

is made and entered into at Lincoln, Nebraska this 1st day of May, 2018, by and between _____, a public body corporate, hereinafter called "OWNER", and _____ hereinafter called "ARCHITECT/ENGINEER", and shall apply to any Project which may during the term of this Agreement be identified in written addenda to this Agreement.

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

_____, in consideration of the mutual promises and covenants hereinafter contained, the OWNER and ARCHITECT/ENGINEER agree as follows:

1.1 _____ The term of this Agreement shall be for a period of four (4) years, beginning on the 1st day of May, 2018, and ending at midnight on the 30th day of April, 2022, subject to automatic extension for that time necessary for completion of those phases of the

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/ENGINEER and other terms and conditions related to the services of the ARCHITECT/ENGINEER 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/ENGINEER in the Construction Documents for an individual Project. Unless the context clearly requires otherwise, any conflict shall be resolved favoring the terms and conditions in highest to lowest order as follows: 1) Agreement for Design Services (this agreement); 2) the correlated Project Addendum, and 3) the correlated Construction Documents for the Project.

2.2 The ARCHITECT/ENGINEER 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/ENGINEER. Accordingly, the ARCHITECT/ENGINEER shall not delegate to other architects or engineers the duties required to be performed pursuant to this Agreement, except that the ARCHITECT/ENGINEER shall have the right to engage other qualified consultants, ARCHITECT/ENGINEERS, engineers or draftpersons in performing the professional services required for a Project with the prior written approval of the OWNER.

2.4 The ARCHITECT/ENGINEER shall cause each of its employees or any person acting on behalf of the ARCHITECT/ENGINEER, 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/ENGINEER. 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. In addition, the ARCHITECT/ENGINEER shall cause each of its employees or any person acting on behalf of the ARCHITECT/ENGINEER whenever on site or otherwise on property of the University under this Agreement, to comply with all policies, rules and regulations of the OWNER. Employees or representatives without proper identification or otherwise in violation of any policy, rule or regulation of OWNER will not be permitted to remain on 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/ENGINEER

3.1 The OWNER shall compensate the ARCHITECT/ENGINEER

4.1 The ARCHITECT'S/ENGINEER'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

4.2.1 The ARCHITECT/ENGINEER shall provide a listing of the ARCHITECT'S/ENGINEER'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/ENGINEER intends to use on the Project. Except for causes beyond the ARCHITECT'S/ENGINEER'S reasonable control or termination of employment of an employee, the ARCHITECT/ENGINEER 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.

4.2.2 DESIGN GUIDELINES - The ARCHITECT/ENGINEER is required to conform to the OWNER'S Design Guidelines in effect at the time of Project Addendum execution, incorporated herein by this reference. It will be the responsibility of the ARCHITECT/ENGINEER to obtain such guidelines from the OWNER'S REPRESENTATIVE. The ARCHITECT/ENGINEER will be responsible for any and all costs relating to the ARCHITECT/ENGINEER'S negligent or intentional failure to conform to these guidelines, including but not limited to the replacement of systems or Work that does not conform to the guidelines. The ARCHITECT/ENGINEER may only depart from these guidelines if written permission is granted from the OWNER.

4.2.3 The ARCHITECT/ENGINEER will prepare meeting minutes for every Project meeting from the Program Verification phase through the construction administration phase. The ARCHITECT/ENGINEER will distribute meeting minutes to all building team participants within 5 days after the meeting. In the meeting minutes, the ARCHITECT/ENGINEER will briefly document each discussion item including related decisions and/or actions required.

4.2.4 The ARCHITECT/ENGINEER is required to use CAD software compatible with or translatable to the OWNER'S throughout the entire project to facilitate the electronic transmission, viewing and alteration of all drawings. Prior to submission of any CAD files to the OWNER, the ARCHITECT/ENGINEER will also adhere to the CAD drafting standards set forth by the OWNER.

4.2.5 The ARCHITECT / ENGINEER will not proceed with subsequent design phases until the current design phase, including any adjustments authorized by the OWNER in the Project, and are approved in with any phase of the work without approval in writing by the OWNER'S REPRESENTATIVE.

4.3

4.3.1 If the ARCHITECT/ENGINEER 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/ENGINEER 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/ENGINEER of the same. In any case, the ARCHITECT/ENGINEER'S design of a Project shall include technical assistance for the proper remediation or abatement of existing conditions of hazardous, potentially hazardous or toxic materials or substances to the extent required by law or applicable regulation. The ARCHITECT/ENGINEER shall not assume any liability for the costs of such remediation or abatement.

4.3.2 ASBESTOS - The ARCHITECT/ENGINEER will notify the OWNER of the possible existence of asbestos, if during the performance of Basic Services the ARCHITECT/ENGINEER should notice its possible existence. The ARCHITECT/ENGINEER'S design of the Project will be so executed so that it will allow for proper abatement of asbestos by the OWNER. If asbestos abatement is required, the OWNER will be solely responsible for same.

4.4

: The ARCHITECT/ENGINEER 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/ENGINEER'S Basic Services and provide for the same in writing in the Project Addendum for a Project.

4.5 : The ARCHITECT'S/ENGINEER'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/ENGINEER 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/ENGINEER may have concerning the OWNER'S requirements for the Project. The ARCHITECT/ENGINEER shall review with the OWNER alternative approaches to design and construction of the Project.

4.5.2 The ARCHITECT/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER the OWNER will furnish to the ARCHITECT/ENGINEER, 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/ENGINEER 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/ENGINEER 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/ENGINEER and recommend changes to the same. If changes to the original project record drawings are necessary, the OWNER shall either: (a) have the ARCHITECT/ENGINEER update the drawings as an Additional Service, or (b) provide the revised drawings to the ARCHITECT/ENGINEER in accordance with Section 6.3.

4.5.7 The ARCHITECT/ENGINEER 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/ENGINEER'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/ENGINEER 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 Aon(the)-90(P)3(TB)6(f5)5()-229(infor)5(mation)-71(to)-67mto

- 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/ENGINEER 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/ENGINEER shall provide interior design services, at no additional cost to the OWNER, 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/ENGINEER 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/ENGINEER shall not proceed with Phase III - Construction Documents Phase until Phase II - Design Phase is approved in writing by the OWNER.

4.6 : The ARCHITECT'S/ENGINEER'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/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER 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 ul c -140(w)-msuiNEE

4.7.5

4.8.11 The ARCHITECT/ENGINEER shall assist the OWNER in determining the dates of Substantial Completion and Final Completion of the Project. The ARCHITECT/ENGINEER 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/ENGINEER shall assist the OWNER and the Project Contractor in preparation of the "punch list" to be attached to the Certificate of

respect to the Project. The OWNER shall examine documents submitted by the

determine the site or project specific accuracy, adequacy, fitness, suitability, or coordination of any Owner Provided Information and the ARCHITECT/ENGINEER may be required to supplement or verify the same in the proper exercise of the ARCHITECT/ENGINEER's professional judgment.

6.9 If the OWNER or ARCHITECT/ENGINEER 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/ENGINEER 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/ENGINEER 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.

7.1 Construction Cost, as may be required in a Project Addendum for the purpose of computing the ARCHITECT'S/ENGINEER'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/ENGINEER 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/ENGINEER estimated Construction Cost prior to bid, the Construction Cost will be defined as the ARCHITECT'S/ENGINEER'S estimate prior to bid.
- b. For Work not constructed, (1) the lowest responsible base bid(s) accepted by the OWNER, including any ARCHITECT/ENGINEER 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/ENGINEER and the ARCHITECT/ENGINEER'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,
- e. Movable equipment, works of art, floor coverings, furniture and furnishings provided and installed by the OWNER, or
- f. Cost of observation or construction furnished by the OWNER, unless designed by the ARCHITECT/ENGINEER.

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

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/ENGINEER, 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.

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/ENGINEER and ARCHITECT'S/ENGINEER'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.

- e. Professional consultant's services that have been approved in writing by the OWNER in advance of performance of such services.

between them relating to the contractual requirements for the ARCHITECT'S/ENGINEER'S services on a Project or the compensation to be paid to the ARCHITECT/ENGINEER 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/ENGINEER 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/ENGINEER, 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.

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

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/ENGINEER from using stock or standardized elements incorporated into the Project drawings for other work.

14.2 The ARCHITECT/ENGINEER shall provide an electronic version of the Specifications, Drawings and other deliverables in electronic format or such other format the OWNER may reasonably request based on equipment and software compatibility for the OWNER'S information and use. Because electronic information can be unintentionally or otherwise modified by others besides the ARCHITECT/ENGINEER, the ARCHITECT/ENGINEER shall have the right to remove all indicia of ownership and/or involvement from electronic files provided to the OWNER. The original electronic data will be retained by the ARCHITECT/ENGINEER. The information set forth in the electronic files may be used by the OWNER for additions to a Project or completion of a project by another design professional, or on another project, and in such event the OWNER agrees to waive and release any and all claims, causes of actions or related liability against the ARCHITECT/ENGINEER arising out of such use.

15.1 The ARCHITECT/ENGINEER 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/ENGINEER in the performance

OWNER for each Project and stated in the Project Addendum. Each such policy of professional liability insurance shall be kept in force for a period of at least two (2) years after the date of substantial completion of a Project.

- c. Comprehensive automobile liability insurance covering all owned, non-owned or hired automobiles to be used by the ARCHITECT/ENGINEER and any consultants of the ARCHITECT/ENGINEER 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/ENGINEER and the OWNER.
- d. Workers' compensation insurance as required by Nebraska law covering the ARCHITECT/ENGINEER and any consultant of the ARCHITECT/ENGINEER. 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/ENGINEER and the OWNER.
- e. Employers' liability insurance covering the ARCHITECT/ENGINEER and any consultants of the ARCHITECT/ENGINEER, 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/ENGINEER 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/ENGINEER shall deposit, and shall cause any ARCHITECT/ENGINEER / ARCHITECT/ENGINEER AP

above.

17.1 Estimates of construction costs prepared by the ARCHITECT/ENGINEER represent the ARCHITECT'S/ENGINEER'S best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the ARCHITECT/ENGINEER 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/ENGINEER 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/ENGINEER for the design of a Project, such consultants shall be paid for by the ARCHITECT/ENGINEER 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/ENGINEER agrees that the compensation provided in a Project Addendum shall be the complete compensation for Basic Services rendered by the ARCHITECT/ENGINEER for the Project, and no additional charges will be made by the ARCHITECT/ENGINEER for such services unless otherwise specifically agreed upon in writing by the OWNER.

17.5 The ARCHITECT/ENGINEER 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/ENGINEER 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/ENGINEER 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/ENGINEER.

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.

in AIA Document A201 (1997 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/ENGINEER.

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.

17.13 Time is of the essence with respect to all provisions of this agreement and any Addendum hereto.

17.14 A/E agrees to indemnify and hold harmless the University and their officers, regents, agents and employees from and against all claims or losses including reasonable attorneys' fees, arising out of or resulting from the negligence or omissions of A/E, its partners, directors, officers,