

MEETING NOTICE

DATE: July 30, 2025
TO: Library Board, Mayor, City Clerk, and City Attorney
FROM: Ryan Wieber, Library Director
SUBJECT: Library Board Meeting

DATE AND PLACE OF MEETING: August 5, 2025
Bennett Martin Public Library
136 S. 14th St.
Lincoln, NE 68508

STARTING TIME OF MEETING: 4:00 p.m.
CHAIR OF MEETING: Joe Shaw, President
PURPOSE OF MEETING: Special Session

AGENDA

1. Call to Order and Announcement of Open Meetings Law
2. Approval of Agenda*
3. Public Comment on Agenda Items
4. Approval of Contract with BVH*
 - a. Presentation by BVH
5. Adjournment

*Action Item

Proposed agenda kept continually current and available for inspection at the Administrative Office of the Bennett Martin Public Library. The Board shall have the right to modify the agenda at said public meeting when convened.

ACCOMMODATION NOTICE The City of Lincoln complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public's access to and participating in public meetings is a priority for the City of Lincoln. In the event you are in need of a reasonable accommodation in order to attend or participate in a public meeting conducted by the City of Lincoln, please contact the Lincoln Commission on Human Rights at 402-441-7624, or the City Ombudsman at 402-441-7511, as soon as possible before the scheduled meeting date in order to make your request. *Open Meetings Act of the State of Nebraska posted in meeting room.*

AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the **First** day of **August** in the year **Two Thousand Twenty-Five**
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Lincoln, Nebraska
Lincoln City Libraries
555 South 10th Street, Suite 300
Lincoln NE 68508
P: 402-441-8510

and the Architect:
(Name, legal status, address, and other information)

Bahr Vermeer & Haecker Architects, LTD
440 North 8th Street Suite 100
Lincoln NE 68508
P: 402-345-3060

for the following Project:
(Name, location, and detailed description)

Lincoln Central Library
BVH Project #25028

The Construction Manager (if known):
(Name, legal status, address, and other information)

TBD (to be determined)

The Owner and Architect agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this **Section 1.1**.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A: Design Services Proposal

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

1111 "O" Street, Lincoln, Nebraska; see Exhibit A

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in **Section 6.1**:

(Provide total and, if known, a line item breakdown.)

Rough order of magnitude in a gross hourly not-to-exceed fee of Thirty Million Dollars (\$30,000,000); see Exhibit A

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

See Exhibit B: Design Milestones

Init.

.2 Construction commencement date:

See Exhibit B: Design Milestones

.3 Substantial Completion date or dates:

See Exhibit B: Design Milestones

.4 Other milestone dates:

See Exhibit B: Design Milestones

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

☒ AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

☐ AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

See Exhibit A. Bid packages to be provided by the design team with the scope of work for the bid packages to be determined at a later point.

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

See Exhibit A regarding Green Globe Certification in Basic Services and Optional Services for Sustainability and High Performance Building Design

§ 1.1.7.1 Intentionally Deleted

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Caleb Swanson
Project Control
728 Q Street, Suite A
Lincoln NE 68508
P: 402-477-0487

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Not Applicable

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

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(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Unknown at time of execution - TBD

.2 Land Surveyor:

**REGA Engineering Group, Inc.
601 Old Cheney Road, Suite A
Lincoln NE 68512
P: 402-484-7342**

.3 Geotechnical Engineer:

Unknown at time of execution - TBD

.4 Traffic Engineer:

Not Applicable – Site design will be coordinated with Project O Street through Lincoln Transportation and Utilities Department

.5 Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

**Mass timber design – assist partner and supplier – Unknown at time of execution- TBD
Other Consultants – unknown at time of execution - TBD**

§ 1.1.11 The Architect identifies the following representative in accordance with **Section 2.4:**
(List name, address, and other contact information.)

**Mark Bacon, Principal, AIA
Bahr Vermeer & Haecker Architects, LTD
440 North 8th Street Suite 100
Lincoln NE 68508
P:402-413-6744**

§ 1.1.12 The Architect shall retain the consultants identified in **Sections 1.1.12.1 and 1.1.12.2:**
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

**Lange Structural Group, LLC.
1919 South 40th Street, Suite 302
Lincoln NE 68506
P: 402-421-9540**

.2 Mechanical, Electrical and Plumbing Engineer, Energy Modeling, Security Systems, Audio-Visual and Information Technology Design:

**Morrissey Engineering, Inc.
4940 North 118th Street, Suite 100
Omaha NE 68164
P: 402-491-4144**

.3 Civil Engineer and Landscape Architect:

Olsson, Inc.
600 P Street, Suite 200
Lincoln NE 68508
P: 402-474-6311

.4 Library Design Architect:

MSR Design
510 Marquette Avenue South, Suite 200
Minneapolis MN 55402
P: 612-375-0336

.5 Food Service:

Foodlines
110 South 14th Street, Suite 200
Lincoln NE 68508
P: 402-475-1787

.6 Acoustical Consulting:

C & C Consultants
6731 A Street
Lincoln NE 68510
P: 402-474-2215

.7 Cost Estimating:

Rockwise Strategies
9202 202nd Street West, Suite 101
Lakeville MN 55044
P: 952-243-0560

.8 Design Engineer and Mass Timber Structural Engineering:

Thornton Tomasetti
14 York Street, Suite 201
Portland ME 04101-7408
P: 207-245-6060

§ 1.1.12.2 Consultants retained under Supplemental Services:

Unknown at time of execution - TBD

§ 1.1.13 Other Initial Information on which the Agreement is based:

See Exhibit A: Design Services Proposal and attachments

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the State of Nebraska where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in **Section 1.1.5**. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect, prior to beginning the services, agrees to the Owner's Insurance requirements and shall provide proof of insurance coverage in a form satisfactory to Owner, which shall not withhold approval unreasonably, with the coverages, minimum limits, and endorsements described in INSURANCE REQUIREMENTS FOR ALL CITY OF LINCOLN, LANCASTER COUNTY, AND PUBLIC BUILDING COMMISSION CONTRACTS, attached and incorporated herein.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. **The Architect shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.**

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this **Section 2.6**.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this **Article 3** and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this **Article 3** are Supplemental or Additional Services. **To the extent the aforementioned services provided in Article 3 and 4, conflict with Exhibit A, then Exhibit A shall control.**

§ 3.1.1 The Architect **and consultants** shall manage the Architect's **and consultants'** services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

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§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's **written** approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's **written** approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to **Section 4.2.1.14**, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under **Section 4.1**.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action, as required under **Section 6.4**, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under **Sections 6.5 and 6.6** and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with **Section 3.6.4**.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under **Section 6.7**, and request the Owner's approval of the Construction Documents.

§ 3.5.6 Architect shall be responsible for the review and coordination of the drawings, specifications and Design Development Documents prepared by the Architect and the Architect's consultants. Architect shall be responsible for the adequacy for construction of all such drawings, specifications and Design Development Documents.

§ 3.5.7 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project in multiple bid packages. Architect shall be responsible for determining which aspects of the Work shall be the subject of Shop Drawings and shall notify in writing the Owner of the absence of approved Shop Drawings.

§ 3.5.8 The Architect shall provide to the Owner and Construction Manager a complete, updated and final set of all approved Bid Documents with addendum and accepted and approved alternatives to be used as the final "for Construction Documents" and the Contract Documents between the Owner and the Construction Manager. The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Construction Manager.

§ 3.5.9 The Architect shall provide, as may be needed, documents for alternate bids for the purpose of controlling the construction cost and separate out-of-sequence bid packages as required for phased construction or to meet the Owner's occupancy requirements. The Architect shall prepare additional drawings or modifications to approved Design or Construction Documents to effect cost reductions if a certain component of the Work is over the budget that shall have been established with respect to all or any portion of the Work that may be affected.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner

and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ **3.6.1.2** Subject to **Section 4.2**, the Architect’s responsibility to provide Construction Phase Services commences upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Owner’s approval of the Construction Manager’s Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to **Section 4.2**, and except as provided in **Section 3.6.6.5**, the Architect’s responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ **3.6.1.3** The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ **3.6.2 Evaluations of the Work**

§ **3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in **Section 4.2.3**, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner **and Construction Manager if the Architect becomes aware of** (1) deviations from the Contract Documents, (2) deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ **3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ **3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ **3.6.2.4** Interpretations and decisions of the Architect 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. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, **and** shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ **3.6.2.5** Owner **Advisor shall** serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, and shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ **3.6.3 Certificates for Payment to Construction Manager**

§ **3.6.3.1** The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in **Section 3.6.2** and on the data comprising the Construction Manager’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed

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to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections 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 suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. **A listing of all such systems, materials, or equipment requiring such delegated design services shall be provided to both the Owner and Construction Manager as soon as reasonable upon determination by the Architect of the need for such services.**

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness, **which shall be considered five (5) business days**. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Owner Advisor to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, **in consultation with the Owner Advisor**, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for Final Completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner and Owner Advisor the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 Some of the services listed below are not included in Basic Services but may be required for the Project; however, the listed services in attached Exhibit A shall control over this Agreement. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, Exhibit A or any subsequent amendments or change orders, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. (Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect/Basic Services
§ 4.1.1.2 Programming	Architect/Basic Services
§ 4.1.1.3 Multiple Preliminary Designs	Architect/Basic Services
§ 4.1.1.4 Measured drawings	Architect/Basic Services
§ 4.1.1.5 Existing/new ALTA survey	Owner

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§ 4.1.1.6	Site evaluation and planning	Architect/Basic Services
§ 4.1.1.7	Building Information Model management responsibilities	Architect/Basic Services
§ 4.1.1.8	Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9	Civil engineering as outlined in Exhibit A	Architect/Basic Services
§ 4.1.1.10	Landscape design as outlined in Exhibit A	Architect/Basic Services
§ 4.1.1.11	Architectural interior design	Architect/Basic Services
§ 4.1.1.12	Value analysis consultant	Not Provided
§ 4.1.1.13	Cost estimating as outlined in Exhibit A	Architect/Basic Services
§ 4.1.1.14	On-site project representation	Not Provided
§ 4.1.1.15	Conformed documents for construction	Architect/Basic Services
§ 4.1.1.16	As-designed record drawings	Architect/Basic Services
§ 4.1.1.17	As-constructed record drawings	Not Provided
§ 4.1.1.18	Post-occupancy evaluation/adjustments, as outlined in Exhibit A	Architect/Basic Services
§ 4.1.1.19	Facility support services	Not Provided
§ 4.1.1.20	Tenant-related services, as outlined in Exhibit A	Architect/Basic Services
§ 4.1.1.21	Architect's coordination of the Owner's consultants	Architect/Basic Services
§ 4.1.1.22	Telecommunications/data design	Architect/Basic Services
§ 4.1.1.23	Security and access control design	Architect/Basic Services
§ 4.1.1.24	Commissioning	Owner
§ 4.1.1.25	Sustainable Project Services	Architect/See Exhibit A
§ 4.1.1.26	Historic preservation	Not Provided
§ 4.1.1.27	Furniture, furnishings, and equipment design, as outlined in Exhibit A	Architect/Basic Services
§ 4.1.1.28	Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29	Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

4.1.1.10 Landscape design shall comply with City of Lincoln public right-of-way design standard, except to the extent Project O Street requires additional design requirements, which shall control.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Not Applicable

§ 4.1.3 If the Owner identified a Sustainable Objective in Section 1.1.7, the Architect shall provide, as a Supplemental Service, as outlined in Exhibit A. The Owner shall compensate the Architect as provided in Section 11.2.

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§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this **Section 4.2** shall entitle the Architect to compensation pursuant to **Section 11.3** and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify **in writing**, the Owner and Owner Advisor with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in **Section 1.1.6**;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to **Section 6.7**), **which substantially alter the program of the Project**, when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 **Intentionally Omitted**;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify **in writing**, the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided

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- information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
 - .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
 - .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 **Two (2)** reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 **The Architect will provide at least monthly site observation reports for site visits during the construction phase, based on reasonably expected site visit needs**
- .3 **Two (2)** inspections for any portion of the Work to determine whether such portion of the Work is at Substantially Completion in accordance with the requirements of the Contract Documents
- .4 **Two (2)** inspections for any portion of the Work to determine Final Completion

§ 4.2.4 Except for services required under **Section 3.6.6.5** and those services that do not exceed the limits set forth in **Section 4.2.3**, Construction Phase Services provided more than **sixty (60)** days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and **Construction Manager**, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within **forty-eight (48)** months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services, **to the extent Architect's services have exceeded the not-to-exceed compensation as provided herein.**

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written 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.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in **Section 1.1.5**.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in **Section 6.1**; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until Final Completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify **in writing**, the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify **an Owner Advisor** authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, 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.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in **Section 4.1.1**.

§ 5.8 If the Owner identified a Sustainable Objective in **Section 1.1.7**, the Owner shall fulfill its responsibilities as **outlined in Exhibit A**, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, **to the extent such reports are in the Owner's possession**.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner **and Architect** shall include **each other** in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify **each other** of the substance of any direct communications **with the** Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within **fifteen (15) business** days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs,

overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under **Sections 5.3 and 6.4**. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with **Section 9.1.2**;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under **Section 6.5.3**, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under **Section 6.5.1**. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this **Article 6**.

§ 6.7 After incorporation of modifications under **Section 6.6**, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work. **If these revisions are significant, the Architect shall submit a request for additional services for the Owner's consideration prior to commencing the work**

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 Drawings, specifications, and other deliverables (Deliverable) shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all Deliverable for their records and use if they so desire. It is mutually agreed that the Deliverable is to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the Deliverable contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were

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prepared, the Owner 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 Deliverable.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.1.1, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.1.1.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2

- .1 Indemnification by Architect – Non-Professional Acts: To the fullest extent permitted by laws and regulations, Architect shall indemnify, defend, and hold harmless Owner, and Owner's its elected officials, officers, directors, agents, consultants, and employees, from and against claims, losses, damages, and judgments, including reasonable consultants' and attorneys' fees and expenses recoverable under applicable law, arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent or wrongful act or omission of Architect or Architect's officers, directors, members, partners, agents, employees, or consultants, and for any patent, copyright or trademark infringement attributable to the Architect's services. Nothing contained in this Agreement shall be construed to waive the sovereign immunity of Owner.
- .2 Indemnification by Architect – Professional Acts: Architect shall indemnify and hold harmless Owner and the Owner's officers and employees from and against claims, damages, losses, and judgments arising from third-party claims or actions relating to the Project including reasonable consultants' and attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of Architect, its employees, and its consultants in the performance of professional services under this Agreement. Architect's obligation to indemnify and hold harmless the Owner and the Owner's officers and employees does not include a duty to defend.

Architect's duty to indemnify the Owner under this subsection shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to **litigation**. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or **litigation**.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of **litigation** proceedings, which shall be stayed pending mediation for a period of **sixty (60)** days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If **mediation** proceeding is stayed pursuant to this **Section 8.2**, the parties may nonetheless proceed to the selection of the **mediator** and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction **in the State of Nebraska** thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this **Section 8.2**, the method of dispute resolution shall be the following:

(Check the appropriate box.)

- ☐ **Intentionally Omitted**
- ☒ **Litigation in a court in the State of Nebraska**
- ☐ Other: *(Specify)*

If the Owner and Architect do not select a method of dispute resolution, or do not subsequently agree in writing to a dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction in the State of Nebraska.

§ 8.3 Arbitration – Intentionally Deleted

§ 8.4 The provisions of this **Article 8** shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OF AGREEMENT

§ 9.1 Termination may occur as follows.

§ 9.1 This Agreement may be terminated by Owner or Architect if the other party fails to adequately perform any material obligation required by this Agreement (Default). Termination rights under this Section 9.1 may be exercised only if the defaulting party fails to cure a Default within ten (10) calendar days after receiving written notice from the non-defaulting party specifying the nature of the Default.

§ 9.1.2 Owner may terminate this Agreement, in whole or part, for any reason for Owner's own convenience upon at least ten (10) calendar days written notice to Architect.

§ 9.1.3 Owner 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, or otherwise not forthcoming through no fault of Owner. In the event of unavailability of funds to pay any amounts due under this Agreement, Owner shall immediately notify in writing the Architect, and this Agreement shall terminate without penalty or expense to Owner. Upon termination, Owner shall pay Architect for any approved and documented services

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completed, reimbursable expenses and costs attributable to termination, including the reasonable costs attributable to the Architect's termination of consultant agreements up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

§ 9.1.4 If the Agreement is terminated by Owner as provided in (b) or (c) above, Architect shall be paid for all services performed, reimbursable expenses incurred and costs attributable to termination, including the reasonable costs attributable to the Architect's termination of consultant agreements, not to exceed the maximum amount payable under the compensation section above, up until the date of termination. Architect hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section in the event of termination.

§ 9.1.5 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for **reasonable** expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.1.6 If the Owner suspends the Project for more than **ninety (90)** cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than **ten (10)** days' written notice.

§ 9.1.7 Owner reserves the right to withhold payment for services rendered that is not in compliance with this Agreement. If for any other reason the Owner fails to make payments in accordance with this Agreement, except in the case of Article 11, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give ten (10) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the **State of Nebraska**, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least **fourteen (14)** days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least **fourteen (14) calendar** days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's 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 **or use the City's mark without express written permission.** The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This **Section 10.7** shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to **Section 9.1.1.**

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential, **to the extent allowed by law**, and shall not disclose it to any other person except as set forth in **Section 10.8.1.** This **Section 10.8** shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after **seven (7)** days' notice to the other party, **to the extent** required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or Work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this **Section 10.8.**

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 **The failure of either party to enforce any section of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every section of this Agreement.**

§ 10.11 This Agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code, and all parties 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. Architect shall maintain, and also require that its consultants/contractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at Architect's office at all reasonable times during the Agreement term and for five (5) years from the date of final payment under this Agreement or for such time period as provided in the Work. Such materials must be available for inspection by City, State, or any authorized representative of the state or federal governments and, when requested, Architect shall furnish copies.

§ 10.12 **The Architect shall be required to complete the Certification Form under the Foreign Adversary Contracting Prohibition Act and comply with federal immigration verification requirements under Nebraska and federal law.**

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under **Article 3**, the Owner shall compensate the Architect as follows:

.1 Time and Materials (Insert amount)

Hourly-not-to Exceed Two Million Nine Hundred Eighty Thousand Dollars (\$2,980,000.00)

Owner funding has been appropriated, authorized, and shall be paid as follows:

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August 1-31, 2025 (FY24-25): private donation funding up to Two Hundred Thousand Dollars (\$200,000.00)

September 1, 2025 to Final Completion Date: funding as approved through City's Capital Improvement Program

§ 11.2 For the Architect's Supplemental or Optional Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit A, some unknown at time of execution - TBD

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Per BVH Standard Billing Rates attached in Exhibit A, or as negotiated with and approved by the Owner

§ 11.4

Intentionally Deleted

§ 11.5

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall invoice monthly in accordance to services performed in each Phase of Services, as appropriate. **Invoices must document actual hours worked, hourly rates applied, actual expenses incurred, and any applicable supporting documentation. All invoices shall be in a format acceptable to the Owner.**

§ 11.6 Compensation shall be paid and is dependent upon monthly progress reports providing adequate substantiation of the services rendered and determination that the services are satisfactory.

§ 11.6.1 The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit A to this Agreement

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner, **not including overtime work necessary to meet the agreed upon schedule if progress is delayed through no fault of the Owner;**

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- .7 Renderings (**outside the initial scope of work**), physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus **ten percent (10 %)** of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in **Section 2.6** are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

Not Applicable

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of **zero dollars (\$ 0.00)** shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. **The Owner shall not be responsible for fees or expenses incurred prior to the Notice to Proceed date or after the completion deadline date for the Project schedule, unless otherwise agreed to in writing by the Owner.**

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of **zero dollars (\$ 0.00)** shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in

accordance to services performed. Architect will invoice Owner monthly for all services rendered pursuant to this Agreement, unless otherwise agreed in writing. Each invoice shall include the fees due for such services, and the costs for any out of pocket expenses incurred by Architect in the performance of the services. Invoices shall be due thirty (30) days from confirmed, approved receipt by the Owner. If there is a dispute of fees owed to Architect, the parties agree to resolve such disputes in good faith within thirty (30) days.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees. **After the final completion of the Work, a final invoice shall be submitted to the Owner. Upon acceptance of the Work and final payment is made, an audit of all invoiced amounts may be completed by the Owner or its authorized representative.**

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

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§ 12.1 If the Owner authorizes deviations, recorded or unrecorded, from the documents prepared by the Architect without written agreement of the Architect, the Owner shall indemnify and hold harmless the Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses arising out of or resulting in whole or in part from such deviations, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

§ 12.2 The Owner acknowledges that the requirements of the Americans with Disabilities Act (ADA), and other federal, state and local accessibility laws, rules, codes, ordinances and regulations will be subject to various and possibly contradictory interpretations. The Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of completion of the design phase and as they apply to the Project. The Architect, however, cannot and does not warrant or guarantee that the Owner's Project will comply with all interpretations of the accessibility requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Architect will interpret requirements of laws, rules, codes, ordinances, and regulations with a degree of care, skill, and judgement that would be expected of a qualified professional in the field of architecture in the locality of the Work. If, during the course of the project, authorities having jurisdiction determine that the Architects' interpretations of applicable laws, rules, codes, ordinances, or regulations are incorrect, Architect shall promptly notify in writing the Owner of such determination, and shall make necessary and appropriate adjustments to the design documents.

§ 12.3 The Architect's services shall be provided to assist the Owner in making changes to an existing facility for which the Owner shall furnish, in a timely manner, documentation and information upon which the Architect may rely for its accuracy and completeness. Unless specifically authorized or confirmed in writing by the Owner, the Architect shall not be required to perform or to have others perform destructive testing or to investigate concealed or unknown conditions. In the event documentation or information furnished by the Owner is inaccurate or incomplete, any resulting damages, losses and expenses, including the cost of the Architect's Additional Services, shall be borne by the Owner, to the extent said damages, losses, and expenses are caused by inaccurate or incomplete documentation or information.

Inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by the Architect regarding existing conditions, and because some of these assumptions may not be verifiable without the Owner expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this Project, excepting only those damages, liabilities or costs attributable to the negligence and willful misconduct by the Architect. If damages are attributable to Architects' negligence, Architect shall be liable only for damages proportional to its negligence.

§ 12.4 **Limitation of Liability**
In recognition of the relative risks and benefits of the Project to both the Owner and Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architect's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and Architect's officers, directors, partners, employees, shareholders, and consultants shall not exceed three (3) times the Architect's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

§ 12.5 **Intentionally Omitted**

§ 12.6 **Services required for governmental agency reviews, securing approvals, etc., other than normal review**

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by the City Building and Safety Department, Urban Design Committee, and the State Fire Marshal will be considered as an Additional Service.

§ 12.7 If governmental funded projects require a wage rate determination, services associated therewith will be considered as an Additional Service.

§ 12.8 **Betterment**

If, due to the Architect's negligence, a required item or component of the Project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents, with the exception of additional costs due to rework which would not have been required if such item or component would have been included in the original construction documents.. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§12.9 **Intentionally Omitted**

§12.10 **Corporate Protection Clause**

It is intended by the parties to this Agreement that the Architect's services in connection with the Project shall not subject the Architect's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Bahr Vermeer Haecker Architects, Ltd a Nebraska corporation, and not against any of the Architect's individual employees, officers or directors. This clause shall not restrict Owner's ability to bring claims against individuals for conduct arising outside the scope of employment performing the services described in this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 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 Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Intentionally Deleted
- .3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

☒ Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A: Design Services Proposal

Exhibit B: Design Milestones

Exhibit C: Concept Documents

- .4 **Insurance Requirements, certificate of insurance, and endorsements**
- .5 **Addendums, amendments, or change orders to the Agreement, schedule, fee, or exhibits**
- .6 **Foreign Adversary Contracting Prohibition Act Certificate**

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

Leiron Gaylor Baird, Mayor

(Printed name and title)



ARCHITECT *(Signature)*

Mark Bacon, Principal, AIA

(Printed name, title, and license number, if required)

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DATE: 7/25/2025

PROJECT: Lincoln Central Library
BVH #: 25028

DESIGN SERVICES PROPOSAL

Thank you for the opportunity to work with the City of Lincoln on this important project. We have developed a comprehensive scope of services to provide the design services for a new Central Library.

I. DESCRIPTION OF PROJECT

The Lincoln Central Library is a major civic renovation project located within the existing Southeast Community College (SCC) building at 1111 O Street in downtown Lincoln. The project involves the adaptive reuse of the existing concrete structure, retaining the original cast-in-place waffle slab system and integrating new structural and architectural systems to meet contemporary library standards. Of the 80,000 square feet in the existing building, the library will occupy approximately 65,000 and the balance will be reserved for partner space and unimpeded access to the skywalks and elevator core. The café/coffee shop is accounted for in the 65,000 library square feet but will be a separate tenant space.

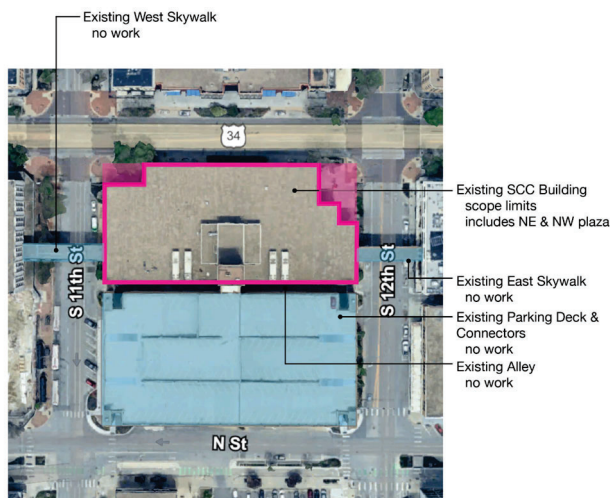
A cross-laminated timber (CLT) diagrid structural system is introduced for new programmatic structural insertions where the concrete waffle slab isn't present. The design incorporates extensive daylighting strategies, energy-efficient building systems, and accessibility improvements. Program elements include collection areas, reading rooms, meeting spaces, digital labs, staff offices, and other core library functions configured to support current and future operational needs.

A rooftop pavilion and outdoor terrace expand the library's public programming capabilities and provide additional event space. The project also reserves a defined area of square footage for a future partner; however, as the partner is not yet identified, this area is excluded from the basic scope of services. The partner space design will utilize code minimum requirements and provide a temporary demising wall to separate the space from the library.

Exterior modifications include new fenestration systems and glazing to improve visibility, natural light, and urban presence along 11th, 12th, and O Street. All facades will consider a new cladding system to increase the energy efficiency of the building envelope.

In alignment with the City of Lincoln's request and the Lincoln Climate Action Plan, the project will pursue Green Globes certification. A sustainability workshop during schematic design will help determine the achievable level of certification based on project goals, budget, and library service needs.

The diagram below indicates the extent of the Lincoln Central Library scope of work



For the design services under this proposal, the library will provide access to the existing parking garage directly south of 1111 O Street, the east and west skywalks attached to the building, and the elevator core and lobby within the building that serves the parking garage.

II. SCOPE OF WORK

The BVH team includes the following firms within our team for the respective scopes of work:

BVH Architecture:	Architect of Record, FFE
MSR Design:	Library Design Architect, FFE
Morrissey Engineering Inc:	Mechanical, Electrical and Plumbing Engineering, Energy Modeling, Security Systems, Audio-Visual and Information Technology Design
Thorton Tomasetti:	Design Engineer, Mass Timber Structural Engineering
Lange Structural Group:	Engineer of Record, Existing Building Structural Engineering
Olsson:	Civil Engineering and Landscape Architect
Rockwise:	Cost Estimating (Schematic Design only)
Foodlines:	Food Service (Library Teaching/Catering kitchen only)
C&C Consulting:	Acoustical Consulting

The scope of work assumes that a Construction Manager at Risk (CM@R) will be hired by the Owner and retained beginning with the Design Development phase. It is also assumed that a mass timber design-assist partner and supplier will be procured by the Owner through the CM@R's contract. Site design will be coordinated with Project O Street..

BVH has been informed that the City intends to procure a tenant for the café/coffee shop through an RFP process. The goal is for the tenant to be selected during the design phase, allowing the design team to coordinate directly with the tenant. The scope of work includes basic professional design and FF&E services for the café/coffee shop. Food service equipment, branding, and signage are excluded from this scope and would be provided as additional services.

The Architect shall furnish and perform the following Basic Professional Services required during the project:

SCHEMATIC DESIGN FOR THE LIBRARY

BVH Architecture, along with the team members listed above, will collaborate with the Library and the City to carry out the following design tasks for the \$30 million library building and \$3 million FF&E budget:

- Conduct site analysis and verify as-built conditions of the SCC building.
- Conduct structural as-built analysis and building systems analysis
- Confirm site utilities.
- Confirm design concepts integrating new library functions within the existing structure.
- Coordinate integration of mass timber, diagrid system, and rooftop pavilion.
- Prepare schematic-level floor plans, sections, massing studies, and illustrative renderings.
- Host client and stakeholder visioning sessions.
- Establish preliminary FF&E needs and layout zones for furnishing strategies.
- Establish preliminary AV/IT/Security needs and layout strategies to establish scope.
- Coordinate with city departments and stakeholders regarding civic, programmatic, and accessibility goals.
- Develop structural and building systems narratives for library space
- Limited planning will be provided for MEP, AV, IT, security, accessibility, and life safety code considerations related to the future tenant space. This work is intended only to address general code minimums required for shell and core coordination. It will not include design or fit-out services for any future tenant-specific needs, which will be the responsibility of the future partner and their design team.
- Sustainability & Building Performance Goal-Setting
- Green Globe programming to establish certification level
- Energy modeling and daylight studies
- NE and NW Plaza Design to back of curb
- 1 cost estimates escalated to mid-2027 dollars
- Project will coordinate with applicable design guidelines and zoning requirements
- Assist the Owner in selecting a CM@R and mass timber design-assist supplier
- 11th, 12th, and O Streetscape Design (coordinated with the Project O Street)

1. STAKEHOLDER ENGAGEMENT

This phase includes the preparation and facilitation of two (2) stakeholder meetings (up to one full day / 8 hours each) to gather input on the program and design of the project. The outcome of this process is a comprehensive understanding of key stakeholder recommendations and insights to inform the design.

SCHEMATIC DESIGN DELIVERABLES

This phase will establish the scope and budget for the project. Deliverables included in this phase are:

- Verification of program spaces
- Floor plans

- Site plan
- Rendered plaza drawing plans
- Axonometric, sectional and other drawings as needed for key design concepts
- 3-Dimensional renderings of key spaces
- 3-Dimensional renderings of key exterior views
- Narratives for mechanical, electrical, plumbing, low voltage, including AV/IT, security, and structural engineering for cost estimating
- Documentation and analysis of stakeholder meetings
- Green Globe certification programming documentation
- Estimates of probable cost for project at
 - 1) 100% SD Completion
- Slide deck: presentations for City staff use

DESIGN DEVELOPMENT FOR THE LIBRARY

BVH Architecture and the team members listed above will collaborate with the Library and City to perform the following design tasks.

- Refine building systems, materials, and architectural detailing, including waffle slab preservation and glazing interventions.
- Further develop library-specific program elements: reading areas, children's zones, digital learning labs, maker spaces, staff areas, and event commons.
- Advance structural, mechanical, electrical, plumbing, and low-voltage systems in coordination with consultants.
- Refine daylighting and lighting design strategies
- Refine Green Globe strategies
- Assist the City with CM@R selection process
- Assist with updated opinion of estimated construction cost in coordination with CM@R
- Integrate sustainable strategies and daylighting analysis.
- Initiate furniture mock-ups or lookbooks for user feedback.

1. COMMUNITY INFORMATIONAL SESSIONS

This includes public informational sessions, which may be conducted using a variety of methods, from online platforms to in-person gatherings. Two (2) engagement sessions are included during the Design Development through Construction Documents phase. Each session may last up to one full day (8 hours). The Owner and Architect will collaborate to determine the most appropriate engagement methods for the project.

DESIGN DEVELOPMENT DELIVERABLES

- Updated floor plans
- Updated site plan
- Updated rendered plaza drawing plans
- Axonometric, sectional and other drawings as needed for key design concepts
- Updated 3-Dimensional renderings of key spaces
- Updated 3-Dimensional renderings of key exterior views
- Drawings for mechanical, electrical, plumbing, low voltage, including AV/IT, security, and structural engineering.
- Lighting design renderings
- Green Globe certification progress documentation
- Review of CM's estimates of probable cost for project at
 - 100% DD Completion
 - Provide input on value engineering

- Provide input on scope
- Normal City agency review meetings (i.e. Urban Design Committee)
- Slide deck: presentations for City staff use

CONSTRUCTION DOCUMENTS FOR THE LIBRARY

- Produce coordinated, permit- and bid-ready documentation for all disciplines.
- Provide no more than two (2) bid packages. Scope of bid packages to be mutually agreed upon by Owner, CM@R, and Design team.
- FF&E layout plans
- Review of CM's estimates of probable cost for project at
 - 75% CD Completion & GMP review
 - Provide input on value engineering
 - Provide input on scope
- Energy model verification
- Green Globe documentation
- Collaborate with consultants on construction detailing for mass timber and rooftop pavilion.
- Coordinate IT, AV, and building technology infrastructure integration.
- Ensure code compliance, including accessibility and life safety requirements.

CONSTRUCTION DOCUMENT DELIVERABLES

- Permit and bid-ready documents
- Project manual

BIDDING AND NEGOTIATION

- Respond to RFIs and contractor questions.
- Participate in contractor selection and/or pricing evaluation.
- Attend prebid meeting
- Issue addenda as necessary.

CONSTRUCTION ADMINISTRATION SERVICES

- Attend preconstruction meeting
- Conduct regular site visits to observe construction progress and adherence to design intent.
- Provide monthly site observation reports
- Attend OAC progress meetings
- Review submittals, shop drawings, and product data.
- Review change order pricing
- Green Globe documentation
- Review material testing and quality assurance reports
- Respond to RFIs and issue Architect's Supplemental Instructions (ASIs) as needed.
- Review pay applications

WARRANTY AND PROJECT CLOSEOUT

- Assist with project closeout, including record drawings and warranty review
- Coordinate with owner's commissioning agent
- Prepare and deliver as-built drawings
- 11-month warranty walk through post project completion
- Green Globe certification documentation

FF&E SCOPE OF SERVICES

- Develop a comprehensive FF&E strategy aligned with library programming and civic identity.

- Select furnishings that reflect the warmth of natural materials and support flexibility, accessibility, and durability.
- Curate product palettes in collaboration with user groups
- Prepare FF&E bid documentation and assist with procurement.
- Coordinate delivery schedules with the construction timeline.
- Oversee installation and quality review.
- Provide post-occupancy adjustments and troubleshooting support.

FF&E DELIVERABLES

- Final FF&E layout plans
- Final FF&E specifications
- Procurement schedules

III. OPTIONAL SERVICES

1. INFORMATIONAL WEBSITE

A project website would be developed to provide information and updates on the Library project. This is separate from social media, TV, radio and other materials that may be developed by an outside community group.

Professional Service Fees: add \$7,500 to the not to exceed basis if utilized.

2. SUSTAINABILITY AND HIGH PERFORMANCE BUILDING DESIGN

In response to the City of Lincoln's request to pursue Green Globes certification for the Lincoln Central Library, our team is committed to helping the project achieve the highest certification level feasible. While the specific certification level is currently unknown, we will, as part of our basic professional services, conduct a sustainability workshop during schematic design to define project goals aligned with environmental performance, library service, and project budget. Sustainability consulting and energy modeling will also be included to assess what level of certification is achievable.

Basic professional services (included in the gross fee listed): \$19,600 NTE

Once the Green Globes intent and targeted certification level have been established through our basic services, *we will provide an hourly not-to-exceed (NTE) fee proposal for the additional scope required to document and complete the certification process.*

3. PARTNER SPACE BASIC PROFESSIONAL SERVICES

Basic professional design services for the future partner space are not included in this scope of work. However, the following elements are included to support code compliance and future tenant readiness:

- A code-compliant demising wall to separate the partner space from the library
- Baseline MEP provisions required to meet code
- Limited planning during the Schematic Design phase for:
 - Mechanical, Electrical, and Plumbing (MEP) systems
 - Audiovisual (AV), Information Technology (IT), and security infrastructure
 - Accessibility and life safety code requirements

If a future partner is secured and their requirements exceed the baseline assumptions or code minimums, additional design services will be negotiated prior to proceeding. Likewise, if a partner requests full professional services for the design and fit-out of their space, those services will be contracted separately and negotiated at that time.

Professional Service Fees: \$TBD based on the partner needs for the space.

4. OTHER SERVICES NOT YET INCLUDED:

- Site Surveying, boundary, topography, etc.
- Radar scanning limited areas to verify as-built conditions
- **Irrigation, plant selection, amenities, etc. at the rooftop pavilion** (Initial SD planning is included to establish scope)
- **Full AV/IT/Security design services** (Initial SD planning is included to establish scope)
- Geotechnical Borings & Assessment
- Special Testing & Inspections
- Easements
- BIM Clash detection services or meetings with subcontractors
- Commissioning Services
- NDEQ/Environmental Review, Permitting, etc
- Zoning/Re-zoning Processes (Presume zoning is in place)
- Hazardous material testing or abatement

IV. COMPENSATION FOR PROFESSIONAL SERVICES

1. The basic professional design services specified above will be completed for the fees as follows:

The work will be performed on an hourly, not-to-exceed (NTE) basis. Fees will be billed monthly at each consultant's standard hourly rates. Monthly invoices will include detailed reports of team members and hours worked. Refer to the attached hourly rate sheets for each team.

The gross hourly not-to-exceed (NTE) fee of **\$2,980,000.00** is based on the known project parameters as of the date of this proposal, along with our assumptions regarding scope, level of effort, and the value required to support a successful outcome for the Lincoln Central Library project. This fee reflects our understanding of the project's goals and the coordination necessary to deliver quality results within the defined limits of work.

Not-to-exceed per consultant:

BVH Architecture:	\$1,137,300
MSR Design:	\$795,000
Morrissey Engineering Inc:	\$624,500
Thorton Tomasetti:	\$186,000
Lange Structural Group:	\$154,600
Olsson:	\$39,600
Rockwise:	\$15,000
Foodlines:	\$18,000 allowance
C&C Consulting:	\$10,000 allowance
Gross NTE fee	\$2,980,000

BVH ARCHITECTURE

Unused fees may be reallocated among consultants to cover overages, provided the total remains within the gross NTE fee. Any savings in the gross NTE fee at the conclusion of the project will be passed on to the City.

Phase Breakouts:	
Schematic Design:	20%
Design Development:	25%
Construction Documents:	25%
Bidding Phase:	5%
Construction Phase:	23%
Warranty Phase:	2%

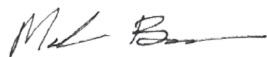
2. Reimbursable expenses—such as printing, travel, photography, delivery, lodging, meals, and supplies—are in addition to basic professional services and billed at invoiced cost plus a 5% administrative fee. Receipts and documentation will be provided. Expenses are listed as a not-to-exceed (NTE) amount. If project requirements or Owner requests cause expenses to exceed the NTE, prior approval will be requested. A breakdown by firm is provided below. Benchmarking trips (e.g., visits to other libraries or furniture showrooms) are excluded and will be coordinated separately if requested.

BVH Architecture:	\$17,500
MSR Design:	\$88,580
Morrissey Engineering Inc:	\$3,000
Thorton Tomasetti:	\$20,500
Lange Structural Group:	\$0
Olsson:	\$0
Rockwise:	\$0
Gross NTE amount	\$129,580

3. Any additional work not described in this Proposal will be negotiated and approved as an hourly not to exceed amount prior to commencing the work.

Thank you again for the opportunity to work with the City on this project. If you have any questions, please contact me.

Sincerely,
BVH Architecture



Mark Bacon, AIA
Principal

Enclosures: Exhibit A BVH Hourly Rates
Exhibit B LCL & Project O Street Design Scope

EXHIBIT A

Standard Hourly Rates

Principal	\$255 - \$376
Project Manager	\$210 - \$265
Senior Architect	\$185 - \$210
Architect	\$145 - \$175
Senior Interior Designer	\$160 - \$180
Graphic Designer	\$125 - \$135
Project Coordinator	\$110 - \$120
Interior Designer	\$105 - \$130
Administrative	\$110 - \$120
Student Intern	\$80 - \$90

These rates are in effect through December 31, 2025