

**UNIVERSITY OF NEBRASKA
STANDARD FORM CONSTRUCTION AGREEMENT**

THIS AGREEMENT made this day of [--month--], --Year--by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate of the State of Nebraska, hereinafter called the OWNER, and

<**Contractor's Name**>
<**Contractor Address**>

hereinafter called the CONTRACTOR.

The Owner and the Contractor for the consideration hereinafter stated agree as follows:

ARTICLE 1 THE WORK

§ 1.1 The Contractor shall furnish all the materials, labor, tools and transportation, and perform all of the Work necessary to complete the project of the Owner shown in the Drawings and described in the Specifications set forth in Article 2 and in all other Contract Documents. The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 1.2 The project is entitled:

[--Project title--]

UNL Project Number:

UNL Invitation Number:

**As prepared by the Architect/Engineer: [--Firm name--]
 [--address--]
 [--city--], NE Zip**

ARTICLE 2 THE CONTRACT DOCUMENTS

§ 2.1 The Contract Documents consist of this Agreement, the General Conditions of the Contract for Construction, the General Requirements, the Specifications, the Drawings, all Addenda issued prior to execution of this Agreement, and other documents listed in this Agreement. Said documents form the Contract between the parties and all are as fully a part of this Agreement as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

§ 2.2 The following is an enumeration by title, date, and other description, of the Contract Documents.

§ 2.2.1 The Agreement is this University of Nebraska Standard Form Construction Agreement (revised May 26, 2006).

§ 2.2.2 The General Conditions are the General Conditions of the Contract for Construction set forth in section 00 72 13 of the Project Manual.

§ 2.2.3 The General Requirements and other Conditions of the Contract are those contained in the Project Manual dated [REDACTED], and are as follows
See Exhibit B attached.

§ 2.2.4 The Specifications are those contained in the Project Manual dated as in Section 2.2.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: See Exhibit C attached.

§ 2.2.5 The Drawings are as follows, and are dated _____ unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: See Exhibit D attached.

§ 2.2.6 The Addenda, if any, are as follows:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 2.

§ 2.2.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

See Exhibit A attached.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay to the Contractor the Contract Sum in warrants of the State of Nebraska for performance of the Work required by the Contract Documents. The Contract Sum shall be _____ Dollars (U.S.) (\$_____), which includes the base bid amount <<(edit this as necessary – “plus the following alternates, allowances and unit prices.”>>:

<<*Delete the following if there are no alternates, allowances and/or Unit Price items for the contract.>>

<<(List here alternates if any.) Use the following wording as an example:

Allowance No. 1 (very brief description) \$ _____

Alternate No. 1 (very brief description) \$ _____

Alternate No 2 (very brief description) \$ _____

Alternate No 3 (very brief description) \$ _____>>

<<(if agreement to hold alternate price add “Contractor will hold bid price for Alternates No. ----, according to the terms specified in the Bid Form, for 60 days following the bid date.”>>

<<(List Unit Prices if any.) Use the following format as an example:

“In addition, the agreement shall include the following unit prices:

Unit Price No. 1 (very brief description) \$ _____>>

ARTICLE 4 PAYMENTS

§ 4.1 Progress Payments

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

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

§ 4.1.3 The Owner shall make payment to the Contractor not later than forty-five (45) days after the Owner receives the Application for Payment.

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

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

§ 4.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of the General Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, which the Owner has withheld, in addition to retention, pursuant to the Contract Documents.

§ 4.1.7 The progress payment amount determined, above, shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

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

§ 4.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a Certificate of Final Completion has been issued by the Owner.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate of Completion and Contractor's fulfillment of all remaining requirements of the Contract Documents.

ARTICLE 5 TIME OF COMMENCEMENT AND COMPLETION

§ 5.1 The date of commencement shall be as set forth in a written notice to proceed issued by the Owner. The Contractor shall commence the Work required by the Contract Documents within ten (10) consecutive calendar days after the date of issuance of written Notice to Proceed from the Owner, unless otherwise stated in such notice to proceed. The Contractor shall substantially complete all work required by the Contract Documents not later than 2:00 o'clock p.m. of the day that is <<number of days from bid form_____>> calendar days from the date of commencement.

(If a Final Completion Date is applicable to this Contract, specify here the Final Completion Date)

The Contractor shall finally complete all work required by the Contract Documents not later than 2:00 o'clock p.m. of the day that is _____ calendar days from the date established above for substantial completion, or as follows:
(Insert here any alternate method of specifying Final Completion Date if number of calendar days is not used)

_____ (date)

Such time period shall be the Contract Time for Final Completion.

§ 5.2 The Substantial and Final Completion dates may be changed only by issuance of change order. All change orders on this project must define any changes in the stipulated completion date which may be caused by the changes in the work authorized by the change order.

§ 5.3 The date of Substantial Completion of Work or designated portion thereof is the Date certified by the Architect and **Owner's Representative** pursuant to § 9.8 of the General Conditions. The Contract Time shall be measured from the time of commencement.

§ 5.4 **Liquidated Damages.** Contractor and Owner agree that the following methods of calculating and determining Owner's damages resulting from Contractor's failure to achieve completion within the Contract Time: *(Check applicable provision below)*

_____ Actual damages incurred by Owner as a result of delay in achieving Substantial Completion and, if applicable, Final Completion. *(No liquidated damages apply.)*

If liquidated damages apply to this Contract, check one of the provisions, below, to specify liquidated damages amounts:

_____ Liquidated damages for delay in achieving Substantial Completion, as set forth in section 5.4.1 and 5.4.2 of this Agreement.

_____ Liquidated damages for delay in achieving Final Completion, as set forth in sections 5.4.1 and 5.4.3 of this Agreement.

_____ Liquidated damages for delay in achieving Substantial Completion and liquidated damages for delay in achieving Final Completion, as set forth in sections 5.4.1 and 5.4.4 of this Agreement.

§ 5.4.1 Contract Time Is of the Essence. Contractor acknowledges, recognizes, and agrees that (1) time is of the essence of this Agreement, (2) the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, and (3) if the Contractor fails to complete substantially, or cause substantial completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult, if not impossible, to ascertain. Accordingly, if Contractor fails to achieve Substantial Completion or Final Completion of the Work, or both, within the Contract Time, as required by this Agreement, Contractor shall be liable to Owner for Liquidated damages for unexcused delay as provided herein.

§ 5.4.2 For Delay In Substantial Completion. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor as liquidated damages and not as a penalty, the sum of _____dollars (U.S.) (\$_____) per calendar day commencing upon the first day following expiration of the Contract Time and continuing until the actual date of Substantial Completion. Contractor and Owner agree that all amounts payable hereunder by Contractor 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, as a result of delayed completion of the Work. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Contractor an amount then believed by Owner to be adequate to recover liquidated damages applicable to the delay in achieving Substantial Completion, or any part thereof. Any liquidated damages not so withheld shall be payable by Contractor to Owner upon demand by Owner plus interest from the date of demand at the highest legal rate.

§ 5.4.3 For Delay in Final Completion. If the Contractor fails to achieve Final Completion of the Work within the Contract Time specified in section 5.1 for Final Completion, the Owner shall be entitled to retain or recover from the Contractor as liquidated damages and not as a penalty, the sum of _____ Dollars (U.S.) per calendar day commencing upon the first day following expiration of the Contract Time specified for Final Completion and continuing until the actual date of Final Completion. Contractor and Owner agree that all amounts payable hereunder by Contractor 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, as a result of delayed Final Completion of the Work. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Contractor an amount then believed by Owner to be adequate to recover liquidated damages applicable to the delay in achieving Final Completion, or any part thereof. Any liquidated damages not so withheld shall be payable by Contractor to Owner upon demand by Owner plus interest from the date of demand at the highest legal rate.

§ 5.4.4 For Both Delay In Substantial Completion and For Delay In Final Completion. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time for Substantial Completion, the Owner shall be entitled to retain or recover from the Contractor as liquidated damages and not as a penalty, the sum of _____ Dollars (U.S.) (\$_____) per calendar day commencing upon the first day following expiration of the Contract Time for achieving Substantial Completion and continuing until the actual date of Substantial Completion. In addition to any liquidated damages for delay in achieving Substantial Completion, if the Contractor fails to achieve Final Completion of the Work within the Contract Time specified for Final Completion, the Owner also shall be entitled to retain or recover from the Contractor as liquidated damages and not as a penalty, the sum of _____ Dollars (U.S.) (\$_____) per calendar day commencing upon the first day following expiration of the Contract Time specified for Final Completion and continuing until the actual date of Final Completion.

Contractor and Owner agree that all amounts payable hereunder by Contractor 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, as a result of delayed Substantial and Final Completion of the Work. When Owner reasonably believes that Substantial or Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Contractor an amount then believed by Owner to be adequate to recover liquidated damages applicable to the delay in achieving Substantial and/or Final

Completion, or any part thereof. Any liquidated damages not so withheld shall be payable by Contractor to Owner upon demand by Owner plus interest from the date of demand at the highest legal rate.

5.5.5 In the event any portion of the liquidated damages provisions set forth, above, are determined to be a penalty and unenforceable under applicable law, then Owner shall be entitled to recover its actual damages for Contractor's delay in achieving Substantial Completion and/or Final Completion.

ARTICLE 6 PARTIES BOUND

§ 6.1 The terms and conditions of this Agreement and the Contract Documents shall be binding upon and inure to the benefit of the Owner and the Contractor and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

By _____

Title _____

THE BOARD OF REGENTS
THE UNIVERSITY OF NEBRASKA,
Owner

By _____

Title _____

ACKNOWLEDGMENTS

State of _____)
) ss. (Corporation)
County of _____)

Before the undersigned, a Notary Public duly qualified in and for said, county and state, personally came _____ the _____ of _____, a corporation authorized to do business in the State of Nebraska, and known to be the said officer of said corporation, and the same and identical persons who signed the foregoing Agreement as said officers, and each acknowledge their signing of this Agreement to be their duly authorized act and deed as such officers on behalf of said corporation.

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

State of Nebraska)
) ss. (Board of Regents)
County of _____)

Before the undersigned, a Notary Public duly qualified in and for said county and state, personally came _____ the _____ for the Board of Regents of the University of Nebraska, and known to me to be the said officer of said public corporation, and the same and identical persons who signed the foregoing Agreement as said officer, and each acknowledged their signing of this Agreement to be their duly authorized act and deed as such officer on behalf of said public corporation.

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

CERTIFIED COPY OF RESOLUTION

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of _____ to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees:

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

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

I hereby certify that I am Secretary of _____, that as such I have access to the books and records of the Corporation; that the foregoing is an excerpt from the minutes of the Board of Directors' Meeting of _____ a Nebraska Corporation, held on the _____ day of _____, 20____, a quorum being present; and that no action has been taken by the Board of Directors of said Corporation since said date that would have effect of changing or altering the authority granted therein.

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

Secretary of the Corporation

Seal:

Date _____

ACKNOWLEDGMENTS

State of _____)
) ss. (Individual)
County of _____)

Before the undersigned, a Notary Public duly qualified in and for said county and state, personally came _____ known to me to be the same and identical person who signed the foregoing Agreement, and acknowledged the same to be his or her voluntary act and deed.

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

State of Nebraska)
) ss. (Board of Regents)
County of _____)

Before the undersigned, a Notary Public duly qualified in and for said county and state, personally came _____ the _____ for the Board of Regents of the University of Nebraska, and known to me to be the said officer of said public corporation, and the same and identical persons who signed the foregoing Agreement as said officer, and each acknowledged their signing of this Agreement to be their duly authorized act and deed as such officer on behalf of said public corporation.

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

ACKNOWLEDGMENTS

State of _____)
) ss. (Partnership)
County of _____)

Before the undersigned, a Notary Public duly qualified in and for said county and state, personally came

_____, known to me to be a partner in the partnership named _____ and is the same and identical person who signed the foregoing Agreement as such partner, and acknowledged such signing of the Agreement to be his or her duly authorized act and deed on behalf of said partnership.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

State of Nebraska _____)
) ss. (Board of Regents)
County of _____)

Before the undersigned, a Notary Public duly qualified in and for said county and state, personally came _____ the _____ for the Board of Regents of the University of Nebraska, and known to me to be the said officer of said public corporation, and the same and identical persons who signed the foregoing Agreement as said officer, and each acknowledged their signing of this Agreement to be their duly authorized act and deed as such officer on behalf of said public corporation.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public