

**AGREEMENT FOR DESIGN SERVICES FOR  
THE FOUR-YEAR ARCHITECT/ENGINEER SELECTION  
FROM MAY 1, 2007 - April 30, 2011  
FOR GENERAL PURPOSE TYPE PROJECTS**

**BETWEEN**

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

**AND**

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**THIS AGREEMENT** is made and entered into at Lincoln, Nebraska this 1<sup>st</sup> day of May, 2007, by and between **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public body corporate, hereinafter called "OWNER", and \_\_\_\_\_, hereinafter called "ARCHITECT", and shall apply to any Project which may during the term of this Agreement be identified in written addenda to this Agreement.

**WITNESSETH:**

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

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

**TERM OF AGREEMENT**

1.1 The term of this Agreement shall be for a period of four (4) years, beginning on the 1st day of May, 2007, and ending at midnight on the 30<sup>th</sup> day of April, 2011, subject to automatic extension for that time necessary for completion of those phases of the ARCHITECT'S Basic Services on a Project (as hereinafter provided) that have not been completed as of the last day of said term.

**GENERAL PROVISIONS RELATING TO ARCHITECT'S SERVICES**

2.1 During the term of this Agreement, the parties may from time to time by written addendum to this Agreement (Project Addendum) describe individual Projects for which the professional services of the ARCHITECT are required. The ARCHITECT shall

provide professional services to the OWNER for each such Project in accordance with the terms and conditions of the Project Addendum and the applicable terms and conditions of this Agreement as provided in the Project Addendum and the related Construction Documents (see 4.6.2 below). If the Project Addendum does not specify which terms and conditions of this Agreement will be applicable to a Project, then all terms and conditions of this Agreement shall apply. The intent of the parties is that this Agreement serve as a base for engaging the services of the Architect on individual Projects from time to time. This Agreement is not an all requirements or exclusive agreement, and the OWNER retains the ability to employ other professional services at the sole discretion of the OWNER. References in this Agreement are to be read in the context of obligations of the ARCHITECT and other terms and conditions related to the services of the ARCHITECT on various individual Projects. As a result, the terms and conditions of this Agreement necessarily include the pertinent Project Addendum and terms and conditions related to the ARCHITECT in the Construction Documents for an individual Project. Unless the context clearly requires otherwise, any conflict shall be resolved favoring the terms and conditions in highest to lowest order as follows: 1) Agreement for Design Services for General Purpose Type Projects (this agreement); 2) the correlated Project Addendum, and 3) the correlated Construction Documents for the Project.

2.2 The ARCHITECT agrees to perform all of the professional services in connection with a Project in a diligent manner in accordance with the highest standards of the architectural and engineering professions, and in accordance with the terms and conditions of this Agreement.

2.3 The parties understand and agree that this Agreement is and shall be for the purpose of obtaining the professional services of the ARCHITECT. Accordingly, the ARCHITECT shall not delegate to other architects or engineers the duties required to be performed pursuant to this Agreement, except that the ARCHITECT shall have the right to engage other qualified consultants, architects, engineers or draftpersons in performing the professional services required for a Project with the prior written approval of the OWNER.

2.4 The ARCHITECT shall cause each of its employees or any person acting on behalf of the ARCHITECT, whenever on site or otherwise on property of the University under this Agreement, to carry identification, with photo, showing that the individual is an authorized employee or person acting on behalf of the ARCHITECT. A badge or identification card worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any University or law enforcement representative. Employees or representatives without proper identification will not be permitted to remain on University property and absence or delay caused thereby shall not

be an excuse for failure to timely perform or constitute any grounds for time extensions, change orders or other modifications. Failure to comply in all material respects with the above requirements, shall be a material breach of the Agreement and shall constitute cause, at the discretion of the University, for termination of this Agreement.

2.5 All time limits for performance of the ARCHITECT'S professional services provided in a Project Addendum or this Agreement are of the essence.

### **ARCHITECT'S COMPENSATION**

3.1 The OWNER shall compensate the ARCHITECT for Basic Services relating to each Project in accordance with the terms and conditions of this Agreement in such amount or amounts or at such rate of compensation as shall be provided in the Project Addendum.

3.2 The OWNER shall compensate the ARCHITECT for Additional Services authorized by the OWNER as provided in Section 5.1 in such amount or amounts or at such rates of compensation as shall be provided in the Project Addendum.

3.3 Reimbursable Expenses (amounts expended as defined below in 9.1) will be billed to the OWNER at direct cost without any administrative charges or cost factors for overhead or otherwise.

3.4 If through no fault of the ARCHITECT the BASIC SERVICES covered by a Project Addendum and this Agreement have not been completed in accordance with the schedule agreed to by the ARCHITECT and OWNER, the ARCHITECT'S compensation as set forth in the Project Addendum shall be subject to renegotiation to reflect any added costs not reasonably foreseeable by the ARCHITECT at the time of execution of the Project Addendum.

3.5 The ARCHITECT will receive compensation approved by the OWNER as an Additional Service for the ARCHITECT'S necessary services in connection with Change Orders, except for any Change Orders resulting from or arising out of the wrongful or negligent acts or omissions of the ARCHITECT, or other corrective action initiated by or on behalf of the ARCHITECT.

3.6 In the event the cost of the Project shall be changed by the OWNER by deletions, alterations and/or additions of any kind which shall not require additional drawings, specifications, and/or observation from the ARCHITECT, then the ARCHITECT shall not receive additional compensation.

3.7 In the event there is a need of the ARCHITECT'S services in connection with Change Orders and/or Construction

Change Directives made after the OWNER'S written approval of the Construction Documents Phase of a Project that result from the ARCHITECT'S negligent acts, errors, or omissions, then such services will be provided by the ARCHITECT at no additional cost or fee charged to the OWNER.

3.8 The OWNER may, at any time, by written order, make changes in the scope of a Project. Should the scope of a Project be changed materially by the OWNER for any reason, an equitable adjustment in the ARCHITECT'S compensation for Basic Services as provided in the Project Addendum will be made by mutual agreement of the ARCHITECT and the OWNER at the time of such change.

#### **ARCHITECT'S BASIC SERVICES**

4.1 The ARCHITECT'S Basic Services for each Project consist of the five phases described below in Sections 4.4, 4.5, 4.6 4.7 and 4.8.

4.2 The ARCHITECT shall provide a listing of the ARCHITECT'S personnel and consultants, if any, to be assigned to each Project. A work flow plan and a schedule shall be provided to the OWNER at the start of Phase II - Design Phase (See Section 4.5). Included in the work flow plan will be a profile of each consultant whose services the ARCHITECT intends to use on the Project. Except for causes beyond the ARCHITECT'S reasonable control or termination of employment of an employee, the ARCHITECT shall not remove the design architect and/or engineer(s) or project coordinator originally assigned to the Project without the written consent of the OWNER.

4.3 If the ARCHITECT encounters or reasonably anticipates encountering conditions involving hazardous, potentially hazardous or toxic materials or substances during the performance of services on any Project, the ARCHITECT shall immediately notify the OWNER of the same. If the OWNER has knowledge of any Project related site conditions involving hazardous, potentially hazardous or toxic materials or substances, it will also advise the ARCHITECT of the same. In any case, the ARCHITECT'S design of a Project shall include design and technical assistance for the proper remediation or abatement of existing conditions of hazardous, potentially hazardous or toxic materials or substances to the extent required by law or applicable regulation. The ARCHITECT shall not assume any liability for the costs of such remediation or abatement.

4.4 **PHASE I - PRELIMINARY PLANNING AND SCHEMATIC DESIGN PHASE:** The ARCHITECT in coordination with the OWNER shall determine any preliminary site planning and schematic design elements that may be required as part of the ARCHITECT'S Basic Services and provide for the same in writing in the Project

Addendum for a Project.

4.5           **PHASE II - DESIGN PHASE:** The ARCHITECT'S Basic Services in the Design Phase of a Project shall be as provided below in Subsections 4.5.1 through 4.5.12.

4.5.1           The ARCHITECT shall review the Need/Program Statement and other information furnished by the OWNER for a Project to ascertain the requirements of the Project and shall meet with the OWNER to resolve any questions the ARCHITECT may have concerning the OWNER'S requirements for the Project. The ARCHITECT shall review with the OWNER alternative approaches to design and construction of the Project.

4.5.2           The ARCHITECT shall not proceed with the Design Phase until the Need/Program Statement for the Project is approved in writing by the OWNER.

4.5.3           Prior to the preparation of Design Documents, the ARCHITECT shall provide to the OWNER a preliminary written estimate of Construction Cost of the Project using industry standard CSI format cost data and categories. The ARCHITECT and OWNER shall thereafter jointly determine and agree upon a total project cost for the Project.

4.5.4           Based upon the Need/Program Statement approved by the OWNER, the ARCHITECT shall prepare, for approval by the OWNER, Design Documents consisting of drawings and other documents that fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

4.5.5           If available, and upon the request of the ARCHITECT the OWNER will furnish to the ARCHITECT, for use in preparing Design Documents, copies of the original record drawings and related documents for any existing building or structure involved in the Project and any alterations made thereto. Such drawings are not represented by the OWNER as being complete or up-to-date, and the ARCHITECT in the proper exercise of professional judgment may be required to supplement or verify the information in such plans by measurement or observation at the site.

4.5.6           The ARCHITECT shall examine existing conditions at the Project site, and shall advise the OWNER of any inaccuracies or other deficiencies noted in any original record drawings and related documents provided to the ARCHITECT and recommend changes to the same. If changes to the original project record drawings are necessary, the

OWNER shall either: (a) have the ARCHITECT update the drawings as an Additional Service, or (b) provide the revised drawings to the ARCHITECT in accordance with Section 6.3.

4.5.7 The ARCHITECT shall in coordination with the OWNER provide informational, consulting, review and approval services to any governmental agency that has regulatory authority relating to the ARCHITECT'S services on the Project specifically including any related planning, historic preservation, design, or environs committee.

4.5.8 For any Project that is \$500,000 or less, the ARCHITECT and the OWNER shall determine if a Design Development Booklet is required for the Project. Projects in excess of \$500,000 shall require a Design Development Booklet. A Design Development Booklet for a Project shall include the following:

- a. Background information to include a list of personnel involved in the design of the Project, a general description of the Project, and location of the Project.
- b. A summary of the Project that includes a site description, architectural design (including historical preservation issues, if applicable), interior design as provided in Section 4.5.10, and civil, structural, mechanical, electrical, acoustical and landscaping considerations. Landscaping considerations should include a discussion of tree removal and replacement in accordance with the University's Tree Management Policy. A description of the systems and materials must be included. If there are any discrepancies between Design Documents and the Program Statement, an explanation thereof must also be included.
- c. Design drawings to include, as applicable, a site plan, floor plans, elevations, descriptive building cross sections and any renderings required by the OWNER.
- d. Space comparison of areas by net assignable square feet and gross square feet to those areas determined in the Need/Program Statement.
- e. Budget information to include an updated budget for the Project (include the basis from which cost estimates are made) with a comparison of the budget estimated in the Need/Program Statement, building efficiency, unit cost data, fiscal impact, funding information, and a monthly cash flow of the total Project cost.
- f. Project time line to include significant dates and

milestones.

4.5.9 The ARCHITECT will on request and at no additional cost to the OWNER make presentations or provide services in connection with presentations by the OWNER relating to the Design Phase of the Project.

4.5.10 The ARCHITECT shall provide interior design services for color selection only that will include the preparation of color boards to be submitted to the OWNER for approval.

4.5.11 The ARCHITECT shall provide to the OWNER a written estimate of construction cost for the Project using industry standard CSI format cost data and categories at the completion of the Design Phase. Such cost estimate shall be prepared by a system cost estimate or a detailed unit cost estimate. If the estimate of construction cost exceeds the preliminary estimate of construction cost in Section 4.5.3 by more than ten (10) percent, then a written report of the reasons for such increase will be provided to the OWNER prior to preparation of the Construction Documents.

4.5.12 The ARCHITECT shall not proceed with Phase III - Construction Documents Phase until Phase II - Design Phase is approved in writing by the OWNER.

4.6 **PHASE III - CONSTRUCTION DOCUMENTS PHASE:** The ARCHITECT'S Basic Services in Phase III - Construction Documents Phase of a Project shall be as provided below in Sections 4.6.1 through 4.6.7.

4.6.1 The ARCHITECT shall prepare from the approved Design Documents, for approval by the OWNER, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the base bid and ARCHITECT initiated alternate bids for construction of the Project. The Construction Documents will include, as applicable to the Project, general work, mechanical work, electrical work, elevators, laboratory casework, energy management, CCTV, telephone and computer networks, and all other work required for construction of the Project.

4.6.2 The ARCHITECT shall assist the OWNER in preparation of the necessary bidding documents and the documents which will comprise the contract to be entered into between the OWNER and the Contractor for construction of the Project using OWNER approved standardized forms where practicable (the Construction Documents).

4.6.3 The ARCHITECT shall assist the OWNER in filing the

required documents for the approval of governmental authorities having regulatory jurisdiction over the Project.

4.6.4 The ARCHITECT shall provide three (3) sets of the Construction Documents to the OWNER for final review at completion of Phase III - Construction Documents Phase.

4.6.5 The ARCHITECT will notify the OWNER of those items required for early order or delivery so that a Project is not delayed, and will provide the OWNER with the necessary drawings and specifications required for separate bidding of such items.

4.6.6 At the completion of Phase III - Construction Documents Phase, prior to releasing the Construction Documents for bid, the ARCHITECT shall provide a written estimate of construction cost and total cost for the Project to the OWNER for the OWNER'S written approval. Such estimates will be provided using industry standard CSI format cost data and categories on an estimate form provided by the OWNER. The estimate of construction cost shall be based on a detailed unit cost estimate.

4.6.7 The ARCHITECT shall not proceed with Phase IV - Bid Phase until the Construction Documents have been approved in writing by the OWNER.

4.7 **PHASE IV - BID PHASE:** The ARCHITECT shall provide professional services in Phase IV - Bid Phase of a Project as provided below in Sections 4.7.1 through 4.7.5.

4.7.1 Following the OWNER'S approval of the Construction Documents and the estimates of construction cost and total cost for the Project as provided above in Sections 4.6.6, the ARCHITECT shall assist the OWNER in obtaining bids or negotiated proposals for construction of the Project, and in awarding and preparing construction contracts. The ARCHITECT shall be present on the occasion of the pre-bid conference and the receipt of bids for the Project.

4.7.2 Prior to advertising for construction bids or seeking negotiated proposals for construction of the Project, the ARCHITECT shall submit to the OWNER a written statement that in the opinion of the ARCHITECT the Project has been designed in compliance with the Nebraska Building Construction Act (Neb. Rev. Stat. ' ' 71-6401 et seq., as amended), the State Fire Marshal's regulations, applicable wetlands regulations including Section 404 permits, and any other applicable federal, state and local laws, orders, regulations, standards, codes and ordinances, including the



Federal Americans with Disabilities Act of 1990, as amended.

4.7.3 The ARCHITECT will print and distribute plans and specifications for the Project as required for bidding purposes as a Reimbursable Expense.

4.7.4 If the construction work for the Project is competitively bid, the ARCHITECT shall assist the OWNER in evaluating bids for construction work and provide a letter to the OWNER stating the ARCHITECT'S opinion as to which bidder has submitted the lowest responsible bid to the plans and specifications for the Project.

4.7.5 In the event that the lowest responsible bid or negotiated proposal for the construction work exceeds the estimate of construction cost for the Project provided by the ARCHITECT and approved by the OWNER pursuant to Section 4.6.6, the OWNER may in the exercise of its sole discretion:

- a. Give written approval of an increase in the previously approved estimated construction cost for the Project, or
- b. After conferring with the ARCHITECT (at no additional cost to the OWNER) and the proposed CONTRACTOR, evaluate the Project to determine if change orders can be initiated to allow construction of the Project to be accomplished within the estimated construction cost, or
- c. Authorize rebidding or renegotiating of the Project within a reasonable time, or
- d. Direct the ARCHITECT (at no additional cost to the OWNER) to revise the scope of the Project and/or Construction Documents on a timely basis, as directed by the OWNER, so that bids or proposals may be received within the previously approved estimated construction cost for the Project, or
- e. Terminate the Project Addendum and the ARCHITECT'S services for the Project by giving the ARCHITECT written notice of termination, and compensate the ARCHITECT for services performed prior to termination, except that in the event of termination of the ARCHITECT'S services as provided in this Section, the ARCHITECT shall not receive termination expenses provided in Section 13.4

4.8 **PHASE V - CONSTRUCTION ADMINISTRATION PHASE:** The ARCHITECT'S Basic Services in Phase V - Construction Administration Phase of a Project shall be as provided below in

Sections 4.8.1 through 4.8.16.

4.8.1 The Construction Administration Phase will commence with the award of the construction contract for the Project, and will terminate on the date provided in the Project Addendum. If no termination date is stated in the Project Addendum, the Administration Phase will terminate one year after the date of Substantial Completion of the entire Project.

4.8.2 Unless otherwise provided in the Project Addendum, the ARCHITECT shall Construction Administration for the Project.

4.8.3 The ARCHITECT shall advise and consult with the OWNER during the Construction Administration Phase. The ARCHITECT shall have authority to act on behalf of the OWNER only to the extent provided in this Agreement, unless otherwise provided in writing by the OWNER.

4.8.4 A registered architect and/or registered engineer representing the ARCHITECT shall make not less than two visits with the OWNER to the Project Site each month during the progress of construction at a time mutually agreed upon between the OWNER and the ARCHITECT. On the basis of on-site observations, the ARCHITECT shall endeavor to guard the OWNER against defects and deficiencies in construction of the Project (the Work) and shall assist the OWNER in obtaining faithful performance of the Construction Documents.

4.8.5 The ARCHITECT shall not be responsible for and will not have control over or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work on a Project. The ARCHITECT shall not be responsible for the Project Contractor's schedules or failure to carry out the Work in accordance with the Construction Documents. The ARCHITECT shall not have control over or charge of acts or omissions of a Project Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.8.6 The ARCHITECT shall at all times have reasonable access to the Work on the Project, wherever it is in preparation or progress.

4.8.7 The ARCHITECT shall not determine the amounts owing to the Contractor on the Project and shall not issue Certificates for Payment unless the same are specifically required in the Project Addendum. See OWNER'S

RESPONSIBILITIES, Section 6.11.

4.8.8 The ARCHITECT shall advise the OWNER in matters relating to rejection of Work on the Project which does not generally conform to the Construction Documents. Whenever the ARCHITECT, in the reasonable exercise of his or her professional judgment, considers it necessary or advisable for the proper execution of the Work in accordance with the Construction Documents, he or she will advise the OWNER to require special inspection or testing of the Work in accordance with the provisions of the Construction Documents, regardless of whether such Work has been fabricated, installed or completed.

4.8.9 The ARCHITECT shall timely review required Shop Drawings, Product Data, Samples and other submittals of a Project Contractor for compliance with the Construction Documents. If the ARCHITECT rejects any submittals, the ARCHITECT shall state the reason therefor in writing and the ARCHITECT shall then be responsible for furnishing three (3) corrected copies of such submittals to the OWNER for recording and filing. In the event the OWNER reasonably determines the ARCHITECT'S review is causing potential delay to the Project, the OWNER may, but is not required to, notify the ARCHITECT in writing that submissions made thereafter are deemed approved by the ARCHITECT 10 days after submittal to the ARCHITECT unless the ARCHITECT sooner objects in writing to the OWNER.

4.8.10 The ARCHITECT shall prepare data for Change Orders or changes in scope of a Project as required by the OWNER, and shall be compensated in accordance with Sections 3.5 or 3.8, as applicable. The ARCHITECT shall receive a copy of all executed Change Orders prepared by the OWNER.

4.8.11 The ARCHITECT shall assist the OWNER in determining the dates of Substantial Completion and Final Completion of the Project. The ARCHITECT shall receive and review written guarantees and related documents provided by the Project Contractor and advise the Owner in regard to their conformance with the Construction Documents. The ARCHITECT shall assist the OWNER and the Project Contractor in preparation of the "punch list" to be attached to the Certificate of Substantial Completion for the Project, and the ARCHITECT shall be responsible for preparing the Certificate of Substantial Completion on behalf of the OWNER.

4.8.12 The ARCHITECT shall, assist the OWNER in interpreting the requirements of the Construction Documents for a Project and the performance thereunder by the Project

Contractor. Interpretations and recommendations by the ARCHITECT shall be consistent with the Construction Documents and shall be in written or graphic form. The OWNER shall have the final decision in regard to aesthetics, cost, or efficiency of the Work, products, materials or other submittals and their conformity with the specifications in the Construction Documents. The ARCHITECT shall make recommendations for the final decision of the OWNER in a timely manner for resolution of all claims by the Project Contractor relating to the execution and progress of the Work or relating to other matters submitted to the ARCHITECT for the ARCHITECT'S recommendation.

4.8.13 The ARCHITECT shall assist in instructing the OWNER'S operations and maintenance personnel in the initial "start-up" of mechanical, electrical and special equipment systems.

4.8.14 If required by the Project Addendum, a registered architect representing the ARCHITECT, the OWNER and others as applicable who are involved in the Project shall conduct a post-occupancy inspection in the period from ten to eleven months after the date of Substantial Completion of the Project. The ARCHITECT shall prepare a report detailing the findings of the post-occupancy inspection and provide two (2) copies to the OWNER. Such inspection shall include:

- a. Review of warranties and interview of appropriate operating and maintenance personnel to evaluate the performance of and inspect materials, systems and equipment under warranty. Document defects or deficiencies and assist, as required, in administering corrective action by the Project Contractor(s).
- b. Evaluation of design services by interview of appropriate OWNER users to evaluate the Project program versus actual use, the functional effectiveness of the planned spaces, and the operational effectiveness of equipment, systems and materials. Document both positive and negative aspects of the design and recommend solutions to problems in the Project design and design of future projects of similar type.

4.8.15 The ARCHITECT shall deliver to the OWNER one (1) complete set of project record drawings showing all work developed by the ARCHITECT'S office for the Project, plus all change orders, revisions, details, etc., recorded on the Project site by the Project Contractor and the OWNER made during the period of construction. The Project Contractor and the OWNER will deliver to the ARCHITECT one complete set

of Project drawings marked up with all changes that occurred during construction at the site. The ARCHITECT will be responsible for the accuracy of drawings developed in the ARCHITECT'S office. The ARCHITECT will not be responsible for changes at the Project site that are not provided by the Project Contractor or the OWNER. The ARCHITECT shall provide 1 hard copy (mylar) of the Record Drawings and an electronic version of the Record Drawings in CADD or such other format the OWNER may reasonable request based on equipment and software compatibility for the OWNER'S information and use. The ARCHITECT may retain one or more copies of the record drawings for the ARCHITECT-S records; Provided, that the ARCHITECT shall not use or employ the same for work on any other project or for any other party without the express written consent of the OWNER. This section does not restrict the ARCHITECT from using stock or standardized elements incorporated into the Project drawings for other work.

4.8.16 The ARCHITECT shall also deliver to the OWNER Project record drawings in an electronic form consisting of the format and type of drawings as directed by the OWNER. Electronic form project record drawings may consist of information produced for the Construction Documents, including plans (site, utility, architectural, mechanical, electrical, etc.), major buildings elevations and major building cross sections. Minor cross sections and detail drawings will not be required in electronic form. The electronic form of the project record drawings must be compatible with the OWNER'S Computer Aided Design and Drafting.

#### **ADDITIONAL SERVICES**

5.1 The Additional Services described below in this Section are not included in the Basic Services of the ARCHITECT. Such Additional Services shall be provided by the ARCHITECT after prior written approval of the OWNER. Additional Services may consist of the following:

- a. Revisions to Drawings, Specifications or other documents when such revisions are inconsistent with written approval or instructions previously given by the OWNER.
- b. Consultation concerning replacement of any Work damaged by fire or other cause during construction and professional services as may be required in connection with the replacement of such Work.
- c. Revisions to project record drawings as directed by the OWNER.

- d. Services to obtain adequate equipment information not provided by the OWNER as described in Section 6.5.
- e. Interior design services, excluding color selections, required for or in connection with the selection, procurement, or installation of furniture, furnishings, signage, graphics, and related equipment as directed by the OWNER.
- f. Preparation of OWNER initiated alternate bids.
- g. Change Orders as approved by the OWNER in accordance with Section 3.5.

#### **OWNER'S RESPONSIBILITIES FOR EACH PROJECT**

6.1 The OWNER shall provide full information, including a complete Need Statement/Program Statement regarding its requirements for the Project.

6.2 The OWNER shall designate a representative authorized to act on its behalf with respect to the Project. The OWNER shall examine documents submitted by the ARCHITECT and shall render decisions pertaining thereto so as to avoid unreasonable delay in the progress of the ARCHITECT'S Services.

6.3 The OWNER shall furnish (as Owner Provided Information) copies of the original Project record drawings, if any, and assist the ARCHITECT in determining the location and size of all utilities serving the Project area. If changes to the original Project record drawings are necessary, the OWNER may choose to have the ARCHITECT update the drawings as an Additional Service or provide revised drawings to the ARCHITECT.

6.4 If required by the Project Addendum, the OWNER shall furnish (as Owner Provided Information) copies of the original Project record drawings and assist the ARCHITECT in determining the legal description of the Project area, as well as the location and size of all utilities serving the Project area. If changes to the original Project record drawings are necessary, the OWNER may choose to have the ARCHITECT update the drawings as an Additional Service or provide revised drawings to the ARCHITECT.

6.5 Early in Phase II - Design Phase the OWNER shall furnish (as Owner Provided Information) detailed information on its equipment requirements (movable, special and technical equipment) including catalogue cuts that describe in detail all physical characteristics and requirements of each piece. This will include such information as size, weight, form and configuration, heat generation characteristics, all utility

requirements, utility service locations, and any other pertinent data necessary for the ARCHITECT'S use for proper design of the Project.

6.6 Early in Phase II - Design Phase, the OWNER shall furnish the services of a geotechnical engineer or other consultant when such services are deemed necessary by the ARCHITECT. Such services may include test borings, test pits, soil bearing values, percolation tests, evaluations of hazardous materials, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations on or about the Project site for determining subsoil, air and water conditions as required, including reports and professional recommendations as determined by the provider of the same.

6.7 The OWNER shall provide its own legal, accounting, and insurance counseling services as necessary for the Project, and such auditing services as it may require to ascertain how or for what purposes the Contractor has used the money paid to the Contractor under the Construction Contract for the Project.

6.8 The services, information, surveys and reports provided for in Sections 6.3 through 6.7 (Owner Provided Information) shall be furnished at the OWNER'S expense. However, the OWNER does not represent, warrant, or guarantee the accuracy or completeness of the same either in whole or in part, and the OWNER shall have no liability therefor. To the extent the same involves existing and available information in the possession of the OWNER -- such as Project related utility locations, topographical or survey information (whether generated by the OWNER or provided by others) -- the same is provided by the OWNER only "where is" and "as is" with no representation by the OWNER that the same is accurate, current, or representative of actual site conditions or other information as it may relate to the Project. The ARCHITECT is solely responsible to determine the site or project specific accuracy, adequacy, fitness, suitability, or coordination of any Owner Provided Information and the ARCHITECT may be required to supplement or verify the same in the proper exercise of the ARCHITECT-s professional judgement.

6.9 If the OWNER or ARCHITECT becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents, it shall give prompt verbal notice of the fault or defect followed by written notice thereof to the other party.

6.10 The OWNER and ARCHITECT shall perform this Agreement and furnish information as expeditiously as necessary for the orderly progress of the Work on a Project.

6.11 The ARCHITECT shall assist the OWNER in the OWNER=s

sole determination of amounts owing to the Contractor on a Project based upon observation at the Project site and upon the OWNER's evaluation of the Contractor's application for payment under the Construction Documents.

#### **DETERMINATION OF CONSTRUCTION COST**

7.1 Construction Cost, as may be required in a Project Addendum for the purpose of computing the ARCHITECT'S compensation for services, shall be determined as provided below in this Section, with precedence for such determination to be in the order listed:

- a. For completed construction, the Contract Sum(s) approved in the Construction Contract(s) (excluding any OWNER initiated alternate bid(s) accepted) will be the Construction Cost. If the Construction Cost is less than the ARCHITECT estimated Construction Cost at the time of bid, the Construction Cost will be defined as that received at bid. If the Construction Cost exceeds the ARCHITECT estimated Construction Cost prior to bid, the Construction Cost will be defined as the ARCHITECT'S estimate prior to bid.
- b. For Work not constructed, (1) the lowest responsible base bid(s) accepted by the OWNER, including any ARCHITECT initiated alternate bid(s) accepted from a qualified bidder(s) for any or all the Work on a Project, or (2) if the Work is not bid, the bona fide negotiated proposal submitted for any or all of such Work will be considered the Construction Cost.
- c. For Work on which no bid or proposal is received, (1) the latest OWNER approved estimate of Construction Cost, if is available, or (2) the latest OWNER approved preliminary estimate of Construction Cost will be considered the Construction Cost.

7.2 Construction Cost used as a basis for fee determination shall not include:

- a. Change Orders,
- b. Compensation of the ARCHITECT and the ARCHITECT'S consultants,
- c. Cost of land, rights-of-way, financing or other costs which are the responsibility of the OWNER as provided in Sections 6.1 through 6.11,
- d. Cost of asbestos, hazardous waste or hazardous



materials abatement or remediation,

- d. Movable equipment, works of art, floor coverings, furniture and furnishings provided and installed by the OWNER, or
- e. Cost of observation or construction furnished by the OWNER, unless designed by the ARCHITECT,

7.3 The ARCHITECT shall be compensated for OWNER initiated alternate bids as an additional service in accordance with Section 3.2.

#### **DIRECT SALARY EXPENSE**

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

#### **REIMBURSABLE EXPENSES**

9.1 For the purposes of this Agreement and any Project Addendum, "Reimbursable Expenses" shall be in addition to compensation for Basic and Additional Services and include reasonable expenses of the ARCHITECT and ARCHITECT'S employees and consultants in the interest of a Project only to the extent that such expenses are necessarily incurred for the Project, as follows:

- a. Cost and expense of transportation and living (not including Direct Salary Expense) approved by the OWNER in writing when traveling in connection with the Project over and above such expenses required to perform basic services.
- b. Cost and expense of reproductions, postage and handling of drawings and specifications, excluding the cost of (1) reproductions for the office use of the ARCHITECT or the ARCHITECT'S consultants, (2) reproductions required at the completion of each phase of a Project for the OWNER'S review, and (3) project record drawings required by Section 4.8.15.
- c. Cost and expense of overtime work requiring higher than regular rates, if authorized in advance by the OWNER in writing.

- d. Cost and expense of renderings, models and mock-ups requested by the OWNER that have not been included in the Project Addendum as part of the ARCHITECT'S Basic Services.
- e. Professional consultant's services that have been approved in writing by the OWNER in advance of performance of such services.

**PAYMENTS TO THE ARCHITECT**

10.1 Payments to the ARCHITECT for Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each Phase, except when the compensation is on the basis of Direct Salary Expense, shall equal the following percentages of the total Compensation:

Phase I	-	Preliminary Site Planning and Schematic Design Phase . . . . .	15%
Phase II	-	Design Development Phase. . . . .	35%
Phase III	-	Construction Documents Phase. . . . .	75%
Phase IV	-	Bid Phase . . . . .	80%
Phase V	-	Construction Administration Phase (Prior to Warranty Period) . . . . .	100%

10.2 No payment will be made to the ARCHITECT until the OWNER has received three copies of the Project Addendum, properly executed by the ARCHITECT, and three copies of the OWNER'S Certificate of Insurance Form for the Project, also properly completed and executed.

10.3 Payments for additional services of the ARCHITECT listed in Section 5.1 and for reimbursable expenses as defined in Section 9.1 shall be made monthly upon presentation of the ARCHITECT'S Application and Certificate for Payment.

10.4 No portion of the ARCHITECT'S compensation shall be withheld on account of penalty, liquidated damages, or other sums withheld from payment to contractors for a Project, or on account of the cost of changes in the Work other than those for which the ARCHITECT is liable.

10.5 Payment to the ARCHITECT for services rendered shall be made by OWNER within thirty (30) calendar days of receipt of the Architect's Application for Payment Form and completion of the Owner's Certificate for Payment.

10.6 The ARCHITECT may charge the OWNER interest at a rate not to exceed 5% per annum upon any payments due to the ARCHITECT and unpaid beginning with the forty-sixth (46th) calendar day after billing the OWNER as provided in Section 10.5. The OWNER will make every reasonable effort to pay the ARCHITECT within 30 days of receipt of the ARCHITECT=s invoices. The OWNER will not be obligated to pay any such interest to the ARCHITECT in regard to any unpaid bill which is the subject of a good faith dispute between the OWNER and the ARCHITECT as defined in Neb. Rev. Stat. ' 81-2402, and in no event shall the OWNER be obligated to pay any such interest unless the ARCHITECT has requested payment of the same in writing within ninety (90) calendar days from the date on which payment is due pursuant to Section 10.5.

#### **ARCHITECT'S ACCOUNTING RECORDS**

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

#### **MEDIATION OF DISPUTES BETWEEN OWNER AND ARCHITECT**

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

#### **TERMINATION, SUSPENSION OR ABANDONMENT**

13.1 This Agreement and any Project Addendum may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement and/or a

Project Addendum through no fault of the party giving notice of termination.

13.2 If by action of the OWNER a Project is suspended for more than ninety (90) days or abandoned in whole or in part, the ARCHITECT shall be compensated for services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with reimbursable expenses then due and all termination expenses as defined in Section 13.4 resulting from such suspension or abandonment. If a Project is resumed after being suspended for more than three months, the Project Addendum shall be subject to renegotiation.

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

13.3 In the event of termination due to the fault of a party other than the ARCHITECT, the ARCHITECT shall be compensated for services performed to the termination date, including reimbursable expenses then due and all termination expenses as defined in Section 13.4.

13.4 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses directly attributable to termination. Termination expenses shall be computed as a percentage of the total compensation for basic services earned to the time of termination, as follows:

- a. If termination occurs during Phase I - Preliminary Planning and Schematic Design Phase or Phase II - Design Phase of a Project, then termination expenses will be ten percent (10%) of the total compensation for basic services earned to the date of termination.
- b. If termination occurs during Phase III - Construction Documents Phase or Phase IV - Bid Phase of a Project, then termination expenses will be five percent (5%) of the total compensation for basic services earned to the date of termination.
- c. If termination occurs during Phase V - Construction Administration Phase of a Project, then the ARCHITECT will not receive any termination expenses.

13.5 TERMINATION FOR UNAVAILABILITY OF FUNDS. Any Project is contingent on the continued availability of government funds which are appropriated or allocated to the OWNER. In the event

funds are not allocated and lawfully available to the Owner to complete the Project, the Project may be terminated by the OWNER upon prompt written notice to the ARCHITECT at the earliest possible time stating the date of termination under this section.

No liquidated damages shall accrue to the ARCHITECT in the event this provision is exercised, and the OWNER shall not be obligated or liable for any costs, expenses or other charges incurred after the date of termination, including any other damages or costs of any kind arising out of or resulting from termination under this section including any termination expenses as provided in Section 13.4. In the event of termination for unavailability of funds, the Owner shall pay the ARCHITECT for the cost of any Basic or Additional services provided and work completed up to the date of termination for the Project in an amount not to exceed 100% of the total compensation for the same. This provision shall not be construed to permit the Owner to terminate a Project in order to acquire similar services from another party.

13.6 The ARCHITECT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from award or making of this Agreement. Violation of the provisions of this section by the ARCHITECT shall constitute a material breach of this Agreement. In the event of such breach, the OWNER shall have the right to terminate this Agreement and any Project Addendum then in effect without liability to the ARCHITECT of any kind whatsoever, and may at its discretion withhold payment of the ARCHITECT'S fees, or otherwise recover the full amount of such fees in an appropriate action at law or in equity.

#### **OWNERSHIP OF INTELLECTUAL PROPERTY**

14.1 Drawings, specifications, and other deliverables including any intellectual property incorporated therein or related to the services that is reduced to tangible form shall become the property of the OWNER as soon as payment for the same has been tendered by the OWNER and regardless of whether the Project for which they are made has been completed. The ARCHITECT may retain copies of the same for the ARCHITECT=s records and use. It is mutually agreed that The ARCHITECT will not be responsible or liable in the event the OWNER elects or permits any of the same to be used for any purpose other than the specific purpose for which they were prepared. Project drawings and other intellectual property related to the same shall be delivered or transmitted to the OWNER before final payment is made. The ARCHITECT shall include consistent provisions (or obtain the same through separate agreement) regarding the

intellectual property and ownership of documents in any agreement with subcontractors, consultants or other parties engaged to provide services related to the same. This section does not restrict the ARCHITECT from using stock or standardized elements incorporated into the Project drawings for other work.

14.2 The ARCHITECT shall provide an electronic version of the Specifications, Drawings and other deliverables in CADD or such other format the OWNER may reasonable request based on equipment and software compatibility for the OWNER'S information and use. Because information contained on computer discs and/or magnetic tapes can be unintentionally or otherwise modified by others besides the ARCHITECT, the ARCHITECT shall have the right to remove all indicia of ownership and/or involvement from the disc/magnetic tape provided to the OWNER. The original CADD data will be retained by the ARCHITECT. The information set forth on the disc/magnetic tape may be used by the OWNER for additions to a Project or completion of a project by another design professional, or on another project.

#### **INDEMNITY AND INSURANCE**

15.1 The ARCHITECT shall be liable to and agrees to indemnify and hold harmless the OWNER, and its governing board members, officers and employees, against all claims against any of them for personal injury or wrongful death or property damage arising out of any wrongful or negligent act, error, or omission of the ARCHITECT in the performance of services for any Project, or arising out of wrongful act, error, or omission by a consultant to the ARCHITECT in the performance of services for any Project.

15.2 The ARCHITECT shall insure and shall require each of the ARCHITECT'S consultants to insure against the following risks to the extent stated below:

- a. Comprehensive general liability insurance including blanket contractual liability, broad form property damage, personal injury, premises medical payments, interest of employees as additional insureds, and broad form general liability endorsement, written on an occurrence basis covering as insureds the ARCHITECT and the OWNER with not less than \$1,000,000 combined single limit for bodily injury and property damage. Consultants of the ARCHITECT shall maintain the same insurance coverage covering each consultant. The OWNER shall be named as an additional insured on a consultant's policy, if requested by the OWNER. Each such policy of comprehensive general liability insurance shall be kept in force until the date of

formal written acceptance of the construction work on a Project by the ARCHITECT and the OWNER.

- b. Architect's professional liability insurance written on a claims made or occurrence basis covering legal liability caused by errors and omissions arising out of professional services by the ARCHITECT on any Project and providing coverage for the ARCHITECT and any consultants of the ARCHITECT with minimum limits of liability approved by the OWNER for each Project and stated in the Project Addendum. Each such policy of professional liability insurance (1) shall include the indemnity as set forth above in Section 15.1, and (2) shall be kept in force for a period of at least two (2) years after the date of substantial completion of a Project.
- c. Comprehensive automobile liability insurance covering all owned, non-owned or hired automobiles to be used by the ARCHITECT and any consultants of the ARCHITECT in the amount of \$500,000 for bodily injury, \$1,000,000 for property damage, or in the amount of \$1,000,000 of combined single limit. Each such policy of comprehensive automobile liability insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the ARCHITECT and the OWNER.
- d. Workers' compensation insurance as required by Nebraska law covering the ARCHITECT and any consultant of the ARCHITECT. Each such policy of workers' compensation insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the ARCHITECT and the OWNER.
- e. Employers' liability insurance covering the ARCHITECT and any consultants of the ARCHITECT, including all states endorsement, in the minimum amount of \$500,000, or the maximum amount required by law, whichever is greater. Each such policy of employers' liability insurance shall be kept in force until the date of formal written acceptance of the construction work on a Project by the ARCHITECT and the OWNER.

15.3 All insurance required by Section 15.2 shall be maintained with responsible insurance carriers licensed to do business in the State of Nebraska. As soon as practicable after executing any Project Addendum and before commencing any performance of services under the Project Addendum, the ARCHITECT shall deposit, and shall cause any ARCHITECT'S consultant to deposit, with the OWNER, certificates of insurance on a form prescribed by the OWNER evidencing the insurance required by

Section 15.2. Each certificate of insurance shall contain a statement certifying to the OWNER that the OWNER will be given at least thirty (30) days prior written notice of any material change in, or cancellation of the insurance coverage shown in the certificate.

#### **EQUAL EMPLOYMENT OPPORTUNITY**

16.1 During the term of this Agreement the ARCHITECT certifies that it will comply with the provisions of the Nebraska Fair Employment Practice Act (Neb. Rev. Stat. ' ' 48-1101 to 48-1126), as amended, and that the ARCHITECT and any consultants of the ARCHITECT shall not discriminate against any employee of applicant for employment, to be employed in the performance of services for the OWNER on any Project covered by this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his or her race, color, religion, sex, disability, or national origin.

16.2 The ARCHITECT shall include in any contract with a consultant performing services for the ARCHITECT relating to any Project covered by this Agreement a clause containing language that is substantially the same as the language of Section 16.1, above.

#### **GENERAL PROVISIONS**

17.1 Estimates of construction costs prepared by the ARCHITECT represent the ARCHITECT'S best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the ARCHITECT nor the OWNER has control over the cost of labor, materials or equipment, the Contractor's methods of determining bid prices, or competitive bidding or market conditions.

17.2 Preliminary to or during construction of a Project, the ARCHITECT agrees to devote such time as may be necessary for conferences with the OWNER, or with any committee, officer, or attorney of the OWNER to act or to make presentations or recommendations on matters relating to the Project.

17.3 Architectural services as referred to in this Agreement and a Project Addendum are complete for the Project which is proposed by the OWNER. If additional consultants are required by the ARCHITECT for the design of a Project, such consultants shall be paid for by the ARCHITECT at no additional cost to the OWNER unless the cost of such services are agreed to in writing by the OWNER.

17.4 The ARCHITECT agrees that the compensation provided in a Project Addendum shall be the complete compensation for Basic



Services rendered by the ARCHITECT for the Project, and no additional charges will be made by the ARCHITECT for such services unless otherwise specifically agreed upon in writing by the OWNER.

17.5 The ARCHITECT and the OWNER each bind themselves and their respective partners, associates, successors, assigns and legal representatives to the faithful performance of the terms and conditions of this Agreement and any Project Addendum between the parties. Neither the OWNER nor the ARCHITECT shall assign or transfer their respective interests in this Agreement without the written consent of the other.

17.6 This Agreement together with any Project Addendum that may be executed by the parties represents the entire and integrated Agreement between the OWNER and the ARCHITECT with regard to the Project described in the Project Addendum, and supersedes all prior negotiations, representations or agreements, either written or oral for the Project described in the Project Addendum.

17.7 This Agreement and any Project Addendum that may be executed by the parties may be amended only by written instrument duly signed by both the OWNER and ARCHITECT.

17.8 No waiver of any of the conditions or provisions of this Agreement or any Project Addendum shall be implied; and no waiver expressed in writing shall affect any provision or condition of this Agreement or a Project Addendum other than the particular one specified in the written waiver, and that particular one only for the time and in the manner specifically stated in the written waiver.

17.9 Terms in this Agreement not otherwise defined shall have the same meaning as those in AIA Document A201 (1987 Edition), General Conditions of the Contract for Construction, as modified by the OWNER'S Supplementary Conditions of the Contract for Construction, as of the date of this Agreement.

17.10 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or ARCHITECT.

17.11 This Agreement shall be governed by and construed according to the laws of the State of Nebraska.

17.12 In the event that any provision of this Agreement, not essential to its overall purpose, shall be found or declared illegal for any reason, the balance of this Agreement shall nevertheless be severable and remain enforceable.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first above written.

**ARCHITECT**

By \_\_\_\_\_

Title \_\_\_\_\_

**ATTEST:**

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

By \_\_\_\_\_  
Corporation Secretary

By \_\_\_\_\_  
Vice President for  
Business and Finance