

City of Lincoln, Nebraska
CONTRACT FOR CONSTRUCTION DESIGN SERVICES

THIS CONTRACT, executed in triplicate, is between the **City of Lincoln, Nebraska** (City) and

(Architect),

a corporation of the state of _____,

with a place of business at:

Phone: _____ Fax: _____

Fed EIN # _____.

WITNESSETH: That in consideration of the mutual covenants herein contained, the City hereby agrees to employ the Architect to perform architectural and related professional services hereinafter outlined in connection with

(Project).

SECTION I — SCOPE OF SERVICES

The Architect agrees to timely and professionally complete, furnish and pay all costs, including any related taxes, and to furnish all labor, supplies and material and everything else reasonably necessary to complete the same unless specifically provided otherwise in this agreement for the following services:

A. Basic Services [May delete/uncheck services that do not apply]

a. Schematic Phase

- i. Prepare and deliver preliminary design study and report;
- ii. Prepare and deliver field surveys, (where required); and
- iii. Prepare and deliver Environmental Site Assessment (Phase 1 or Phase 1 & 2 ASTM standard (E-1527)) or other due diligence reports (where required)

b. Design Phase

- i. Prepare and deliver Construction Drawings and Specifications;
- ii. Prepare and deliver Bid Specifications;
- iii. Attend pre-bid conference;
- iv. Assist review and determine bid compliance including recommendation for lowest responsible bidder;

- v. Evaluate substitute “or equal” bids and modifications or addenda to bidding documents;
- vi. Prepare, deliver and award contracts for construction and related Contract Documents; and
- vii. Review applicable fire safety and code compliance (ADA compliance included).

c. Construction Phase

- i. Prepare and deliver appropriate applications and supporting documentation for permits, variances and approvals – including grading, utilities, planning/subdivision and floodplain requirements;
- ii. Meet with building officials for inspections or plan review to obtain permits;
- iii. Document by memoranda or minutes including summaries of telephone calls where appropriate supplementing site visit and inspection reports to maintain a comprehensive record of the Project;
- iv. Administer contract for construction;
- v. Conduct site visits;
- vi. Review and certify amounts due to contractor;
- vii. Reject work not in conformance with Contract Documents;
- viii. Review and approve contractor submittal including shop drawings and, product data and samples for conformance with the Contract Documents; and
- ix. Prepare change orders with supporting documentation and data.

d. Substantial Completion and Wrap-up

- i. Conduct inspections to determine Substantial Completion;
- ii. Forward and coordinate with City applicable warranties as supplied by the contractor;
- iii. Prepare final Certificate of Payment upon compliance with the requirements of the Contract Documents;
- iv. Prepare a punch list and 10 month (assumes 1 year warranty period) warranty inspection review and report; and
- v. Prepare as built or record plans showing any significant changes in the work made during construction.

- B. Supplemental services. [list with correlated not to exceed amount] and additional services as preauthorized by written approval of the City.
- C. Services Description. A description of the services to be performed is listed in Appendix A [Proposal] and the Project Schedule is listed in Appendix B. In the event of a conflict between the terms of Appendix A and this agreement, this agreement shall control.

SECTION II — COMPENSATION

For the services covered by this Contract, the City agrees to pay the Architect as follows:

- A. For Basic Services: Cost plus reimbursement of actual expenses with an agreed maximum amount. Architect agrees to request payment according to the substantial completion of the following milestones in compliance with the Project schedule listed in Appendix B:
 - o Schematic Phase 20%;
 - o Design Phase 40% (60% cumulative);
 - o Construction Phase 30% (90% cumulative); and
 - o Substantial Completion – Wrap-up 10% (100% cumulative)
- B. For supplemental services: Cost plus reimbursement of actual expenses plus _____ percent of cost for fixed fee, with an agreed maximum

- amount to be billed. A maximum amount for each item of supplemental services will be established and approved by the City before the work is started. Supplemental services are not included in any of the prices or billing limits named above.
- C. The Architect is responsible for determining if its actual costs will exceed the maximum amount stated above. If at any time during this Project, the Architect determines that its costs will exceed, or have exceeded the maximum amount stated above, the Architect must immediately notify the City in writing and describe which costs are causing the overrun and the reason. The Architect must also estimate the additional costs needed to complete the work. The City will then determine if the maximum amount is to be increased, and an amendment will be prepared if needed.
 - D. The City is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in Appendix B of this agreement.
 - E. The fixed-fee is computed upon actual costs including direct labor costs, direct non-labor costs, and overhead costs as follows:
 - a. **Direct Labor Costs** are the earnings that individuals receive for the time they are working directly on the Project.
 - i. Hourly rates: For hourly employees, the hourly earnings rate is based on the compensation received during the pay period that the work is performed, and dividing that compensation by the hours paid. For salaried employees, the hourly earnings rate is determined by dividing the employee's fixed annual compensation by the number of hours normally expected to be worked that year. In those pay periods which the employee works more hours than normally expected and does not receive additional compensation at least equal to the normally expected hourly rate, the rate for that pay period will be determined by dividing the actual compensation by the actual hours reported.
 - ii. Time records: The hours charged to the Project must be supported by adequate time distribution records. The records must clearly indicate the distribution of hours to all activities on a daily basis for the entire pay period, and there must be a system in place to ensure that time charged to each activity is accurate.
 - b. **Direct Non-Labor Costs** charges in this category include per diem expenses for personnel away from their base of permanent assignment, communication costs, reproduction and printing costs, computer charges, special equipment and materials required for the Project, special insurance premiums if required solely for this agreement, and such other similar items. Payment for these items must be made on receipted invoices whenever possible, or on certified billings of the Architect. For purposes of standardization on this agreement, automobile mileage will be reimbursed at the IRS approved rate for mileage expenses for federal income purposes and computer charges will only be allowed with prior written approval not to exceed actual reasonable cost. All lodging, airfare and other applicable discounts for expenses shall be passed on to the city in calculating reasonable costs. Meals are not eligible for reimbursement if the employee eats within 20 miles of their base.
 - c. **Overhead Costs** include indirect salary costs, indirect non-salary costs, and direct salary additives that are allowable in accordance with 48 CFR 31. Overhead costs are to be allocated to the Project as a percentage of direct labor costs. The Architect will be allowed to charge the Project using its actual allowable overhead rate. Overhead rate increases which occur during the Project period will not be cause for an increase in the maximum amount established in paragraph A of this section.
 - F. Invoices. The Architect should submit invoices to the City at monthly intervals. The invoices must present actual direct labor, actual overhead, and actual direct non-labor

- costs, as well as a prorated amount of the fixed-fee based upon the actual direct labor and overhead costs billed for that period relative to the Architect's estimated total direct labor and indirect overhead costs and the milestones provided in section A above, until 100 percent of the fixed-fee has been billed. The invoices must identify the hours worked and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed.
- G. Progress Reports. Monthly invoices must be substantiated by progress reports which indicate the percent of work completed. If the Architect does not submit a monthly invoice, it shall submit its progress report by the fifth day of each month.
 - H. Payment. The City will make every effort to pay the Architect within 30 days of receipt of the Architect's invoices. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the City determines that the work is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs and fixed-fee. After the Architect has completed all work required under this agreement, a final bill must be sent to the City. Upon acceptance by the City, a final audit of all invoiced amounts may be completed by the City or its authorized representative.
 - I. Final Payment. The acceptance by the Architect of the final payment will constitute and operate as a release to the City for all claims and liability to the Architect, its representatives, and assigns, for any and all things done, furnished, or relating to the services rendered by or in connection with this agreement or any part thereof. The Architect agrees to reimburse the City for any overpayments discovered by the City or its authorized representative.
 - J. Audit Standards. The Architect shall maintain, and also require that its Sub-Consultants/Subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final payment under this agreement. Such materials must be available for inspection by the City, State, FHWA, or any authorized representative of the federal government, and when requested the Architect shall furnish copies.

SECTION III — CITY'S RESPONSIBILITIES

The City will furnish, as required for the work and not at the expense of the Architect, the following items:

- A. Property, boundary, easement, right-of-way, and utility surveys, and property descriptions when such information is required.
- B. All exploratory work, such as core borings, penetration tests, soundings, and subsurface explorations; and laboratory tests and analyses.
- C. All maps, drawings, records, audits, annual reports, and other data that are available in the files of the City and which may be useful in the work involved under this contract, including existing surveys, maps, and boring information for the site. Such information is supplied "where is – as is" for the Architect's review. Architect must identify and specifically request available information by itemized request with sufficient detail to identify existing documents. The City does not warrant or represent that such information is accurate or complete with regard to the Project. Architect understands and agrees that Architect is not entitled to rely upon the available information provided by the City as such information may contain errors, omissions, misrepresentations, uncharacteristic representations or other inconsistencies including inconsistencies or changed conditions that may not be readily discernable but should be reasonably discovered by the Architect's exercise of due care.
- D. Access to public and private property, as necessary, when required in conduct of field investigations.

- E. Office desk space for the Architect's personnel during preliminary investigations.
- F. Shop, mill, or laboratory inspection of materials, or laboratory testing service. The Architect will review the reports furnished by such laboratories.
- G. Charges for review of drawings and specifications by governmental agencies, if any.
- H. Royalties and fees for patented processes used in the work, except those required to be paid by construction contractors as part of the construction contract.

SECTION IV — OTHER MATTERS

It is mutually understood and agreed:

- A. Termination. The City has the right to terminate this contract for any cause, including convenience in which event the Architect shall be paid on the basis of percentage of completion of the work to be performed hereunder. The ownership of the work completed at the time of such termination shall be retained by the City. In addition, the City may terminate this agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, released, or otherwise not forthcoming through no fault of the City.
- B. Change in Scope. A change in scope of work shall be accompanied by a corresponding adjustment in the compensation to be paid hereunder, which adjustment shall be as may be mutually agreed upon between the parties hereto prior to the implementation of such change in scope.
- C. Project Representatives. _____ will act as the City's authorized representative for this Project and _____ will act as the Architect's authorized representative. The Architect's authorized representative shall have direct and responsible charge for timely completing the Architect's responsibilities. All changes and other matters requiring decisions on the part of the City will be administered and directed by the City Project Representative.
- D. Cost Estimates. Architect's Construction Estimates are done to industry standards and comply with minimum specifications for city construction using unit prices where possible.
- E. City's Concerns. Design documents shall itemize and list the Architect's responses to City concerns or comments on schematic review.
- F. Signatures and Approvals. Architect's design documents shall be complete for bidding purposes and include all required seals, signatures and approvals.
- G. Changes. Architect may only authorize changes in the work not involving changes to the contract Sum or Contract Time.
- H. Advisory Capacity for Disputes. In disputes between the City and Project contractor, the Architect shall advise the City issues concerning performance under the contract documents. Architect may decide issues solely on matters of aesthetic effect consistent with contract documents.
- I. Ownership of Drawings and Specifications. Drawings, specifications, and other deliverables shall become the property of the City as soon as payment for the same has been completed. The Architect may retain copies of all information for their records and use if they so desire. It is mutually agreed that these documents are to be used by the City solely in connection with this Project. In the event the City elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the City agrees to hold harmless and indemnify the Architect for and against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.
- J. Architect's Supervision, Seal. The Architect shall perform all required services under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the State of Nebraska on all plans and specifications prepared hereunder.

- K. Independent Contractor. The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contract is that of independent contractor to the City.
- L. Compliance with Law. Architect shall comply with all Federal and State laws and City ordinances applicable to the work.
- M. Fair Employment Practices. Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of Section 48-1122, Nebraska Reissue Revised Statutes, Reissue 1998 (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).
- N. Indemnification. Architect shall indemnify, defend and save harmless the City of Lincoln, Nebraska, or its representatives from all claims, demands, suits, actions, payments, liability, and judgments, including reasonable attorney's fees arising out of the activities of Architect or of Architect's agents, servants, or employees. In this connection, Architect shall carry insurance in the following kinds and minimum limits as indicated:
 1. **Worker's Compensation Insurance and Employer's Liability Insurance.** The Architect shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance in this State covering all his employees, and in the case of any work sublet, the Architect shall require the subcontractor similarly to provide statutory Worker's Compensation Insurance for the latter's employees. The architect shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of \$500,000 in an insurance company authorized to write such insurance in all states where the Architect will have employees located in the performance of this contract, and the Architect shall require each of his subcontractors similarly to maintain common law liability insurance on his employees.
 2. **Public Liability Insurance.** The Architect shall maintain during the life of this contract, Public Liability Insurance, naming and protecting him and the City of Lincoln against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury; liability, and (3) property damage which may arise from operations under this contract whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be a combined single limit of \$1,000,000 and \$2,000,000 aggregate.
 - i. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto including contractual liability; and
 - ii. The property damage coverage shall include a Broad Form Property Damage Endorsement and shall include the following extensions of coverage: Contractual Liability, Products Liability and/or Completed Operations.
 3. **Automobile Liability Insurance.** The Architect shall take out and maintain during the life of this contract such Automobile Liability Insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from the operations of any owned, hired, or non—owned automobiles used by or for him in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

- i. Bodily Injury Limits \$ 500,000 Each Person
\$1,000,000 Each Occurrence
- ii. Property Damage Limit \$ 500,000 Each Occurrence
- iii. Combined Single Limit \$1,000,000 Each Occurrence

4. Professional Liability Insurance. The Architect shall maintain during the life of this contract, Professional Liability Insurance, naming and protecting Architect against claims for damages resulting from the Architect's errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than \$2,000,000 excluding defense costs and claim expenses.

5. Certificate of Insurance. The insurance specified above shall be written by a company duly authorized and licensed to do business in the State of Nebraska and shall be maintained until Architect's work has been completed and accepted by the City. A certificate of insurance evidencing policies required shall be furnished the City of Lincoln, such certificate shall specifically indicate that insurance policies shall give the City at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies.

O. Copyrights, Royalties & Patents. Without exception, Architect represents the consideration for this agreement includes Architect's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this agreement except those required to be paid by construction contractors as part of the construction contract. Further Architect shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Architect shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights in any way related to this agreement. This section survives any termination of this agreement.

P. Copyright -- Architect's Warranty.

- 1. Architect warrants that all material, processes, or other protected rights to be used in the Services have been duly licensed or authorized by the appropriate parties for such use. This section survives any termination of this agreement.
- 2. Architect agrees to furnish the City upon demand written documentation of such license or authorization. If unable to do so, Architect agrees that the City may withhold a reasonable amount from Architect's compensation herein to defray any associated costs to secure such license or authorization. Architect shall defend any infringement claim arising out of Architect's performance of this agreement. This section survives any termination of this agreement.

Q. Industry Standards. Architect warrants to the City that the services to be performed under this agreement shall be in accordance with accepted and established practices and procedures recognized as such in Architect's trade in general and that Architect's services shall conform to the requirements of this agreement.

R. Nebraska Law. This agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

S. Integration, Amendment & Assignment. This agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this agreement. This agreement may be amended only by written agreement of both parties. Any subletting, assignment or transfer of any services to be performed by the Architect is hereby prohibited unless prior written consent of the City is obtained. This contract shall be binding upon the successors and assigns of the parties hereto

T. Capacity. The undersigned person representing Architect does hereby agree and represent that he or she is legally capable to sign this agreement and to lawfully bind Architect to this agreement.

U. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska.

A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The contractor shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

- V. Living Wage. If the compensation for services provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Service Provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, the City shall have authority to terminate this Agreement and to seek other remedies for violation of this Ordinance.
- W. Audit Provision. The Service Provider shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

IN WITNESS WHEREOF, City and Architect do hereby execute this agreement.

City of Lincoln, Nebraska

Mayor

Architect

By:

Title: _____