required by, and in strict compliance with, the Contract, including Design/Builder's provision to Owner of all documents and things required to be provided by the Contract.

12.5 Determination Of Final Completion: When Design/Builder believes that all of the Work is finally complete, and Design/Builder is ready for a final inspection, Design/Builder shall so notify Owner in writing. Owner will then make final inspection of the Work and, if the Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then Owner will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

12.6 Payment After Final Completion: Owner shall make final payment of all sums due Design/Builder within thirty (30) days after Final Completion as reflected by Owner's Certificate for Final Payment, provided that all documents and things required to be delivered to Owner hereunder have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

12.7 Conditions Precedent To Final Payment: Prior to being entitled to receive final payment, and as a condition precedent thereto, Design/Builder shall furnish Owner, in the form and manner required by Owner, the following:

- (1) An affidavit that all of Design/Builder's obligations to Subcontractors, laborers, equipment or material Suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied, and receipt from the State of Nebraska, Department of Labor, Division of Employment From No. 16, Certificate of Contribution Status, certifying that

Design/Builder and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the date of Substantial Completion;

(2) If required by Owner, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might have a claim against Owner or Owner's property;

(3) If applicable, consent(s) of surety to final payment;

(4) A complete set of the (**CADD**) as-built drawings and the record set of Contract Documents;

(5) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

12.8 Acceptance Of Final Payment A Waiver: Acceptance by Design/Builder of final payment shall constitute a waiver and release of all claims against Owner by Design/Builder except for those claims previously made in writing against Owner by Design/Builder, pending at the time of final payment and specifically identified on Design/Builder's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 13

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, Owner shall undertake to perform the following:

13.1 Provide Project Information: Owner shall provide Design/Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule.

13.2 Review Of Documents: Owner shall review any documents submitted by Design/Builder requiring Owner's decision, and shall render any required decisions pertaining thereto.

13.3 Provide Notice Of Defects: In the event Owner knows of any material fault or defect in the Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Design Documents, then Owner shall give prompt notice thereof in writing to Design/Builder.

13.4 Access To The Site And The Work: Owner shall provide Design/Builder access to the site and to the Work, and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contract as Design/Builder may request.

13.5 Cooperation To Secure Permits, Licenses, Approvals, And Authorizations: Owner shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

13.6 Timely Performance: Owner shall perform the duties set forth in this Article 13 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Work.

13.7 Owner's Reviews, Inspections, Approvals, And Payments Not A Waiver: Owner's review, inspection, or approval of any Work, Design Documents, Submittals, or pay requests by Design/Builder

shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner pursuant to the Contract shall not constitute a waiver of any of Owner's rights under the Contract or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

13.8 Delay Or Forbearance Not Waiver: Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Design/Builder under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

13.9 Documents Requested By Design/Builder: Owner shall furnish to Design/Builder, prior to the execution of this Agreement, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design/Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefor. If Design/Builder requests in writing, Owner shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

13.10 Approvals And Easements: Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Work. Design/Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

13.11 Right To Stop Work: In the event Design/Builder fails or refuses to perform the Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, Owner may, at its option, instruct Design/Builder to cease and desist from performing further Work, or any part thereof. Upon receipt of such instruction from Owner in writing, Design/Builder shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instructions has been corrected, no longer exists, or Owner instructs that the Work may resume.

13.12 Owner's Right To Perform Work: In the event Owner issues such instructions to stop Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the costs incurred in performing such Work. The rights set forth in Section 13.11 and this Section 13.12 are in addition to, and without prejudice to, any other rights or remedies Owner may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

13.13 Owner's Representative: "Owner's Representative" means the individual named by Owner, in writing, to act on Owner's behalf in the administration of the Contract.

ARTICLE 14

PROJECT DOCUMENTATION

14.1 Maintenance Of Project-Related Records: Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

14.2 Availability Of Project-Related Records To Owner: All Project Records which are in the possession of Design/Builder or Design/Builder's Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

ARTICLE 15

PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

15.1 Subcontractor Defined: A "Subcontractor" means an entity which has a direct contract with Design/Builder to perform a portion of the Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing specially fabricated equipment and materials for the Project.

15.2 Supplier Defined: A "Supplier" means an entity providing only equipment or materials for the performance of the Work.

15.3 Objections To Subcontractors: Upon execution of this Agreement, and at such later times as may be applicable, Design/Builder shall furnish Owner, in writing, the names of persons or entities proposed by Design/Builder to act as Subcontractors on the Project. Design/Builder shall provide such information regarding such proposed Subcontractors as Owner deems necessary. Owner shall promptly reply to Design/Builder, in writing, stating any objections Owner may have to such proposed Subcontractors. Design/Builder shall not enter into a subcontract with an intended Subcontractor with reference to whom Owner objects. Any consent or failure to reject by Owner shall in no way relieve Design/Builder of any of its duties or warranties under the Contract.

15.4 Terms Of Subcontracts: All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to Owner against Design/Builder herein, including those rights of Contract suspension, termination, and stop Work orders as set forth herein. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor of Design/Builder and a provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

15.5 Design/Builder Responsible For Acts Of Its Subcontractors: Should Design/Builder subcontract all or any part of the Work, such subcontracting of the Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

15.6 Personnel: In accordance with Article 2 above, Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design/Builder shall designate one such person as the Project Manager. Absent written instruction from Design/Builder to the contrary, the Project Manager shall be deemed to be Design/Builder's authorized representative and shall be authorized to receive and accept any and all communications from Owner. Key design and supervisory personnel assigned by Design/Builder to this Project are as follows:

<u>NAME</u>	<u>FUNCTION</u>
_____	_____
_____	_____

continue listing as appropriate

Evidence of the above-named personnel's competence, such as a resume, shall be provided to Owner prior to said personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by Design/Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless Owner agrees to the contrary in writing or unless Owner reasonably requests removal of any such individual from the Project. In the event Owner reasonably requests the removal of any of the individuals named above, Design/Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom Owner makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design/Builder shall be bound by the provisions of this Section 15.6 as though such individuals had been listed above.

15.7 Removal Of Subcontractors And Personnel: If, at any time during the course of the Project, Owner reasonably determines that the performance of any Subcontractor or any member of Design/Builder's staff working on the Project is unsatisfactory, Owner's Representative may require Design/Builder to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to Owner for delays or inefficiencies the change may cause.

ARTICLE 16

CHANGES AND EXTENSIONS OF TIME

16.1 Owner's Right To Order Changes: Changes in the Design Services or the Work within the general scope of the Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by Owner without invalidating the Contract. Such changes shall be communicated by Change Order or by Field Order. Design/Builder shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the following terms and conditions as set forth in this Article 16.

16.2 Definition Of Change Order: "Change Order" shall mean a written order to Design/Builder executed by Owner, issued after execution of this Agreement, authorizing and directing a change in the Design Services or the Work, an adjustment to the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

16.3 Adjustments To Contract Price Or Contract Time: Upon the occurrence of a change as set forth in Section 16.1 the adjustment, if any, to the Contract Price or the Contract Time resulting from the change shall be determined as follows:

(1) By mutual agreement between Owner and Design/Builder as evidenced by (a) the change in the Contract Price, the Contract Time, or both, being set forth in a Change Order, (b) such change, together with any conditions or requirements relating thereto, being initialed by both parties, and (c) Design/Builder's execution of the Change Order; or

(2) If no mutual agreement occurs between Owner and Design/Builder, then the change in the Contract Price, if any, shall be established on the basis of, and shall be limited to, the reasonable expenditures or savings, as defined below, resulting from the change. Such reasonable expenditures or savings shall include a component for direct jobsite overhead and profit, but shall not include home office overhead or other indirect costs or components. Any such expenditures or savings shall be documented in such form and with such content and detail as Owner may require. Reasonable expenditures or savings shall be limited to the following:

(a) Actual, reasonable costs of Design Services, supervision, materials, supplies or equipment including delivery costs;

(b) Actual, reasonable costs of Design Services, supervision, labor, plus social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

(c) Actual, reasonable rental costs of machinery and equipment (exclusive of small tools or hand tools) whether rented from Design/Builder or others;

(d) Actual, reasonable costs of premiums for bonds, permit fees, and sales, use or other taxes related to the Work.

In no event shall any expenditure or savings associated with Design/Builder's home office or indirect overhead expense be included in any Change Order.

(3) Any extension of the Contract Time requested by Design/Builder for performance of any change in the Design Services or the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the Contract Time must be requested by Design/Builder pursuant to the terms and conditions of Article 17 of this Agreement, and any such request for extension of the Contract Time shall be subject to Section 16.7 of this Agreement. The failure of Design/Builder to provide notice in writing to Owner in accordance with Article 17 of this Agreement of any request for extension of the Contract Time shall constitute a waiver by Design/Builder of any entitlement to an extension of the Contract Time.

16.4 Continuing Duty To Perform Work And Make Payment: In the event the parties are unable to agree on the terms of a Change Order, then Design/Builder shall continue to diligently perform the Design Services and the Work, including any change directed by Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of Section 16.3 above. Pending final determination of reasonable expenditures or savings, payments on account shall be made to Design/Builder in accordance with said Section 16.3 and Article 11 herein.

16.5 Changes In Unit Prices: If unit prices are provided in the Contract, and if the quantities contemplated are changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed will cause substantial inequity to Owner or to Design/Builder, the applicable unit prices shall be equitably adjusted.

16.6 Minor Changes: Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price nor extension of the Contract Time and not inconsistent with the intent of the Contract. Such minor changes shall be made by written Field Order, and Design/Builder shall promptly carry out such written Field Orders.

16.7 Effect Of Executed Change Order: The execution of a Change Order by Design/Builder shall constitute conclusive evidence of Design/Builder's agreement to the ordered changes in the Design Services or the Work, the Contract as thus amended, the Contract Price as thus amended and the Contract Time as thus amended. Design/Builder, by executing the Change Order, waives and releases any claim against Owner for additional time or compensation for matters relating to, arising out of, or resulting from the Design Services or the Work included within or affected by the executed Change Order.

16.8 Consent Of Surety: Design/Builder shall notify and obtain the consent and approval of Design/Builder's surety with reference to all Change Orders if such notice, consent or approval are required by Owner, Design/Builder's surety or by law. Design/Builder's execution of the Change Order shall constitute Design/Builder's warranty to Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

16.9 Fiduciary Relationship: Design/Builder recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Design/Builder and Owner and agrees that it shall at all times in good faith use its best efforts to advance Owner's interests and agrees to perform the Design Services and the Work in the best professional manner.

ARTICLE 17

CLAIMS BY DESIGN/BUILDER

17.1 Terms And Conditions Of Claims: Claims by Design/Builder against Owner are subject to the terms and conditions of this Article 17, and strict compliance herewith shall be a condition precedent to any liability of Owner therefor.

17.2 Notice Of Claim: All Design/Builder claims, disputes and other matters in question against Owner arising out of or related to the Contract or the breach thereof, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to Owner. Such written notice of claim shall be received by Owner no later than seven (7) days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim including the amount claimed. Design/Builder agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

17.3 Documentation In Support Of Claims: Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Design/Builder shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

17.4 Formal Written Claim: No later than thirty (30) days after the date of the written notice of claim, Design/Builder shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim, dispute or other matter, and the relief sought; (2) identification of the facts giving rise to the claim dispute or other matter; (3) the date

Design/Builder discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim, dispute or other matter; (5) documentation supporting the schedule of values; (6) identification of any impact the claim, dispute or other matter has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim, dispute or other matter. Other information or documents shall be submitted to Owner within ten (10) days after written request by Owner. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner within ten (10) days after the written request shall constitute a waiver of any claim for additional compensation or time extension related thereto.

17.5 Continuous Duty To Provide Documentation: Design/Builder shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner may request so that Owner may evaluate Design/Builder's claim.

17.6 Duty To Continue Performance: Design/Builder and Owner shall continue their performance hereunder regardless of the existence of any claims submitted by Design/Builder.

17.7 Differing Site Conditions: In the event Design/Builder discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, and not reasonably discoverable by Design/Builder's diligent inspections as required herein, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to Owner having any liability to Design/Builder due to concealed and unknown conditions, Design/Builder must give Owner written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure of Design/Builder to give the written notice and make the claim as provided by this Section 17.7 shall constitute a waiver by Design/Builder of any rights arising out of or relating to such concealed and unknown condition including any claim for an increase in the Contract Price or any claim for an extension of the Contract Time.

17.8 Claims For Increase In Contract Price: In the event Design/Builder seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of Owner therefor, Design/Builder shall strictly comply with the requirements of Section 17.2 above and such notice shall be given by Design/Builder before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by Design/Builder of any claim for additional compensation.

17.9 Limit Of Owner's Liability For Increased Costs: In connection with any claim by Design/Builder against Owner for compensation in excess of the Contract Price, any liability of Owner (1) shall be strictly limited to direct cost actually and reasonably incurred by Design/Builder in accordance with the provisions regarding changes in the Contract Price as set forth in Subparagraph (2) of Section 16.3, and (2) shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Design/Builder or its Subcontractors. Owner shall not be liable to Design/Builder for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Design/Builder under the terms of the Contract. As a condition precedent to Owner's liability to Design/Builder for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Design/Builder and such Subcontractor's claims must have been submitted to Owner by Design/Builder in strict compliance with all the requirements of this Article 17. Owner shall not be liable to Design/Builder for claims of third parties including Subcontractors, unless and until the liability of Design/Builder therefor has been established in a court of competent jurisdiction.

17.10 Claims For Increase In Contract Time: If Design/Builder is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by Owner or someone acting in Owner's behalf, or by changes ordered in the Design Services or the Work, unusually bad weather not reasonably anticipatable, fire or other Acts of God, then the date for achieving Substantial Completion, or, as applicable, Final Completion, shall, subject to the provisions of Section 17.11 below, be appropriately adjusted by Owner upon the written notice and claim of Design/Builder to Owner for such reasonable time as Owner may determine. A task is critical within the meaning of this Section 17.10, if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. As a condition precedent to any right to an extension of time, Design/Builder shall strictly comply with the requirements of Section 17.2 above and such notice shall be given by Design/Builder before proceeding to execute any additional or changed Design Services or Work. If Design/Builder fails to give such notice, any claim for an extension of time shall be waived. In the event the delay to Design/Builder is a continuing one, only one notice and claim for additional time shall be necessary, provided the continuing nature of the delay is indicated in the notice and claim.

17.11 Owner's Right To Order Acceleration And To Deny Claimed And Appropriate Time Extensions, In Whole Or In Part: Design/Builder acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is, or may be, of substantial importance to Owner.

(1) Owner shall accordingly have the right in its sole discretion to order Design/Builder to accelerate its progress in such a manner as to achieve Substantial Completion on or before such date as Owner may reasonably direct and, upon receipt, Design/Builder shall comply with such order.

(2) In the event that Design/Builder is otherwise entitled to an extension of Contract Time and has made claim therefor in accordance with Section 17.10 above, Owner shall have the right in its sole discretion to deny all, or any part, of such extension of Contract Time by written notice to Design/Builder provided within seven (7) days of receipt of Design/Builder's claim. Should Owner deny Design/Builder's claim for an extension of Contract Time under this Subparagraph (2), either in whole or in part, Design/Builder shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) In the event that (a) Owner orders Design/Builder to accelerate its progress under Subparagraph (1) of this Section 17.11, or (b) Owner exercises its rights under Subparagraph (2) of this Section 17.11, above, or (c) both, such action shall be deemed to constitute a Change Order under Article 16 and any change in the Contract Price shall be determined in accordance therewith.

17.12 Claims Resolved By Change Order: The resolution of any claim under this Article 17 shall be reflected by a Change Order executed by Owner and Design/Builder.

ARTICLE 18

UNCOVERING AND CORRECTING WORK

18.1 Design/Builder Not To Cover Work Contrary To Requirements: If any of the Work is covered, concealed or obscured contrary to the written request of Owner, or contrary to any provision of the Contract, said Work shall, if required by Owner, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

18.2 Owner's Right To Order Uncovering Of Any Work: If any of the Work is covered, concealed or obscured in a manner not inconsistent with Section 18.1 above, it shall, if required by Owner, be uncovered for inspection. If such Work conforms strictly with the Contract, the cost of uncovering and proper replacement shall by Change Order be charged to Owner. If such Work does not strictly conform with the Contract, Design/Builder shall pay the cost of uncovering and proper replacement.

18.3 Duty To Correct Rejected Work: Design/Builder shall immediately proceed to correct Work rejected by Owner as defective or failing to conform to the Contract. Design/Builder shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections made necessary thereby.

18.4 Duty To Correct Defective Work Discovered After Completion: In addition to its warranty obligations set forth elsewhere herein, Design/Builder shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from Owner. This obligation shall survive final payment by Owner and termination of the Contract.

18.5 No Period Of Limitation Established: Nothing contained in Section 18.4 shall establish any period of limitation with respect to other obligations which Design/Builder has under the Contract. Establishment of the one-year time period in Section 18.4 above relates only to the duty to Design/Builder to specifically correct the Work.

18.6 Owner's Option To Accept Defective Work: Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work. Owner shall be entitled to such reduction in the Contract Price regardless of whether Owner has, in fact, removed and corrected such defective Work. If the unpaid balance of the Contract Price, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Design/Builder shall, upon written demand from Owner, pay Owner such additional compensation for accepting defective or nonconforming Work.

ARTICLE 19

SUSPENSION AND TERMINATION

19.1 Suspension Of Performance: Owner may for any reason whatsoever suspend performance under the Contract. Owner shall give written notice of such suspension to Design/Builder specifying when such suspension is to become effective.

19.2 Ceasing Performance Upon Suspension: From and upon the effective date of any suspension ordered by Owner, Design/Builder shall incur no further expense or obligations in connection with the Contract, and Design/Builder shall cease its performance. Design/Builder shall also, at Owner's direction, either suspend or assign to Owner any of its open or outstanding subcontracts or purchase orders.

19.3 Claim For Costs Of Suspension: In the event Owner directs a suspension of performance under this Article 19, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Agreement, Owner shall pay Design/Builder as full compensation for such suspension Design/Builder's reasonable costs, actually incurred and paid, of:

- (1) Demobilization and remobilization, including such costs paid to Subcontractors;
- (2) Preserving and protecting Work in place;

- (3) Storage of materials or equipment purchased for the Project, including insurance thereon;
- (4) Performing in a later, or during a longer, time frame than that contemplated by this Contract.

19.4 Resumption Of Work After Suspension: If Owner lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

19.5 Termination By Design/Builder For Prolonged Suspension Of Performance: If performance of this Contract is stopped for a period of ninety (90) consecutive days at the direction of Owner pursuant to Section 19.1 or by an order of any court or other public authority, or as a result of any act of the Government, and provided that such suspension by Owner or public authority is through no fault of Design/Builder or any person or entity working directly or indirectly for Design/Builder, Design/Builder may, upon ten (10) days' written notice to Owner, terminate performance under the Contract and recover from Owner on the terms and conditions and in the amounts provided in Section 19.8 below.

19.6 Termination By Design/Builder For Cause: If Owner shall persistently or repeatedly fail to perform any material obligation to Design/Builder for a period of thirty (30) days after receiving written notice from Design/Builder of its intent to terminate hereunder, Design/Builder may terminate performance under the Contract by written notice to Owner. In such event, Design/Builder shall be entitled to recover from Owner on the terms and conditions and in the amounts as though Owner had terminated Design/Builder's performance under the Contract for convenience pursuant to Section 19.7 below.

19.7 Termination By Owner For Convenience: Owner may, for any reason whatsoever, or without reason, terminate performance under the Contract by Design/Builder for convenience. Owner shall give written notice of such termination to Design/Builder specifying when termination becomes effective. Design/Builder shall incur no further obligations in connection with the Contract and Design/Builder shall stop Design Services and the Work when such termination becomes effective. Design/Builder shall also, at Owner's direction, either terminate or assign to Owner outstanding orders and subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts and orders. Owner may direct Design/Builder to assign Design/Builder's right, title and interest under terminated orders or subcontracts to Owner or its designee. Design/Builder shall transfer title and deliver to Owner such completed or partially completed Design Documents, Work and materials, equipment, parts, fixtures, information and Contract rights as Design/Builder has.

19.8 Submission Of Termination Claim And Compensation For Termination For Convenience: When terminated for convenience, Design/Builder shall be compensated as follows:

- (1) Design/Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Owner shall pay Design/Builder an amount derived in accordance with Subparagraph (3) below;
- (2) Owner and Design/Builder may agree to the compensation, if any, due to Design/Builder hereunder;
- (3) Absent agreement to the amount due to Design/Builder, Owner shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:

(a) That portion of the Contract Price representing the value of the Design Services and the Work, as reflected on the Schedule of Values, performed by Design/Builder prior to its receipt of the notice of termination, which is completed and accepted by Owner for which Design/Builder has not been previously paid;

(b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Design Services and the Work, and in terminating Design/Builder's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that Design/Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 19.7 above. These costs shall not include amounts paid in accordance with other provisions hereof.

In no event shall Design/Builder be entitled to recover anticipated profits or other consequential damages from Owner on account of a termination for convenience or an erroneous termination for cause, as described below. The total sum to be paid Design/Builder under this Section shall not exceed the Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

19.9 Termination By Owner For Cause: If Design/Builder does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then Owner may by written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Work by whatever methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment until the Work is finished.

19.10 Erroneous Termination For Cause: In the event the employment of Design/Builder is terminated by Owner for cause pursuant to Section 19.9, and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Section 19.7 and the provisions of Section 19.8 regarding compensation shall apply.

19.11 Payments To Design/Builder or Owner After Termination For Cause: If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including compensation for Owner's additional costs and expenses of every nature whatsoever made necessary thereby, such excess shall be paid to Design/Builder. If such costs exceed the unpaid balance, Design/Builder shall pay the difference to Owner. The Design/Builder shall be liable to the Owner for all costs and expenses, including reasonable attorney's fees, incurred by Owner to enforce the provisions of this Section 19.11. This obligation for payment shall survive the termination of the Agreement.

ARTICLE 20

OWNERSHIP OF DOCUMENTS

20.1 Documents Owner's Property: The Design Documents and the Contract Documents, including but not limited to, the drawings, specifications and other documents or things prepared by Design/Builder for the Project, shall immediately become and be the sole property of Owner. Any documents furnished by Owner shall remain the property of Owner. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records with approval in writing of Owner; provided, however, that in no event shall Design/Builder use, or permit to be used, any portion of all of such documents on other projects without Owner's prior written authorization.

ARTICLE 21

INDEMNITY

21.1 From Personal Injury Or Damage To Tangible Property: Design/Builder shall indemnify and hold Owner harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with Design/Builder's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by Design/Builder or anyone for whose acts Design/Builder may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by Owner.

21.2 From Violations Of Laws, Environmental Requirements, Performance Guidelines, And Licensing Requirements: Design/Builder shall indemnify and hold harmless Owner and its affiliates, officers, directors, and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorney's fees and expenses, and fees and expenses of experts) for bodily injury, including death, or damage to or loss of property, or any other type or form of loss occurring or sustained or resulting from:

- (1) Any violation by Design/Builder, its Subcontractors, representatives, employees, and agents of any municipal, state or federal laws, rules, or regulations applicable to the performance of its obligations under the Contract;
- (2) Environmental violations or contamination from hazardous substances, hazardous wastes and emissions or other substances or chemicals regulated by any applicable environmental laws or regulations and resulting from any willful misconduct, negligent act or omission, or legal violation by Design/Builder, its Subcontractors, Suppliers, representatives, employees, or agents;
- (3) The failure of any of Design/Builder's employees, agents, representatives, Suppliers, or Subcontractors to obtain and maintain the required skills, licenses, certificates and permits mandated by applicable federal, state or local governing authorities with jurisdiction over construction, fabrication, environmental, health and safety matters or the Project.

21.3 Hazardous Materials: In the event Design/Builder discovers hazardous or contaminated materials, including but not limited to asbestos, PCBs, petroleum, hazardous waste, or radioactive material, Design/Builder shall stop all Work in connection with such hazardous condition and in any area affected thereby, and notify Owner of the discovery of said condition. Design/Builder shall strictly comply with all applicable laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over the Project or the discovery of said hazardous or contaminated material. Design/Builder shall secure the Work site to prevent access by unauthorized personnel. If

Design/Builder fails to comply with this Section 21.3 or contaminated, hazardous or suspected contaminated or hazardous material is transported (either on or off site) without notice to Owner, such materials shall become the property of Design/Builder and Design/Builder shall be solely responsible for all costs and fines associated therewith.

ARTICLE 22

INSURANCE

22.1 Builders Risk. The Owner will provide and maintain Builders Risk insurance for the structure or buildings while under construction, erection or fabrication as shown and described in the Contract Documents.

22.1.1 Builder's Risk Policy Limits

		Policy Limits
		<u>Shared by All Insureds</u>
Specified Location:	All Risk Perils	Replacement Cost of
Annual Aggregates:	Flood	the work or adequate
	Earthquake	loss limit to cover
Transit & Off-Site Storage		physical loss or damage to the work

- .1 Coverage does not extend to any owned, leased or rented property or any construction type equipment, machinery or supplies used for construction and not intended to form a permanent part of the work.
- .2 Deductible to Design/Builder and subcontractors not to exceed \$1,000 per occurrence
- .3 90 Day notice of cancellation
- .4 Debris removal/demolition
- .5 Blanket waiver of subrogation against all insureds (including design professionals)
- .6 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation until final acceptance by the Owner. This insurance shall include interest of the Owner, Design/Builder, Subcontractors, and Sub-subcontractors in the Work, and the Board of Regents of the University of Nebraska.

22.1.2 A loss insured under the Owner's builder's risk insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds as their interest may appear, subject to any applicable mortgagee clause and subject to Subsection 22.2.9. The Design/Builder shall pay Subcontractors their just shares of insurance receipts received by the Design/Builder, and by appropriate agreements, written or legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

22.1.3 Partial occupancy or use of the Project shall not commence until the insurance company or companies providing builder's risk insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design/Builder shall take reasonable steps to obtain consent of the insurance company, or companies and shall without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or a reduction of insurance.

22.2 Owner Controlled Insurance Program. The Owner has implemented an Owner-Controlled Insurance Program (OCIP) to furnish certain insurance coverages with respect to on-site activities. The OCIP will be for the benefit of the Owner, the Design/Builder and subcontractors of all tiers (unless specifically excluded) who have on-site employees and only with respect to work performed at the site.

The OCIP does not cover consultants, suppliers, vendors, drivers, materials dealers, guard services, janitorial services, or temporary services. All subcontracts involving asbestos abatement are excluded from the OCIP. Also, subcontracts of less than \$5,000 shall be excluded. For purposes of the OCIP, activities or work performed "on-site" shall mean and include all operations conducted at the project site. It shall not mean or include fabrication, manufacturing or other operations away from the project site or at the Design/Builder or Subcontractor's premises. During the construction phase of the Project, the Owner shall at its sole cost and expense maintain the following types of insurance:

22.2.1 Workers' Compensation and Employer's Liability

Workers' Compensation	Nebraska Statutory Limit
Employer' Liability	Annual Limits Per Insured <u>(minimum)</u>
Bodily Injury by Accident	\$1,000,000
Bodily Injury by Disease - policy limit	\$1,000,000
Bodily Injury by Disease - each employee	\$1,000,000

- .1 Design/Builder and each subcontractor issued a separate policy.

22.2.2 Commercial General Liability

	Annual Limits of Liability (minimum) <u>Shared by All Insureds</u>
General Aggregate	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000
Personal/Advertising Injury Aggregate	\$5,000,000
Each Occurrence Limit	\$2,000,000

- .1 Occurrence form
- .2 Single policy issued to all insureds
- .3 Coverage extensions to include:
 - Three (3) year completed operations extension
 - Blanket waiver of subrogation
 - Blanket additional insured
 - Fellow employee bodily injury endorsement
 - Unintentional omission
 - Notice of Occurrence
 - 120 Day notice of cancellation
 - "XCU" coverages
- .4 Excludes: Asbestos, Nuclear Energy, Engineers/Architect's E&O, Pollution Liability

22.2.3 Excess Liability

	<u>Shared by All Insureds (minimum)</u>
Each Occurrence	\$50,000,000
Annual Aggregate	\$50,000,000

- .1 Occurrence form
- .2 Single policy issued to all insureds
- .3 Following Form
- .4 Three (3) year completed operations extension
- .5 Excludes: Asbestos, Nuclear Energy, Engineers/Architect's E&O, Pollution Liability

22.2.4 Design/Builder Responsibilities. The Design/Builder is required to cooperate with the Owner and the Owner's Risk Manager with regards to administration and operation of the OCIP and other owner provided insurance. The Design/Builder's responsibilities shall include:

- .1 Provision of necessary contract, operations and insurance information;
- .2 Inclusion of the OCIP provisions in all subcontracts;
- .3 Notification to OCIP Administrator of all subcontracts awarded;
- .4 Maintenance and provision of monthly payroll records and other records as necessary for premium computation;
- .5 Compliance with applicable loss control (safety) and claims reporting procedures; and
- .6 Maintenance of the OSHA 200 Log to be provided monthly to the Owner or the Owner's representative.
- .7 The Design/Builder shall not violate or knowingly permit to be violated any conditions of the policies of insurance and shall at all times satisfy the requirements of the insurance companies issuing them.
- .8 The Design/Builder shall bind affirmatively each of its respective subcontractors to any indemnity and hold harmless provisions of the Contract Documents.
- .9 In the course of awarding each subcontract, the Design/Builder shall notify the subcontractor that the Owner retains the option to enroll any subcontractor in the OCIP. Unless or until formally enrolled in the OCIP, each subcontractor hired by the Design/Builder shall maintain at its own expense at least insurance of such kinds, limits, and endorsements as are required by the Contract Documents covering both off-site and on-site operations and employees.
- .10 The Design/Builder recognizes and agrees that, as respects the OCIP insurance coverages provided herein, Marsh, is the Broker of Record; that the Design/Builder has the affirmative obligation and right to notify and request correction of any insurance deficiencies, omissions or errors to Marsh; that the Owner is not acting in any capacity whatsoever as an insurance seller, broker, or agent for any insurance company, Marsh, or the Design/Builder as respects the OCIP insurance coverages insuring this project.
- .11 For pricing purposes on changes in the Work, the Design/Builder and Subcontractor shall price each change proposal request, or claim including the cost of Workers' Compensation and Liability Insurance even though such insurance is procured by the Owner. The Owner shall pay for such changes in the Work net of the Design/Builder's and Subcontractor's insurance cost. The deduction for the Design/Builder's and Subcontractor's insurance cost, will be a percentage of the additional contract cost for the Change Order. The percentage used will be the same percentage which is arrived at by dividing the original insurance deduction by the original estimated contract cost contained in the original insurance deduction form.
- .12 Design/Builder shall require other Subcontractors not covered as an insured under the Owner-Controlled Insurance Program, to provide applicable Workers' Compensation, General Liability, and Auto Liability coverages at their own expense. Such coverages shall include the Owner as an additional insured and shall provide appropriate waivers of subrogation.
- .13 Development of a safety plan per OCIP Project Safety Plan Requirements.

22.2.5 Assignment of Return Premiums. As noted above, the Owner will provide the OCIP coverage for the benefit of the Design/Builder and covered subcontractors at the Owner's sole expense. In consideration of the Owner's provision of said coverages the Design/Builder and subcontractors agree to:

- .1 Identify all applicable insurance costs in their contract price (i.e., bid "ex" of insurance), all change orders, and provide a completed Form 1.
- .2 Assign to the Owner all return premiums, dividends, refunds, discounts, or other credits due or to become due under the OCIP insurance policies. The Design/Builder and subcontractors

agree to execute documents and agreements which may be necessary to accomplish this assignment.

.3 Submit certified payrolls as documentation of time spent on the job when submitting their request for payment under the terms of this Agreement. Final deduction for insurance costs will be based on the final total of certified payrolls and is subject to audit by the OCIP auditors.

.4 Warrant that no cost for insurance is included in their cost to the Owner, except for that which is required in Subsection 22.3.

22.2.6 Termination or Modification of OCIP. While it is the intent of the Owner to keep the OCIP in force throughout the term of the Project, the Owner reserves the right to terminate or modify the OCIP or any portion thereof. To exercise this option, the Owner shall provide 30 days advance written notice to the Design/Builder and subcontractors covered under the OCIP.

The Design/Builder and subcontractors shall immediately be required to obtain replacement insurance coverage and the actual cost of such replacement insurance will be reimbursed by the Owner. Written evidence of such replacement insurance shall be provided to the Owner prior to the actual termination date of the OCIP.

22.2.7 Prior to commencement of construction the Design/Builder shall obtain from the Owner a certificate that includes insurance coverages provided by this Section 22.2.

22.2.8 If required in writing by a party in interest, the Owner, as fiduciary, shall upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties and interest may reach. If after such loss no other special agreement is made, replacement of damaged properties shall be covered by appropriate change order.

22.2.9 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing five days after occurrence of loss. If such objection is made, the Owner shall not make any settlement with respect to such loss until a resolution has been reached by agreement between such parties and interests and the insurers or by a court of competent jurisdiction.

22.2.10 The Design/Builder and its Subcontractors agree to comply with policy conditions of the insurance policies provided as per this Section 22.2, and to comply with any claims handling procedures, payroll reporting procedures, loss prevention program, or other similar programs related to the Owner-Controlled Insurance Program and Builders Risk.

22.2.11 If the Design/Builder requests in writing that insurance risks other than those described herein, or for other special hazards to be included, the Owner shall, if possible, include such insurance and the cost will be charged to the Design/Builder by appropriate change order.

22.3 Insurance Furnished By Design/Builder And Subcontractors. Except as otherwise provided, the Design/Builder and subcontractors shall maintain, at their own expense, the following minimum insurance coverages on policy forms and with insurers acceptable to the Owner:

22.3.1 Automobile Liability Insurance. \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence for owned, non-owned and hired vehicles.

22.3.2 Workers' Compensation and Employer's Liability Insurance for Off-Site Activities. The Design/Builder and its Subcontractors will procure and provide the following Workers' Compensation coverage at their own expense with respect to operations not conducted at the Project Site. This Workers' Compensation coverage shall include a waiver of subrogation in favor of the Owner as it relates to the Work for this Project.

Nebraska Statutory Limits with All States Endorsement

\$1,000,000	Each Accident - Bodily Injury by Accident
\$1,000,000	Policy Limit - Bodily Injury by Disease
\$1,000,000	Each Disease - Bodily Injury by Disease
\$1,000,000	Employer' Liability

22.3.3 Commercial General Liability Insurance for Off-Site Activities. \$2,000,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence or \$1,000,000 Bodily Injury and \$1,000,000 Property Damage. Coverage must include Broad Form Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products-Completed Operations, Independent Contractors and Subcontractors, Fire Legal Liability, and when indicated, coverages for XCU. The Owner and its agents shall be included as additional insureds under these policies. Prior to commencement of Work, the Design/Builder shall provide the Owner with a Certificate of Insurance showing coverages in compliance with this Subsection.

22.3.4 Other Insurance. Insurance other than insurance provided by the OCIP or Builders Risk as the Design/Builder or subcontractors may carry with respect to their operations and/or property, shall be at their own expense and risk. By way of illustration such types of coverage may include Contractors Equipment Floater, Aircraft and Watercraft Liability, Railroad Protective Liability, and other insurance as needed or deemed appropriate.

22.3.5 Triplicate Original Certificates of Insurance shall be filed with the Design/Builder prior to commencement of the Work for coverages provided in 22.3. These certificates shall contain a provision that coverage as afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Design/Builder.

22.4 Waiver of Subrogation. Each party shall waive all rights of subrogation against the other, its agents, and any of its insurers as regards any loss covered by insurance, regardless of whether this insurance be Owner-Furnished, Design/Builder-Furnished, Subcontractor-Furnished, or other insurance the Design/Builder or Subcontractor carries for his or her own account. This waiver shall apply to the insurers of each party hereto and of any subcontractor.

ARTICLE 23

SURETY BONDS

23.1 Performance Bond And Payment Bond: Design/Builder shall furnish separate performance and payment bonds to Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by Design/Builder shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by Design/Builder, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by Design/Builder shall be in form suitable to Owner and shall be executed by a surety, or sureties, reasonably acceptable to Owner and authorized to do business in the State of Nebraska.

ARTICLE 24

MISCELLANEOUS PROVISIONS

- 24.1** Governing Law: The Contract shall be governed by the laws of the State of Nebraska.
- 24.2** Compliance With Nebraska Fair Employment Practices Act: Design/Builder and Design/Builder's Subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Contract or any subcontract for the Project, with respect to his or her tenure, terms, conditions, or privileges of employment, because of his or her race, color, religion, gender, disability, or national origin. Design/Builder shall include the forgoing provisions of this Section 24.2 in each subcontract for the Project.
- 24.3** Successors And Assigns: Owner and Design/Builder bind themselves, their successors, assigns, executors, administrators and other legal representatives to the other party hereto and to successors, assigns, executors, administrators and other legal representatives of such other party in respect to all terms and conditions of this Contract.
- 24.4** Non-Assignment: Design/Builder shall not assign the Contract, or any part of the Contract, without prior written consent of Owner.
- 24.5** Notices: Any notice required to be given herein shall be deemed to have been given to the other party if (1) given by first class mail, registered or express mail, courier service, or hand delivery; or (2) by telex or fax, provided that such notice is also confirmed by first class mail, registered or express mail, courier service, or hand delivery to the following addresses:

To Owner:

Name
Project Manager
University of Nebraska
Facilities Management Department
Street
City, NE Zip Code

To Design/Builder:

Name
Street
City, State Zip Code
Attn: _____

All notices shall be effective upon receipt.

- 24.6** Publicity: No information relative to the existence or the details of the Design Services or the Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without Owner's prior written consent.

24.7 Severability: In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

Executed by the parties' duly authorized representatives as indicated by their signatures below.

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA, Owner (Seal)**

Name of Firm, Design/Builder (Seal)

By: _____
(Signature)

By: _____
(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title & Address)

(Date of Execution)

(Date of Execution)

