

UNIVERSITY OF NEBRASKA

FIXED PRICE

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

DESIGN/BUILDER S REPRESENTATIONS

2.1 Specific Representations: In order to induce Owner to execute this Agreement and recognizing that Owner is relying thereon, Design/Builder, by executing this Agreement, and without superseding,

limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement or the Contract, or implied by operation of law, makes the following express representations to Owner:

(1)

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

3.3 Preparation Of Site Information: Design/Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be

(6) Any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and the Contract.

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

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

ARTICLE 6

DETAILED DESIGN

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

6.2 The Detailed Design: The Detailed Design shall include all Design Documents which shall

(2) The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;

(3) The procurement and furnishing of all necessary bufunecessary The(1)-4()-227(pt)-4(it)-4(4(ool)63()

8.4 Liquidated Damages For Delay In Final Completion: If Design/Builder fails to achieve Final Completion by _____, as detailed in Outline Specification Section 00 01 20 “List of Schedules, the

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

9.7 Record Copy Of Contract Documents: Design/Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of the Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of Owner, a copy of all Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Work, or upon Owner's request, all of the documents described in this Section shall be finally updated and delivered to Owner and shall become the property of Owner.

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

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

9.10 Procurement And Review Of Warranties: Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit to Owner, all warranties required by the Contract. Design/Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirementmew9xa484(DETq2()-260(Subm)19(i0-4(.))TJETBT1 0 0 1 43764(m)15-4(ew9xa484(DETq2()-260(Subm)1

9.14 Testing, Inspections, And Approvals: Except for inspection and testing specified as the Owner's responsibility, the Design/Builder shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project, and shall assume the cost of such tests and testing. Design/Builder shall request the testing or inspection

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

11.12

- (7) Loss caused by Design/Builder;
- (8) Design/Builder's failure or refusal to perform any of its obligations to Owner.

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

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

11.19 Payment contingent upon availability of appropriated funds or funds approved by Board of Regents: Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum of any part thereof shall be contingent upon the availability of funds appropriated by the Legislature of the State of Nebraska as provided by law, or the availability or other funds of the Owner specifically approved by formal action of the Board of Regents of the University of Nebraska for the purpose of payment of the Contract Sum or any part thereof. The appropriation, availability of funds, and the specific approval by formal action of the Board of Regents shall be conditions precedent to Owner's obligation to make any payment to Contractor for the Work.

ARTICLE 13

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

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

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

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

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

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

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

(3) Any extension of the Contract Time requested by Design/Builder for performance of any change in the Design Services or the Work ordered by Owner may be granted by mutual

ARTICLE 17

CLAIMS BY DESIGN/BUILDER

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

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

17.3 Documentation In Support Of Claims: Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Design/Builder

constitute a waiver by Design/Builder of any rights arising out of or relating to such concealed and unknown condition including any claim for an increase in the Contract Price or any claim for an extension of the Contract Time.

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

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

17.10 Claims For Increase In Contract Time: If Design/Builder is delayed in progressing any task which

in its sole discretion to deny all, or any part, of such extension of Contract Time by written notice to Design/Builder provided within seven (7) days of receipt of Design/Builder's claim. Should Owner deny Design/Builder's claim for an extension of Contract Time under this Subparagraph

written notice of such termination to Design/Builder specifying when termination becomes effective. Design/Builder shall incur no further obligations in connection with the Contract and Design/Builder shall stop Design Services and the Work when such termination becomes effective. Design/Builder shall also, at Owner's direction, either terminate or assign to Owner outstanding orders and subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts and orders. Owner may direct Design/Builder to assign Design/Builder's right, title and interest under terminated orders or subcontracts to Owner or its designee. Design/Builder shall transfer title and deliver to Owner such completed or partially completed Design Documents, Work and materials, equipment, parts, fixtures, information and Contract rights as Design/Builder has.

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

- (1) Design/Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Owner shall pay Design/Builder an amount derived in accordance with Subparagraph (3) below;
- (2) Owner and Design/Builder may agree to the compensation, if any, due to Design/Builder hereunder;
- (3) Absent agreement to the amount due to Design/Builder, Owner shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:
 - (a) That portion of the Contract Price representing the value of the Design Services and the Work, as reflected on the Schedule of Values, performed by Design/Builder prior to its receipt of the notice of termination, which is completed and accepted by Owner for which Design/Builder has not been previously paid;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Design Services and the Work, and in terminating Design/Builder's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that Design/Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 19.7 above. These costs shall not include amounts paid in accordance with other provisions hereof.

In no event shall Design/Builder be entitled to recover anticipated profits or other consequential damages from Owner on account of a termination for convenience or an erroneous termination for cause, as described below.

the Owner, Design/Builder, Subcontractors, and Sub-subcontractors in the Work, and the Board of Regents of the University of Nebraska.

22.1.2 A loss insured under the Owner's builder's risk insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds as their interest may appear, subject to any applicable mortgagee clause and subject to Subsection 22.2.9. The

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

22.3 Waiver of Subrogation. Each party shall waive all rights of subrogation against the other, its agents, and any of its insurers as regards any loss covered by insurance, regardless of whether this insurance be Owner-Furnished, Design/Builder-Furnished, Subcontractor-Furnished, or other insurance the Design/Builder or Subcontractor carries for his or her own account. This waiver shall apply is y(r)-3(an)9(ce)--66(

Project Manager
University of Nebraska
Facilities Management Department
Address _____
City, State, Zip Code _____

To Design/Builder:

All notices shall be effective upon receipt.

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

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

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

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA, Owner**

_____,
Design-Builder

By: _____
(Signature)

By: _____
(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title & Address)

(Date of Execution)

(Date of Execution)

ACKNOWLEDGMENTS

State of _____)
) ss. (Corporation) or (Partnership) or (Individual)
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

00 71 23 Field Engineering
00 72 13 General Conditions - Stipulated Sum

DIVISION 01 - GENERAL REQUIREMENTS

01 10 00 Summary of Work
01 25 00 Substitution Procedures
01 26 00 Contract Modification Procedures
01 29 00 Payment Procedures
01 31 13 Project Coordination
01 31 19 Project Meetings
01 33 00 Submittal Procedures
01 40 00 Quality Requirements
01 42 00 Reference Standards
01 45 29 Testing Laboratory Services
01 50 00 Temporary Facilities and Controls
01 60 00 Product Requirements
01 77 00 Closeout Procedures

DIVISION 02 - SITEWORK

02070 Selective Demolition
02200 Earthwork
02250 Erosion and Sediment Control Systems
02370 Augured Cast-In-Place Piles
02511 Hot-Mix Asphalt Paving
02520 Portland Cement Concrete Paving
02832 Segmental Retaining Wall System

DIVISION 03 - CONCRETE

03100 Concrete Formwork
03200 Concrete Reinforcement
03250 Concrete Accessories
03300 Cast-In-Place Concrete
03350 Cast-In-Place Concrete 31 Tm72.024 371.47 Tm[DIV)4(I)-10(S)4(IO)-E6Tc(-)]TJETBT1 0

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

07100

15835 Terminal Heat Transfer Units
15855 Ductless Split System
15870 Power Ventilators
15890 Ductwork
15910 Ductwork Accessories
15940 Air Outlets and Inlets
15980 Instruments and Control Elements
15985 Sequence of Operation
15990 Testing, Adjusting and Balancing

DIVISION 16 - ELECTRICAL

16015 Electrical General Provisions
16050 Basic Materials and Methods
16110 Raceways
16120 Conductors
16140 Wiring Devices
16450 Grounding System
16460 Dry-Type Transformers
16470 Panel boards
16481 Motor Controllers
16500 Lighting
16721

BIM Level 1.0 - The model shall include basis components such as walls, floors, and roof, some finishes, and the spaces along with related information such as name, occupant, department, etc.

BIM Level 2.0 - In addition to Level 1.0 requirements, the model shall include detailed spaces, details of walls, floors, and roof, the complete structural system of the building, details of finishes such as moldings, and all the system information including, but limited to ducts, valves, piping, lights, panels, and equipment.

BIM Level 3.0 - In addition to Level 1.0 & 2.0 requirements, the model shall include adding all information required for analysis and simulation, such as the thermal properties of the components, and full details of all the systems that the building will have.

BIM Level 4.0 - In addition to Level 1.0, 2.0, & 3.0 requirements, the model shall include all fabrication information and shall serve as the contract model for full-fledged collaboration and integrated practice.