



AGREEMENT BETWEEN
DOUGLAS COUNTY SCHOOL DISTRICT 0001
(OMAHA PUBLIC SCHOOLS)
AND THE ARCHITECT

Project Name: _____

Architect: _____

Bid Package: _____

This Agreement ("Agreement") between DOUGLAS COUNTY SCHOOL DISTRICT 0001, a Nebraska political subdivision (Omaha Public Schools), hereinafter referred to as the "Owner" and the ARCHITECT, whose name and mailing address is:

[Architect Firm Name]

[Architect Contact Name]

[Architect Street Address]

[Architect City, State, Zip]

hereinafter referred to as "Architect".

WITNESSETH

For the consideration hereafter agreed to be paid by the Owner, the Architect covenants, contracts and agrees to perform the work herein contracted to be done ("Architect's Work") in strict conformity to this Agreement on certain public work hereinafter identified in general terms as the 2014 OPS Capital Improvement Bond Program (CIP), hereinafter referred to as the "CIBP". The Owner has retained the services of **Jacobs Project Management Co.**, as program manager (hereafter "Program Manager" or "PgM") to administer and manage all design and construction contracts for the CIBP. **PgM** will assign a project manager ("**PM**") as the Architect's single point of contact, unless Owner or the assigned **PM** directs otherwise. Owner and **PgM** reserve the right to change the **PM**. Specifically, this Agreement covers the construction project known as Bid Package # [xxx], [full name of the bid package], which includes the following location(s):

[school name, address, brief description]

[school name, address, brief description]

[school name, address, brief description]

[school name, address, brief description]

The foregoing projects are hereafter collectively referred to as "Projects" and individually as a "Project" or as a "Project" together with the school name.

Article 1. ARCHITECT'S RESPONSIBILITIES

- 1.1. The Architects' services consist of those services performed by the Architect, Architects' employees, and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services as provided in Article 12 of this Agreement.
- 1.2. The Architect's services shall be performed by architects who are duly registered and licensed in the State of Nebraska.
- 1.3. The Architect will perform its services consistent with the professional skill and care provided by architects practicing in the same locality under the same or similar circumstances. The Architect's services shall be performed as expeditiously as is consistent with professional skill and care, the orderly progress of the Architect's Work and the requirements of this Agreement. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect' services for each Project as provided in Paragraph 2.2.12 hereof, which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the

Owner's review and approval of submissions by the Architect and for approvals by authorities having jurisdiction over each Project and for obtaining required approvals of Owner's Board of Education. The approved schedule shall be deemed a part of this Agreement. The Architect shall not exceed time limits established by the approved schedule unless the Owner agrees in writing to a modification of the schedule.

- 1.4. The Architect covenants with the Owner to furnish its professional skill and judgment, pursuant to the professional standard of care set forth in this Agreement, and to cooperate with the Owner in furthering the Owner's best interests.
- 1.5. The Architect agrees to furnish efficient administration, observation, and inspection, as defined in paragraph 1.5.1, for each Project and to perform all duties in the soundest, most expedient, exemplary, and economical manner consistent with the interests of the Owner.
 - 1.5.1. Required observations and inspections shall include all observations and inspections required by Architects standard of care.
- 1.6. The Architect will support the Owner's efforts to implement the economic inclusion programs for the design and construction phases of the Projects. The Architect will also support the Owner's efforts with contractors to implement economic inclusion programs for the construction of the Projects.
- 1.7. The Architect will indemnify, hold harmless, and protect the Owner against any loss, damage, claim, liability, and cost, including attorneys' fees, proximately caused by any negligent error or omission in the performance of any professional services or in any plan or specification within the responsibility of the Architect or Architect's consultants or to any breach of duty or obligation assumed by or required of Architect under the terms of this Agreement.
- 1.8. The Architect unconditionally agrees to promptly remedy at its own cost any defect in the Project proximately resulting from the negligence of Architect or its consultants or from the failure of Architect or its consultants to perform its services in a manner as required by this Agreement, or, at the election of the Owner, to pay the reasonable cost of such remedy as performed by a competent third party chosen by the Owner.
- 1.9. Since this Agreement provides for the physical performance of services in the State of Nebraska, as determined under state law, Architect must register with and utilize an electronic verification system or program, whether the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, now known as the "E-Verify Program" or an equivalent federal program designated by the Department of Homeland Security or other federal agency authorized to verify the work eligibility status of any newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Architect shall contractually require all subcontractors and consultants performing any portion of the Architect's Work under this Agreement to also register and utilize such electronic verification system. Architect and all of Architect's subcontractors and consultants shall use such electronic verification system to determine the work eligibility status of each new employee physically

performing any services within the State of Nebraska under the Agreement. Any person whom the electronic verification system determines is ineligible or not authorized to work in the United States shall not be permitted by Architect, nor any subcontractor or consultant, to perform services in Nebraska under this Agreement. Architects shall provide such reasonable documentation as Owner may request, from time to time, during the performance of the contract and for 5 years thereafter documenting compliance with the provisions of this Paragraph 13. Failure to comply with the provisions of this Paragraph shall constitute a default under the Agreement with the Owner.

- 1.10. The Architect must complete Criminal record checks on all Architect's employees and all of its consultants' employees who work on the Project and who will be visiting the Project site during the course of the performance of the Architect's Work. The requirement to conduct such checks is a continuing requirement to be performed during the entire time that Architect is performing services under this Agreement for any employee of Architect or its Consultants that is to visit the Project Site. Employees of Architect, or of any consultant of Architect, who have been convicted of a violent or serious felony, including crimes that require registration on the National Sexual Offender Registry or on an abuse/neglect registry, will not be allowed to visit the Project Site. The Architect must complete the Owner's Criminal Records Check Certification and furnish it to Owner and PgM. The Architect and each of Architect's consultants shall adhere to all Federal, State, or Local privacy and confidentiality regulations and laws.

Article 2. SCOPE OF ARCHITECT'S BASIC SERVICES

2.1. SCOPE SUMMARY

- 2.1.1. The Architect's Basic Services consist of those described in Paragraphs 2.1 through 2.6, inclusive, and further in Article 12 plus warranty phase services for one year beyond the Substantial Completion date for the Project, and including normal structural, mechanical, civil, and electrical consultation services, economic inclusion services, as well as any other specialty consultant services as necessary to complete each Project. The Architect shall engage the services of registered professional Engineers, licensed to practice in the State of Nebraska, for the performance of engineering services under this Agreement.
- 2.1.2. As part of Architect's Basic Services, Architect shall utilize the PgM Automated Project Management Control System (PMCS) to administer the services as defined in this Agreement and those services identified in the Owner's General Conditions of the Contract for Construction. The PMCS will be available via the Internet and will implement the use of electronic submission of information for review, responses and approvals as required to administer the contract and to receive payment from the Owner.
- 2.1.3. Attached hereto as Exhibits B and C and made a part of this Agreement are the Project Design Schedule and the Project Submittal Requirements. Architect and its consultants shall perform its design services under this Agreement in accordance with the Project Design Schedule. Architect and its consultants shall provide to Owner and PgM all of the documents in the Project Submittal Requirements required to be prepared and submitted during each Phase of the Architect's design services under this Agreement.

2.1.4. Attached hereto as Exhibit D is the Architect's Economic Inclusion Plan that has been approved by the Owner. Architect will implement and perform the Economic Inclusion Plan in the manner as set forth in the attached Exhibit D. Architect will designate one or more representatives of Architect to perform the following duties regarding the Economic Inclusion Plan: (i) be responsible for and coordinate all of Architect's Economic Inclusion Plan activities; (ii) assure that requirements of this Agreement regarding measures to be taken by the Architect to encourage economic inclusion by contractors and subcontractors are being met; (iii) assure that economic inclusion is incorporated as a regular agenda item for Project progress meetings; and (iv) coordinate economic inclusion activities with the Owner's Economic Inclusion Manager. The Architect's economic inclusion representative shall regularly report at the Owner's Economic Inclusion Manager the status of the Architect's economic inclusion activities and compliance with the Economic Inclusion Plan.

2.2. **SCHEMATIC DESIGN PHASE**

2.2.1. The Architect shall review the initial programs furnished by the Owner to ascertain the requirements of each Project and shall arrive at a mutual understanding of such requirements with the Owner prior to the execution of this Agreement. Architect shall participate in any necessary conference calls with Owner personnel for the preparation of educational specifications.

2.2.2. The Architect shall review, with the Owner and the PM, approaches to design and construction of each Project, including, but not limited to, the Architect's Quality Assurance Program and Economic Inclusion Plan.

2.2.3. The Architect shall provide a preliminary evaluation of each Project, including the Owner's programs, schedules, Owner-approved educational specifications, and Construction Project Budgets, each in terms of the other. The Architect shall also evaluate and advise Owner regarding specific economic inclusion opportunities that may be available for the construction of the Project

2.2.4. The Architect shall prepare, as part of the Schematic Design Phase, conceptual design study including: (a) drawings indicating space relationships; (b) site use drawings; and (c) written description of basis of approach to the Project.

2.2.5. The Architect shall proceed with Schematic Design Phase Services only upon receipt of written authorization from the Owner, which authorization shall be issued and transmitted timely following receipt of materials documenting completion of the conceptual design studies under Paragraph 2.2.4. Should authorization to proceed with the next phase be delayed beyond the time allowed in the approved Project schedule, through no fault of the Architect, an extension of the Architect's proposed schedule shall be approved and allowed.

2.2.6. Based on the project delivery method determined by Owner, in consultation with the Architect, for each Project, programs, schedules, and Construction Project Budget requirements documented by the Architect, the Architect then shall prepare, for approval by the Owner and the PM, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components for each Project.

2.2.7. The Architect shall submit, to the PM, an estimate of Construction Cost for each

Project based on current area, volume, or other unit costs.

- 2.2.8. The Architect shall cooperate with other consultants employed by the Owner for design or consultation related to each Project. The Owner will identify such professionals and their roles at the time of execution of this Agreement or as soon as such information is available. If the Owner determines to utilize a Construction Manager at Risk ("CMR") project delivery method, Architect will cooperate and work with the designated CMR during all design phases. If such project delivery method is used, the term "Contractor" in this Agreement shall mean the designated "Construction Manager at Risk."
- 2.2.9. The Architect shall, timely upon its receipt thereof, review site boundary and topographic surveys, subsurface data, and foundation engineering recommendations, and any other Owner furnished data or information related to each site, and advise the Owner in writing, whether such data and information is adequate for its intended use or whether additional data is necessary before the Architect can proceed with Architect's Work. For projects involving additions to existing buildings, new construction on sites with existing buildings or remodeling or renovating existing buildings, Architect shall review Owner's documentation of the existing improvements, compare the documents with existing conditions of such improvements, and make such investigations and measurements of such observable existing facilities as are necessary to perform its services under this Agreement.
- 2.2.10. The Architect shall designate a principal of the Architect's firm, satisfactory to the Owner, as the Project Architect, who shall, so long as his/her performance is acceptable, remain in charge of the firm's services for the Project through completion of the one year warranty period, and who shall represent the firm and be available for general consultation throughout the Project. If it becomes necessary to change the Project Architect, Architect will designate a new Project Architect who is reasonably acceptable to Owner.
- 2.2.11. The Architect shall abide by all applicable local, state, and national code requirements as well as all regulations imposed by funding sources (auditing requirements, payroll affidavits, etc.), such as may be identified at the time of execution of this Agreement.
- 2.2.12. Promptly after execution of this Agreement, the Architect shall, for the Project, prepare and submit for review and approval/revision, by the Owner, a schedule showing the order and time frames in which the Architect proposes to carry on Architect's Work. Major Milestone dates such as reviews, presentation, Board of Education approval, and bids shall be in accordance with information to be supplied to the Architect by the Owner. Architect shall provide a statement of compliance with the Owner's Design Guidelines and the Administrative Guidelines and Procedures Manual. Each chart shall be in a form that may be used to show, in parallel, the proposed schedule and actual progress for the Project. Such proposed schedules prepared and submitted by the Architect, shall be based upon the assumption of timely responses from the Owner with regard to requests and submittals, and timely payment of invoices of amounts due for professional services under this Agreement.

2.3. **DESIGN DEVELOPMENT PHASE**

- 2.3.1. The Architect shall proceed with Design Development Phase Services only upon receipt of written authorization from the Owner, which shall be issued and transmitted timely following receipt of materials documenting completion of the previous phase of design and review and approval by the Owner. Should authorization to proceed with the next phase be delayed beyond the time allowed for approval in the approved schedule through no fault of the Architect an extension of the Architect's proposed schedule may be approved and allowed.
- 2.3.2. Based on the Schematic Design Documents approved by the Owner and any adjustments authorized by the Owner in the program schedule or the Construction Project Budget, the Architect shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, and electrical systems, and materials and such other elements as may be appropriate.
- 2.3.3. The Architect (or the CMR, if applicable) shall, for the Project, advise the Owner of any adjustments to the statement of probable Construction Cost.
- 2.3.4. The Architect shall prepare and submit for review and approval, written design criteria including, but not limited to, mechanical and electrical systems, environmental controls, and structural loads for general and special occupancy as they relate to the Project. Architect shall provide a statement of compliance with the Owner's Design Guidelines and the Administrative Guidelines and Procedures Manual.
- 2.3.5. The Architect shall prepare Design Development Documents in sufficient detail so as to accomplish all of the design portions of Architect's Work in the Design Development Phase including wall sections, elevations, and enlarged plans of complex or critical areas.
- 2.3.6. The Architect shall prepare value analysis of aspects of building materials and systems which are unusual or which deviate from the Owner's furnished Design Guidelines. No deviation from the Owner's Design Guidelines shall be made without Owner's express written approval.
- 2.3.7. The Architect shall consult with Owner on various options concerning the base bid and any proposed alternate bids and any proposed unit price bids.
- 2.3.8. The Architect shall consult and coordinate with the Owner to implement the Owner's Economic Inclusion Program activities and deliverables described in Exhibit C, Section 10 of the Design Development Document Requirements.
- 2.4. **CONSTRUCTION DOCUMENT PHASE**
 - 2.4.1. The Architect shall proceed with the Construction Documents Phase only upon receipt of written authorization from the Owner, which authorization shall be issued and transmitted timely following receipt of materials documenting completion of the previous phase. Should authorization to proceed with the next phase be delayed beyond the time allowed for approval in the approved schedule through no fault of the Architect, an extension of the Architect's proposed schedule may be approved and allowed.
 - 2.4.2. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Construction Project

Budget authorized by the Owner, the Architect shall prepare, for approval by Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. Architect shall provide a statement of compliance with the Owner's Design Guidelines and the Administrative Guidelines and Procedures Manual.

- 2.4.2.1. The Architect shall prepare from such Design Development Documents and from such standard or special documents as may be furnished by the Owner, Construction Documents and Bidding Documents in sufficient detail to define the construction work ("Work") to be performed for construction of the Project, and to keep the responsibility for the design with the Architect. Format of Construction Document is subject to review/approval of the Owner and the PM.
- 2.4.2.2. The Architect shall submit, for the Project, check sets of Construction Documents, when fifty percent (50%), ninety- five percent (95%), and one hundred percent (100%) complete, including Specifications. See Administrative Guidelines and Procedures Manual for definitions.
- 2.4.2.3. The Architect shall affix professional Architect and professional Engineer seals upon documents as prescribed by law including Addenda issued subsequently.
- 2.4.2.4. The Architect shall consult with the Owner and the PM regarding the preparation of forms and documents in such detail as may be required to obtain competitive bidding for the Project and incorporating the Owner's standard documents, special documents, or documents of appropriate authorities, as furnished or directed by the Owner.
- 2.4.2.5. The Architect shall consult as required and perform Construction Documents Phase Services, including those services defined in the Administrative Guidelines and Procedures Manual. The Construction Documents shall be prepared for a stipulated sum Base Bid plus Alternate Bids, as determined by the Owner and the Architect.
- 2.4.2.6. The Architect shall prepare and submit recommendations for Construction Phase quality control, including materials inspection and testing.
- 2.4.2.7. The Architect shall submit to the governmental agencies having jurisdiction the required number of sets of completed Construction Documents to initiate the process of plan review and checking that must precede the issuance of building permits. Final application for building permits will also be initiated by the Architect. Architect shall attend any meetings with governmental officials necessary for issuance of building permits and will respond to questions from government representatives as a part of that process. The Architect shall obtain an architectural barriers review by state agencies having jurisdiction and report any requested

modifications for review by the Owner. The Owner shall pay all governmental fees required for the plan review and architectural barriers review processes. Architect shall make any revisions to the Construction Documents as directed by Owner as necessary to obtain building permits.

2.4.2.8. The Architect will consult with Owner and PgM to assist Owner in preparing a list of S/DBE firms by discipline and conduct an availability analysis as to those firms.

2.4.3. The Architect shall assist the Owner in the preparation of the necessary bidding information and bidding forms.

2.4.4. The Architect shall, for the Project, advise the Owner of any adjustments to previous preliminary statements of probable Construction Cost indicated by changes in requirements or general market conditions.

2.4.5. The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5. **BIDDING PHASE**

2.5.1. The Architect shall proceed with the Bidding Phase only upon receipt of written authorization from the Owner, which authorization shall be issued and transmitted timely following receipt of materials documenting completion of the previous phase. Should authorization to proceed with the next phase be delayed beyond the time allowed for approval in the approved schedule, through no fault of the Architect, an extension of the Architect's proposed schedule may be approved and allowed.

2.5.2. The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost for the Project, shall have Bidding Documents, including Addenda, reproduced (as reimbursable expense,), numbered by sets, and distributed to bidders. Where a CMR is utilized for a Project, the Architect will work with the CMR to determine the packaging and preparation of bidding documents for subcontractor bids.

2.5.3. The Architect shall, if required to further explain and/or clarify the intent of the Bidding and Construction Documents, prepare and issue Addenda to bidders or to the Construction Manager, as applicable, on media and in a format acceptable to the Owner, timely, during the bidding period. Addenda that modify the intent of the Construction Documents shall be submitted for review/approval to the Owner prior to issuance.

2.5.4. The Architect shall secure no less than three (3) competitive lump sum bids for the Project. The Architect shall assist in reviewing all bids and present a recommendation to the Owner for the Owner's approval. Should the Architect recommend a bidder not the lowest bona bidder; the Architect shall provide an explanation of its decision. This Paragraph 2.5.4 shall not apply to any Project where a Construction Manager at Risk is utilized.

2.5.5. If the Owner is utilizing a CMR project delivery system, Architect shall assure that the designated CMR is observing all subcontractor bidding requirements for the

Project and is complying with all requirements of the Owner's Economic Inclusion Program and the CMR's Economic Inclusion Plan. Architect will assist Owner and PM in evaluating the CMR's guaranteed maximum price (GMP) proposal.

- 2.5.6. If the lowest bona fide bid (base bid, excluding additive alternates) received or if the CMR's GMP exceeds the agreed Construction Project Budget, as defined in Article 10, the Owner may, at its discretion: (1) accept the bid and award the contract in an amount that exceeds the fixed limit of Construction Project Budget or accept the GMP; or (2) authorize re-bidding of a Project within a reasonable time without any increase in the Architect's fee; or (3) require the Architect to revise the scope of the Project or its quality, or both, if the lowest bona fide bid or the GMP proposal exceeds the total of the Project Construction Budget by greater than five percent (5%), so as to reduce the Construction Project Budget, in which case, the Architect shall without adjustment of fee, if so directed by the Owner, modify the Construction Documents, to reduce the cost so as to bring it within the total Project Construction Budget; or (4) abandon the Project.

2.6. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT.

- 2.6.1. The Architect's responsibility to provide basic services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner and the PgM of the final Certificate of Payment for the complete Project. However, the Architect shall assist in resolution of the Contractor's obligation under the one-year warranty and guarantee for the Project and shall conduct, approximately eleven (11) months after Substantial Completion or final payment, a one-year warranty inspection and submit a written report to the Owner on the findings and then advise the Owner on the findings and then direct the Contractor accordingly and upon completion of warranty Work by the Contractor (but not later than thirty (30) days after the end of the one-year warranty period), re-inspect the Work, and submit a final report
- 2.6.2. The Architect, in consultation with the PM, will provide administration of the Contract for Construction as set forth in the Owner's General Conditions of the Contract for Construction. However, whenever there is a conflict in the Contract Documents as to whether the Architect or the PM has authority or is responsible for any decision and/or action, the PM, in its sole and absolute discretion, at any time and from time to time, shall determine who, between the Architect and the PM shall be responsible for such decision and/or action. The PM shall make such determination in writing, with a copy to the Contractor and the Architect.
- 2.6.3. The duties, responsibilities, and limitations of authority of the Architect and/or the PM, as the Owner's representative during construction and their respective authority, as set forth in the Contract Documents will not be changed, modified, or extended without written consent of the Owner and Architect and written notice by the PM to the Architect and Contractor. A copy of any such modification and extension shall be delivered to the Contractor prior to its taking effect.
- 2.6.4. The Architect and the PM will be the Owner's representatives during

construction and until final Certificate of Payment to the Contractor is due, and as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instruction.

- 2.6.5. The Architect (together with Architect's consultants) shall visit each site of the Project at intervals appropriate to the stage of construction, but no less than the following:
 - 2.6.5.1. For projects with a Construction Project Budget of one million dollars (\$1,000,000) or less: one (1) visit per week.
 - 2.6.5.2. For projects with a Construction Project Budget of one million and one dollar to four million dollars (\$1,000,001 -- \$4,000,000): one (1) visit per week as to each phase of the Project until that phase is "in the dry" and one and one-half (1½) visits per week thereafter for each such phase.
 - 2.6.5.3. For project with a Construction Project Budget of four million and one dollar (\$4,000,001) or more: one (1) visit per week as to each phase of the Project until that phase is "in the dry" and two (2) visits per week thereafter for each such phase.
- 2.6.6. In addition to the site visits listed in paragraph 2.6.5, the Architect will conduct one (1) site visit for each phase of construction of a Project to determine substantial completion of each phase of the Project and for preparation of a punch list, and up to two (2) site visits for each phase of construction of a Project to determine if Final Completion of that phase has been achieved.
- 2.6.7. Architect shall also attend all weekly Project progress meetings and shall require Architect's consultants to attend such meetings when necessary to the progress of the Work. Attendance at Project progress meetings shall not be considered a site visit, unless the Architect (and the Architect's consultants, as applicable) actually conduct site inspection activities on the same date as the progress meeting, and such inspections conducted are appropriate to the stage of construction of the Project. Architect shall assure that a discussion of compliance with Economic Inclusion requirements is incorporated as regular agenda item for each progress meeting.
- 2.6.8. The Architect shall visit each site to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of on-site observations as an Architect, the Architect shall keep the PM, as the representative of the Owner, informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defect and deficiencies in the Work of the Contractor. However, should the Architect observe or become aware of conditions that require services beyond those included herein, guarding each Project and the Owner against defects and deficiencies in the Work of the Contractor, the Architect shall so notify the PM in writing. The Architect shall reject all Work of which it knows or should have known does not conform to the Contract

Documents. "In the dry" is defined as being when the exterior of the facility (wall, roof, floor, etc.) is enclosed and weatherproofed to prevent damage to interior systems and finished from atmospheric conditions (wind, moisture, etc.). Architect will promptly notify Owner and PM if Architect becomes aware of any fault or defect in the Work performed by Contractor or other non-conformance with the Contract Documents.

- 2.6.9. The Architect shall not be responsible for and will not have control or charge of construction means, method, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and it will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents unless it knew or reasonably should have known of the failure. The Architect shall not be responsible for or have control or charge of the acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work, unless it knew or reasonable should have known thereof and could have given notification which would have resulted in a timely cure of the omission or avoided the act or its impact on the Project. However, the Contractor is responsible for carrying out the instruction of the Architect or the PM, or both, with respect to all safety precautions and programs instituted by the Owner in connection with the Project and as to the means, methods, techniques, sequences, or procedures which are required by the Construction Documents.
- 2.6.10. Architect will promptly report to Owner regarding any materials at the Project site that Architect knows or suspects contain hazardous substances.
- 2.6.11. The Architect, the Owner, and the PM shall at all times have access to the Work wherever it is in preparation or progress.
- 2.6.12. Based on the Architect's observations and an evaluation of the Contractor's Applications for Payment for the Project, the Architect will determine the amounts owing to the Contractor and will issue to the PM Certificates for Payment in such amounts, as provided for in the Contract Documents. Such certificates are subject to approval of PM and Owner
- 2.6.13. Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized by the Owner, the Owner and the Contractor shall communicate through the Architect and the PM. Communications by and with the Architect's consultants shall be through the Architect. The PM has the right to communicate with, exchange information with, and issue instructions to, the Architect and/or the Contractor with the understanding that such communications are not to interfere with or hinder the performance of duties assigned to the Architect.
- 2.6.14. The Architect's Certification for Payment shall constitute a representation to the Owner, based on the Architect's observations at each site as provided in Paragraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architects knowledge, information, and belief the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior

to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate of Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has: (1) made exhaustive or continuous on-site observations to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and materials Suppliers and other data required by the Owner to substantiate the Contractor's right to Payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.15. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for conformance with information given in the Contract Documents and the design concept expressed in the Contract Documents. Such action shall be taken with such reasonable promptness so as to cause no unreasonable delay in the Work or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Owner, all of which remain the responsibility of the Owner to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions, or unless otherwise specifically stated by the Architect of construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems, or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification provided to Architect to establish that the materials, systems, or equipment will meet the performance criteria required by the Contract Documents.

2.6.16. The Architect shall assist the PM in preparing Change Orders and Construction Change Directives with supporting documentation and data if deemed necessary by the Architect, or if required in the Administrative Guidelines and Procedures Manual, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving adjustment in the Contract Sum or an extension of the Contract Time and which are not inconsistent with the intent of the Contract Documents.

2.6.17. The Architect will conduct observations for the Project to determine the date of Substantial Completion and Final Completion for recommendation to the Owner, shall receive and forward to the Owner through the PM for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will issue to the PM a final Certificate for Payment for the Project upon compliance with the requirements of the Contract Documents.

2.6.18. The Architect will be the initial interpreter of the requirements of the Contract Documents. In case of a conflict between the Architect and the PM, the

interpretation of the PM shall take precedence.

2.6.18.1. The Architect will render interpretations necessary for the proper execution of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

2.6.19. All interpretations and decisions of the Architect and/or the PM shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Architect and PM shall not be liable for results of interpretations or decision so rendered in good faith and in accordance with professional standards applicable to Architect and PM. Any such interpretations or decisions shall be subject to final approval by Owner and shall not be binding on Owner until approved.

2.6.20. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.21. The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever, in its opinion, the Architect considers it necessary or advisable for the implementation of the Contract Documents, the Architect will have authority, with the prior approval of the PM, to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed. However, neither this authority of the Architect nor any decision made by it in good faith either to exercise or not to exercise such authority shall relieve the Contractor, any Subcontractor, any or their agents or employees, or any other person performing any of the Work from complying with the Contract Documents, competently and efficiently executing the Work in a good and workmanlike manner, nor shall it give rise to any duty or responsibility of the Architect, the PM, and/or the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.6.22. Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or the progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect by the PM for decision, which it will render in writing within a reasonable time. Any such decision will be submitted to OPS for its approval, and shall not be binding on OPS until approved. Such process shall be described with the Administrative Guidelines and Procedures Manual.

2.6.23. The Architect shall prepare record drawings showing significant changes in the Work made during construction and of dimensioned locations of underground improvements including utility, supply, and drainage piping and apparatus, including the exact location of stubbed out underground utilities for future relocatable classrooms, based upon marked-up prints, drawings, and other data which the Architect shall receive from the Contractor. Record drawings shall include all addenda, accepted alternates, RFI's, ASI's, change orders and change directives, approved requests for substitutions and any other approved changes made by Contractor in the field. Record drawings shall be in AutoCAD version 2015 or newer and/or Revit version 2015 or newer, plus a full "plot file" set in Adobe Acrobat pdf format. The Architect shall include in the Construction

Documents, a requirement that the Contractor shall furnish such information to the Architect and conform to requirements as described in the Administrative Guidelines and Procedures Manual.

2.6.24. Prior to final payment, Contractor shall deliver to Architect, for Architect's review for completeness and representation of the Project in its entirety, specified written guarantees, warranties, consent of surety to final payment (partial payment, if applicable), Certificate of Occupancy, operating and maintenance manuals, final HVAC pneumatic control drawings, final corrected HVAC Test and Balance Report, parts books, diagrams, charts and other documents for the Owner's use. Architect shall deliver such documentation to Owner after Architect completes its review. The Architect shall include in the Construction Documents requirements that the Contractor shall furnish such information or documentation for the Project to the Architect as a prerequisite to final payment to the Contractor.

2.6.25. The Architect will assist the Owner in conducting all administrative functions associated with the implementation of the Owner's Economic Inclusion Program requirements for construction. The Architect will obtain, review and consult with the Owner required documents, schedules and other information needed to monitor the Contractor's or CMR's performance in meeting the Economic Inclusion requirements and commitments as required in the agreement with the Contractor or CMR.

Article 3. ADDITIONAL SERVICES

3.1. GENERAL

3.1.1. The services described in this Article 3 are not included in Basic Services unless so identified in Article 12 and shall not affect the requirements under the Owner's Design Guidelines and the Administrative Guidelines and Procedures Manual. Additional Services shall be paid for by the Owner as provided in this Agreement in addition to the compensation for Basic Services. The Services described under Paragraphs 3.2 and 3.3 shall only be provided if authorized or confirmed in writing prior to the performance of such Additional Services by the Owner and the PM. Hourly rates for Additional Services, if approved by Owner as required by this Agreement, are set forth on Exhibit E to this Agreement.

3.2. PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1. With the prior approval of the Owner and the PgM, the Architect will provide one or more Project Representative to assist the Architect in carrying out its responsibilities at each site. The duties, responsibilities, and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents. Such Exhibit may be amended, in writing by the Owner, the PgM and the Architect, at any time and from time to time. A copy of any such amendment shall be delivered to the Contractor prior to its taking effect.

3.2.2. The Architect will select, employ, and direct the Project Representative with the approval of the PM.

3.2.3. Through the observations by such Project Representatives, the Architect shall

endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such Project Representation shall not modify the rights, responsibilities, or obligations of the Architect as described elsewhere in this Agreement.

3.3. **OPTIONAL ADDITIONAL SERVICES**

- 3.3.1. Making revisions in Drawings, Specifications, or other documents when such revisions are:
 - 3.3.1.1. inconsistent with approvals or instruction previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project Construction Budget, except for revisions required to be made at Architect's cost as provided in Paragraph 2.5.6 or revisions made necessary due to the fault of Architect or its consultants;
 - 3.3.1.2. required by the enactment of revision of any Laws and Regulations subsequent to the preparation of such documents which could not have been reasonably anticipated; or
 - 3.3.1.3. due to changes required as a result of the Owner's failure to render decision in a timely manner.
- 3.3.2. Providing services required because of significant changes in a Project made after Architect commences the Architect's Work including, but not limited to size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, but only to the extent such significant changes result in a material increase in Architect's Work.
- 3.3.3. Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
- 3.3.4. Providing services made necessary by the default of the Contractor where Architect is not also at fault, or by major defects or deficiencies in the Work of the Contractor.
- 3.3.5. Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.
- 3.3.6. Providing services in connection with an arbitration or legal proceeding, except where the Architect is party thereto.
- 3.3.7. Providing financial feasibility or other special studies.
- 3.3.8. Providing planning surveys, site evaluations, or comparative studies of prospective sites.
- 3.3.9. Providing special surveys and/or environmental studies required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.3.10. Providing services relative to future facilities, systems, and equipment beyond those required by the Owner's Design Guidelines, or the scope of the Project.
- 3.3.11. Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services in connection performed

and equipment supplied by the Owner.

- 3.3.12. Providing detailed quantity surveys or inventories of materials, equipment, and labor.
- 3.3.13. Providing interior design and other similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings, and related equipment. However, the Architect shall, as part of Basic Services, detail and coordinate necessary utilities for furnishing as provided by the Owner and shall define finishes, including color, for the materials specified in the Construction Documents. The Architect shall coordinate these colors with the furnishings provided by the Owner.
- 3.3.14. Unless identified in the Owner's Project description, providing services for planning tenant or rental spaces.
- 3.3.15. Providing assistance in the utilization of equipment or systems such as testing, adjusting, and balancing; preparation of operation and maintenance manuals; training personnel for operation and maintenance; and consultation during operation. However, the Architect shall, as a part of Basic Services, assist in the coordination with the Owner's personnel and shall observe initial start-up testing, to include HVAC testing and balancing, etc. and shall review reports and operation and maintenance manuals submitted by the Contractors for compliance with the Contract Documents. Observation of testing shall mean observation to the extent necessary to ascertain that the specified testing is being performed and being performed by qualified personnel.
- 3.3.16. Providing services to the Owner after issuance of Certificate of Final Completion for all phases of the Project, except that the Architect's services relative to the specified warranty(ies), including one year warranty inspection (see the Administrative Guidelines and Procedures Manual) shall be furnished as a part of Basic Services.
- 3.3.17. Providing any other services not otherwise included in this Agreement, or reasonably inferable therefrom, or not customarily furnished in accordance with generally accepted architectural practices of which both the Owner and the Architect have agreed to in writing.

Article 4. OWNER'S RESPONSIBILITIES AND DOCUMENTS TO BE PROVIDED BY THE OWNER

- 4.1. The Owner shall provide information regarding requirements for the Project including a program which shall set forth the Owner's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- 4.2. The Owner shall designate a representative, the PM, authorized to act on the Owner's behalf with respect to the Project. The Owner and/or the PM shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
- 4.3. The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for each site of the Project, and a written legal

description of the site(s). The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, adjoining property and structures, adjacent drainage, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and necessary data pertaining to existing buildings, other improvements and trees, and location data for existing utility services, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Owner does not guaranty the accuracy of the location of underground utilities.

- 4.4. The Owner shall pay for the services of geotechnical engineers when such services are deemed necessary by and defined by the Architect and approved by the Owner. Such services may include, but are not limited to, test borings, test pits, determination of soil bearing values, percolation test, evaluations of hazardous materials, ground corrosion resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 4.5. The Owner shall furnish the services of other consultants not required to be furnished by Architect as a part of Basic Services when such services are deemed necessary by the scope of the Project and are requested by the Architect in writing and approved by the PM and Owner.
- 4.6. The Owner shall furnish any necessary structural, mechanical, chemical, air, and water pollution tests to determine if hazardous materials are present, and any other laboratory and environmental tests, inspections, and reports required by law or the Contract Documents.
- 4.7. The Owner shall furnish such legal, accounting and insurance counseling services as the Owner may deem necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by and on behalf of the Owner.
- 4.8. The services, information, surveys, and reports required by Paragraph 4.4 and 4.7 shall be furnished at the Owner's expense.
- 4.9. Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.
- 4.10. The proposed language of certificates or certifications requested of the Architect or the Architect's consultants (such as Certificates of Payment, Certificate of Substantial Completion and Certificate of Final Completion) shall be submitted to the Architect for review and approval at least fourteen (14) days prior to execution. The Owner shall not request certifications that require services beyond the scope of this Agreement.
- 4.11. The Owner shall provide:
 - 4.11.1. Forms and formats for original preparation by the Architect, if any, will be identified when required by the Owner.
 - 4.11.2. Forms and formats furnished to the Architect for use in Construction Documents, Bidding Documents, Economic Inclusion Documents and Contract Documents, if

any, will be identified when required by the Owner.

- 4.11.3. Owner's Technical Design Guidelines, which includes the Owner's Technical Guidelines/Specifications, the Optimal Facility Guidelines and the Owner's Educational Specifications will be furnished to communicate information for the Architect's use in design of certain aspects.
- 4.11.4. Owner's Administrative Guidelines and Procedures Manual will be furnished to inform the Architect of administrative and other procedures that may be amended only by specific memoranda.
- 4.11.5. The issuance and application of Owner-furnished forms, formats, and documents shall not serve as limitation to, or establishment of, scope of services of the Architect.
- 4.11.6. The Owner shall provide information regarding requirements associated with the Economic Inclusion Program which shall set forth the Owner's objectives. The Owner shall designate an Economic Inclusion Manager to act on the Owner's behalf with respect to the Economic Inclusion Program. The Owner and the Economic Inclusion Manager shall render decisions in a timely manner pertaining to Economic Inclusion documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

Article 5. CONSTRUCTION COST

5.1. DEFINITION

- 5.1.1. The Construction Cost shall be the total cost or estimated cost (when the actual cost is not known) to the Owner of all elements of each Project designed or specified by the Architect.
- 5.1.2. The Construction Cost shall include a reasonable allowance for the Contractor's overhead and profit as well as a reasonable allowance for contingencies in market conditions at the time of bidding and for changes in the Work during construction all of which require prior written approval by the Owner and the PM.
- 5.1.3. Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way, financing, or other costs which are the responsibility of the Owner as provided in Article 4.

5.2. RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.1. At the completion of each phase of Architect's design services (Schematic Design, Design Development and Construction Documents phases) and at such other times as may be required by this Agreement, Architect will furnish to Owner a statement of probable Construction Cost. The Architect shall be permitted, for the Project, to include in its statement of probable Construction Cost contingencies for design, bidding, and price escalation to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents and to make reasonable adjustments in the scope in order to adjust the Construction Cost to the Construction Project Budget.

In the event that a CMR is utilized on the Project, the Architect shall not be required to complete and submit a statement of probable Construction Cost at the Construction Document phase of design.

- 5.2.2. In the event any statement of probable Construction Cost exceeds the Construction Project Budget as defined in Paragraph 10.1.1 hereof, the Architect may be required by Owner to redesign the Project by making changes thereto that are approved by OPS as are necessary to reduce the Architect's statement of probable Construction Cost within the limits of the applicable Construction Project Budget, without additional cost to OPS.
- 5.2.3. If the Bidding Phase for any Project has not commenced within ninety (90) days after the Architect submits the Construction Documents to the Owner, the Owner's Construction Project Budget and the Architect's statement of probable Construction Cost shall be adjusted for each Project to reflect reasonable changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought, however, any changes must be justified and written approval of the Owner and the PM is required.
- 5.2.4. Construction Cost estimates shall be prepared in a format acceptable to the Owner, and shall be of sufficient detail (e.g., by CSI division with quantity take-off from the plans and specifications) to allow the Owner to make decisions on inclusion and/or exclusion of various Project components.
- 5.2.5. If the lowest bona fide base bid (base bid, excluding additive and deductive alternatives) for the Project that is acceptable to Owner exceeds the Construction Project Budget, the parties shall proceed as set forth in Paragraph 2.5.6.

Article 6. USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 6.1.1. The Drawings, Specifications, and other documents prepared by the Architect for the Project are the property of the Owner for Owner's use in connection with the Project and the improvements constructed with respect to the Project. However, the Owner will not utilize these documents in the construction of other projects without equitable compensation to the Architect. Nothing stated herein shall be deemed to prohibit the use by Owner of a similar component or design feature in another Project without compensation to the Architect. In the event of any unauthorized use of the Drawings or Specifications by Owner for projects other than the Project that is the subject of this Agreement, Owner agrees to indemnify Architect and hold it harmless from any loss or damage incurred by Architect arising solely from such unauthorized use.

Article 7. DISPUTE RESOLUTION, TERMINATION, SUSPENSION, OR ABANDONMENT

- 7.1. The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between themselves prior to mediation or litigation. However, in the event the parties are unable to resolve such claims, disputes and other matters in question between themselves, any such claim, dispute or other matter in question arising out of or related to this Agreement may be submitted

to mediation, if mediation is agreed to by both parties, prior to or concurrently with the institution of legal or equitable proceedings by either party. If mediation is agreed to after the initiation of legal or equitable proceedings, such proceedings may be stayed to allow time to complete the mediation proceedings. The parties shall share the mediator's fee and any mediation filing fees equally. The mediation shall be held in Omaha, Nebraska, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any dispute not resolved by the parties shall be resolved by litigation in a court of appropriate jurisdiction. Any person or entity necessary to the resolution of such dispute may be joined in such litigation proceeding if joinder is permitted by law.

- 7.2. This Agreement may be terminated by either party upon ten (10) days' written notice to the other, should the other party fail substantially to perform in accordance with its terms through no fault of the party giving such notice of termination. In the event this Agreement is terminated, the Architect shall cease all Architect's Work on all Projects, upon receipt of written notice, and the Owner shall have no liability or responsibility whatever to the Architect other than to remit to the Architect the amount of any sums due the Architect for the Architect's Work it has performed pursuant to this Agreement up to and including the date upon which written notice of termination was received, less any amounts retained by Owner to compensate Owner for any damages Owner may have suffered due to such default by Architect.
- 7.3. If the Owner suspends the Project for more than sixty (60) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension with respect to such Project. When the Project(s) is resumed, the Architect's compensation shall be equitably adjusted for the affected Project to provide for expenses incurred in the interruption and resumption of the Architect's services. If the Owner suspends a Project for more than ninety (90) consecutive days, the Architect may terminate this Agreement by giving written notice.
- 7.4. The Owner upon not less than seven (7) days' may terminate this Agreement for any reason and without cause upon written notice to the Architect in the event that a Project is permanently abandoned.
- 7.5. If the Owner fails to make payment to Architect when due for services and reimbursable expenses, the Architect may, notify Owner that Architect will suspend performance of services under this Agreement, unless the Architect receives payment in full within seven (7) days' of the date of the notice. If payment is not made in full within such seven (7) day period, suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services unless such suspension is not authorized.
- 7.6. In the event of termination not the fault of the Architect, the Architect as its sole remedy shall be compensated for services performed to the date of termination, together with Reimbursable Expenses then due.

Article 8. INSURANCE AND MISCELLANEOUS PROVISIONS

- 8.1. Unless otherwise provided, the laws of the State of Nebraska shall govern this Agreement. It is hereby agreed by the parties that for any lawsuit to enforce any provision of the Contract Documents or any claim arising out of the Architect's Work, the sole venue and jurisdiction shall be in the state courts of Douglas County, Nebraska, and the Architect and any person, entity, or corporation acting pursuant to the Contract Documents hereby submit to the jurisdiction of the state courts of Douglas County, Nebraska.
- 8.2. Capitalized terms not otherwise defined in this Agreement shall have the same meaning as those in the Owner's General Conditions of the Contract for Construction, current as of the date of this Agreement.
- 8.3. The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the prior written consent of the other.
- 8.4. This Agreement represents the entire and integrated Agreement between the Owner and the Architect and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect.
- 8.5. Nothing contained in this Agreement shall create a contractual relationship with or a cause or action in favor of a third party against either the Owner or the Architect.
- 8.6. Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials, in any form at a Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances, provided, however, that Architect shall promptly notify Owner and PM of any material that Architect knows or suspects contains such substances.
- 8.7. The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architects' materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for each Project.
- 8.8. Any information and student data that Architect receives from the Owner is confidential and may only be used for providing services under this Agreement. Architect agrees to maintain the confidentiality of all such information that Architect may have access to under this Agreement and further agrees not to disclose any such information gained during the course of providing services under this Agreement to any person or entity not performing services under this Agreement without the express agreement of OPS. Architect shall advise all of its employees of the confidentiality obligations under this Agreement.

8.9. The Architect shall carry insurance with insurance companies acceptable to the Owner and with minimum limits of liability, as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, claims for property damage and claims arising out of the performance of professional service caused by any of its own negligent acts, errors, omissions, or the negligent acts, errors, or omissions, or the Architect or its employees. The Architect shall require that its consultants and other providing services under this Agreement shall carry similar insurance, as described above and with minimum limits as stated below. All policies of insurance, other than professional liability insurance, shall be written on an occurrence basis and not a claims made basis. The Architect shall furnish the Owner with certificates of insurance indicating compliance with this Paragraph.

8.9.1. TYPE OF COVERAGE - MINIMUM LIMIT OF LIABILITY

8.9.1.1. Workers' Compensation - Statutory

8.9.1.2. Employer's Liability - \$1,000,000 each accident

8.9.1.3. Commercial General Liability

\$1,000,000 each occurrence, combined single limit
for bodily injury and property damage.

\$2,000,000 aggregate

8.9.1.4. Auto Liability - Comprehensive, Owned, Hired, Non-Owned

\$1,000,000 each occurrence, combined single limit
for bodily injury and property damage.

8.9.1.5. Excess Liability/Umbrella \$2,000,000 aggregate

8.9.1.6. Professional Liability - Errors And Omissions
\$2,000,000 per claim and in the annual aggregate

8.9.2. The Architect shall submit satisfactory evidence at the time of execution of this Agreement that it has in full force and effect all insurance required by this Agreement. The Architect shall maintain all such insurance in full force and effect throughout the Project Construction Phase with Final Completion of the Work and completion of Architect's duties under this Agreement. Thereafter, for a period of 10 years thereafter, Architect will endeavor to maintain professional liability insurance coverage. Owner shall be named as an additional insured on all liability insurance policies except professional liability. Each such policy shall be endorsed to waive any subrogation rights against Owner and Owner's employees and agents.

8.9.3. The Architect shall indemnify the Owner and the PM from and against all claims and actions based upon or arising out of any deficiency or inadequacy in the design plans, specifications, and construction administration resulting from a negligent error, omission, or act of the Architect, its employees, consultants, or Subcontractors, arising out of professional services performed under this Agreement.

- 8.9.3.1. The Architect shall be responsible to the Owner for the negligent acts and omissions, and intentional misconduct of its employees, consultants and their employees, and other persons performing any portion of Architect's Work under a contract with the Architect.
- 8.9.3.2. The Owner does not waive any of its immunities from lawsuit or damages, or both, as a political subdivision whether granted by common law or statute.
- 8.10. For Projects involving new construction, additions to existing buildings, new construction at sites of existing improvements, rehabilitation, alternation, repair and/or replacement of existing construction, the services of the Architect shall include the necessary review of documents, if any, of the existing facility, comparison of actual construction with such documents, measurements and investigations as required to the fully informed on the observable portions of the existing improvements.
 - 8.10.1. In the case of such Projects, the Architect shall incorporate into the Construction Documents and the Contract Documents such requirements as will fix with the Contractor the responsibility to: (a) verify the accuracy of information given covering existing construction and conditions, promptly disclose in writing any variances and request directions; (b) verify the presence of underground utilities, supplies and improvements; and (c) protect existing facilities from damage resulting from the construction operations.
 - 8.10.2. For Projects involving alterations or additions to existing structures, the insurance requirements in the Project specifications shall be revised or amended by the Architect to include requirements for insurance coverage relative to "explosion, collapse, and underground," (SCU) and other special insurance as may be requested by the Owner.
- 8.11. Architect shall at all times maintain good discipline and order among its employees and its consultants, agents and their employees at the Project site. The Owner prohibits the illegal use of drugs, the possession of permitted and/or non-permitted firearms, the consumption of alcoholic beverages, and the presence of any person under the influence of drugs, including alcohol, on and within the limits of the school district's property. Smoking or the use of any tobacco products is not permitted on any portion of the Project site or on any other property of the Owner. The Architect agrees to take all necessary steps to ensure that each agent and employee of the Architect and each subconsultant complies with these prohibitions.
- 8.12. The Architect, by signing this contract, certifies that it does not have a conflict of interest relative to the services to be rendered on behalf of the Owner. The Architect agrees that it will not divulge any proprietary or confidential information to any person without written authorization from the Owner.

Article 9. PAYMENTS TO THE ARCHITECT

9.1. DIRECT PERSONNEL EXPENSE

- 9.1.1. Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory

and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

9.2. REIMBURSABLE EXPENSES

9.2.1. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and only include those expenses incurred by the Architect and Architect's employees and consultants reasonably incurred in the interest of any Project, and are limited to those expenses identified in the following Paragraphs 9.2.1.1 to 9.2.1.6, inclusive. Such expenses shall exclude costs for transportation less than twenty-five (25) miles outside the district boundaries of the Owner, between the Architect's office locations, and from Architect's or consultant's office to the Project site.

9.2.1.1. Expenses in connection with authorized out-of-town travel.

9.2.1.2. Fees paid for securing approval of authorities having jurisdiction over the Project.

9.2.1.3. Expense of reproductions of Drawings, Specifications, and other documents for use by the Owner or as required by a governmental authority, excluding reproductions for the office use of the Architect and the Architect's consultants. At owner's election, Owner may contract directly with a third party printer and pay such printer directly for printing services for printing of any bidding documents.

9.2.1.4. Courier services if required by the Owner in connection with such Drawings, Specifications, and other documents.

9.2.1.5. If authorized in advance by the Owner, expenses of overtime work requiring higher than regular rates.

9.2.1.6. Expense of renderings, models, and mock-ups requested by the Owner, except that at the conclusion of each Construction Administration Phase, the Architect shall submit a single line drawing of the floor plan(s) and the site plan of a quality and scale suitable for the Owner's catalog requirements. Payment for models and/or color renderings for the Owner's use will be made only if approved in advance for a fixed lump sum fee to be negotiated by the Owner and the Architect.

9.3. PAYMENTS ON ACCOUNT OF BASIC SERVICES

9.3.1. Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Paragraph 10.1.2.

9.3.2. When any portion of any Project is deleted or otherwise not constructed, compensation for those portions of those Projects shall be payable to the extent services are performed on those portions. Compensation for the remaining portion of the Project shall be equitably reduced to reflect the reduced Project scope.

9.4. **PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

9.4.1. Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

9.5. **ARCHITECT'S ACCOUNTING RECORDS**

9.5.1. Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's representative at mutually convenient times.

9.6. **PAYMENT DOCUMENTATION**

9.6.1. Concurrently with the submission of the invoice or each request for a progress payment under this contract, the Architect shall provide a breakdown of the amounts paid to date to SBEs/DBEs identified by the Architect to participate on this contract. As provided elsewhere in this contract, the Owner may withhold all or part of any payment otherwise due the Architect if the Architect fails to submit the breakdown of the amounts paid to date.

9.6.2. The Program Manager shall process each invoice for payment submitted by the Architect within 5 working days of receipt. The invoice shall then be forwarded to the Owner's Buildings and Grounds Department who shall process the invoice for payment within ___ working days of receipt. The Architect is required to issue payment(s) to its consultant(s) within 5 working days of the receipt of payment for each occurrence. As provided elsewhere in this Agreement, the Owner may withhold all or part of any payment otherwise due the Architect if the Architect fails to comply with this provision.

Article 10. BASIC COMPENSATION

The Owner shall compensate the Architect as follows:

10.1. **BASIC COMPENSATION**

10.1.1. For Basic Services as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be in the form of a Lump Sum Fixed Fee in the amount presented in Article 12.

The Lump Sum Fixed Fee shall not be changed unless the scope of the Project or the Architect's services are materially changed in accordance with Paragraph 10.5.1.

The Construction Project Budget formulated by the Owner for this Project is
\$ _____

By executing this Agreement, the Architect is affirming the appropriateness of this Construction Project Budget. The above listed Construction Budget(s) shall be a limiting construction cost with a maximum +/- five percent (5%) allowable variable. See Paragraph 2.5.6 for the consequences of exceeding the

Construction Project Budget for any Project.

10.1.2. Given that Basic Compensation is based upon a fixed Lump sum Fee, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable.

	<u>% per Agreement Phase</u>	<u>Cumulative %</u>
Schematic Design Phase	15%	15%
Design Development Phase	20%	35%
Construction Documents Phase	35%	70%
Bidding or Negotiation Phase	05%	75%
Construction Phase	20%	95%
Close-out Phase	05%	100%

During the Construction Phase, compensation shall be billed at the same percentage as that shown in the most recent payment on the Construction Contract.

10.1.3. The Lump Sum Fixed Fee to be paid by the Owner to the Architect for Basic Services includes consultant contract amounts. See Exhibit A attached to this Agreement for a listing of the Architect's and the Architect's consultants S/DBE qualifications.

10.2. COMPENSATION FOR ADDITIONAL SERVICES

10.2.1. For Project representation beyond Basic Services as described in Paragraph 3.2 and for Additional Services of the Architect as described in Articles 3 and 12, compensation shall be in the form of a fixed lump sum fee negotiated between the Owner and the Architect.

10.2.2. For Additional Services related to special inspections deemed necessary by the Owner and/or the PM to ensure the proper installation of roof coverings, additional lump sum fees will be negotiated between the Owner and the Architect and/or the selected testing laboratory, based on the scope of the roofing work to be performed, to provide full time inspection during the early, critical Phases of the Work and periodic partial visits thereafter.

10.3. REIMBURSABLE EXPENSES

10.3.1. For Reimbursable Expenses, as defined in Paragraph 9.2 and any other items included in Article 12 as Reimbursable Expenses, the Owner shall reimburse the Architect the actual cost of such expenses. Once Owner has paid up to the "not to exceed" amount of Reimbursable Expenses for Basic Services stated in Article 12, Owner shall have not further obligation to reimburse Architect for any Reimbursable Expenses for Basic Services.

10.4. PROGRESS PAYMENTS

10.4.1. The Architect shall submit billings for services rendered relative to 10.1.2 on a monthly basis. Invoices for the services received will be promptly processed for payment, which shall normally require approximately thirty (30) days from submission. All invoices shall be accompanied by S/DBE utilization reports.

10.5. MATERIAL CHANGES

10.5.1. If the scope of the Project or of the Architect's Services is changed materially from the scope identified in this Agreement, the amounts of compensation payable to the Architect shall be equitably adjusted per negotiations between the Architect and the Owner with any additional fixed lump sum fee being incorporated into the Agreement by written amendment. Such amendments will be processed in the same manner as a Change Order.

10.6. INTERRUPTIONS OR DELAYS

10.6.1. If Architect is delayed by any act or neglect of the Owner, PM, or by any separate contractor employed by the Owner, Architect may be equitably compensated for all provable costs, which it incurs as a result of such delay, and a change order will be issued therefore. Any such claim must be submitted to the PM by the Architect within 15 days of the event causing the delay and must include all pertinent documentation required by the PM to evaluate the claim including a complete cost breakdown clearly demonstrating the increased cost to be incurred by Architect and the effect of delay on progress of the Architect's Work. Any additional claim made after the initial claim has been implemented by Change Order will not be considered unless submitted within the time frame provided for above, except that an uninterrupted delay that is continuous in nature will be covered by the initial application.

10.6.2. If Architect fails to meet project design schedules or submittal requirements in this Agreement as set forth in Exhibit B and C, in addition to Owner's remedies for default under this Agreement, Architect shall be liable to the Owner for all costs and damages incurred by the Owner as a result of the Architect's default.

10.6.3. A claim by either party for compensation for delay, not resolved by mutual agreement within 45 days from the date submitted to the other party, shall be resolved pursuant to the Disputes clause of this Agreement.

Article 11. DEFINITIONS

11.1. The Owner is the political subdivision identified as such in this Agreement between the Owner and Architect and is referred to throughout the Contract Documents as if singular in number and neuter, masculine, or feminine in gender. The term Owner means Douglas County School District 0001, also known as Omaha Public Schools and its successors. The Owner's chief executive officer is the Superintendent of Schools of the Owner. Except as otherwise limited or prohibited in the Contract Documents or applicable law, the Superintendent, or the Superintendent's designee, is authorized to act as the agent of the Owner.

11.2. Program Manager – the entity that has been engaged by the Owner to assist with the monitoring, coordination, communication, and administration of the CIBP. The Program Manager, herein and throughout the Contract Documents referred to as the "Program Manager" or the "PgM," will provide administration of the Contract as described in this Agreement and/or as described in the Owner/PgM Agreement. The PgM for the 2014 Capital Improvement Bond Program is Jacobs

Project Management Co.

- 11.3. Economic Inclusion Manager – the individual designated by the Owner who is responsible for the coordination and oversight of the Owner's Economic Inclusion Program.
- 11.4. Appropriate authorities and/or lending agencies shall mean municipal, county, state or federal authority or agency with which the Project may be involved. This term is intended to include those agencies and authorities, which may require information or the filing of plans, specifications, etc. in connection with the Project.
- 11.5. Construction Documents shall include working Drawings, Specifications, the Agreement between the Owner and the Contractor, including Owner's General Conditions of the Contract for Construction and any supplementary conditions as executed for the Project by the Owner and Contractor, the Performance and Payment Bonds, alternates (including written and graphic descriptions thereof), and Addenda issued prior to the receipt of bids, developed to set forth in detail the requirements for construction of the Project.
- 11.6. Bidding Documents are the Construction Documents plus the information for Bidders, Instructions to Bidders, Pre-qualification Form, Bid Form, Form of Performance Bond, Form of Payment Bond, Form of Bid Security, Form of Agreement, and any other documents identified in the Table of Contents of the Specifications.
- 11.7. Contract Documents are the Bidding Documents, the fully executed Owner-Contractor Agreement and other documents referenced in the Owner-Contractor Agreement and approved Change Orders issued subsequent thereto, and the Notice to Proceed addressed to the Contractor and signed by the Owner.

Article 12. LUMP SUM FIXED FEE, REIMBURSABLES LIMITATION AND PAYMENTS TO ARCHITECT

The Owner shall make payments to Architect of the Architect's Basic Compensation per phase of Architect's Basic Services in the amounts in the amounts set forth below. Owner's obligation to pay Architect for Reimbursable Expenses for Basic Services is subject to the "not to exceed" limitation also set forth below:

Basic Services Phase	Portion of Fee	Dollar Amount of Fee per Phase and Total
Programming and Schematic Design Phase:	15%	\$ _____
Design Development Phase:	20%	\$ _____
Construction Document Phase:	35%	\$ _____
Bidding/Negotiation Phase:	5%	\$ _____
Construction Phase:	20%	\$ _____
Close-out Phase:	5%	\$ _____
Total Lump Sum Fixed Fee:	100%	\$ _____
Not To Exceed Reimbursables Amount:		\$ _____

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in triplicate, each to have the force and effect of an original, on this the _____ day of _____, 201__.

Douglas County School District 001, a Nebraska political subdivision,

By: _____
President, Board of Education

ATTEST:

By: _____
Secretary, Board of Education

Architect Firm Name

By: _____

Its: _____

OPS Standard Agreement for Architectural Services March 12, 2015

- Exhibit A – Architect’s S/DBE Consultants
- Exhibit B – Project Design Schedule
- Exhibit C – Project Submittal Requirements
- Exhibit D – Architect's Economic Inclusion Plan
- Exhibit E –Architects' Hourly Rate for Additional Services