



# AIA<sup>®</sup> Document B103<sup>™</sup> – 2017

## Standard Form of Agreement Between Owner and Architect for a Complex Project

**AGREEMENT** made as of the 24th day of September in the year 2021  
(In words, indicate day, month and year.)

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

Nebraska Department of Correctional Services (NDCS)  
801 West Folsom, Building 1  
Lincoln, NE 68522  
Telephone Number: 402-471-2654

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

DLR Group, inc (a Nebraska Corporation)  
6457 Frances Street, Suite 200  
Omaha, NE 68106  
Telephone Number: 402-393-4100

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

New Multi-Custody Correctional Facility

A site for the Project has not yet been identified, and assistance with site selection and procurement is part of the scope of services included with this Project.

The site required for the proposed facility should be approximately 160 acres, but not less than 100 acres. The site should be large enough to accommodate buffer zone areas between the property line and secure perimeter which could range between 300-600 feet. It should also be large enough to provide for future construction associated with a state correctional facility.

The proposed correctional facility will be a multi-custody classification facility, with minimum (3X), medium (2X), and maximum (1X) security classifications, organized in a campus configuration. The minimum-security compound will be located outside a double fenced secure perimeter and surrounded by a single line security fence.

The proposed design capacity of the multi-custody facility is 1,512 beds and will house an all-male adult population. The facility will be composed of a main compound for maximum/medium-security, enclosed by a secure perimeter fence and detection system, and a minimum-security compound located immediately adjacent to the main compound, and enclosed by a single security fence.

Minimum-security capacity is 600 beds and consists of a semi-autonomous compound located immediately adjacent to the maximum/medium security compound. Housing for the minimum-security facility will consist of three (3) housing units, each with a capacity of 200 beds. These housing units will contain both 2-person and 4-person rooms, and open dormitories.

The maximum/medium facility will have a capacity of 912 beds and consist of two (2) housing units for maximum-security inmates and two (2) housing units for medium-security. The maximum-security housing units will be all cells, with a mix of 40

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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single and 80 double occupancy cells. Each maximum-security housing unit will contain 200 beds but will be capable of accommodating up to 240 beds if all cells were double occupancy. The medium-security housing units will be all cells, each will be double occupancy. Each medium-security housing unit will contain 256 beds.

In addition to the inmate housing, the new facility will contain all the necessary support and inmate services, such as the following:

- Outside Administration
- Inside Administration
- Food Service and Laundry
- Recreation
- Education and Vocational Classrooms
- Medical, Mental Health, and Dental Services
- Religious Programs
- Visitation
- Central Warehouse
- Central Maintenance
- Correctional Industries (Cornhusker State Industries)
- Central Energy Plant

The Owner and Architect agree as follows.

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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.)*

The program for the project will be based on information contained in the Program Statement, dated April 9, 2021, as prepared by DLR Group. The Architect will verify and reconcile information contained in the Program Statement and prepare a reconciled Architectural Space Program to serve as basis for the Project.

§ 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.)*

Site and building design for a New 1,512-bed Multi-Custody Correctional Facility at a yet to be determined site. Per the program referenced in section 1.1.1, it is anticipated that total building area will encompass approximately 503,963 GSF.

Building functions are anticipated to be dispersed over multiple buildings organized in a campus-style layout, and are to include the following:

- Outside Administration
- Inside Administration
- High-security Housing (1X)
- Medium Security Housing (2X)

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- Minimum Security Housing (3X)
- Food Service and Laundry
- Recreation
- Education and Vocational Classrooms
- Medical, Mental Health, and Dental Services
- Religious Programs
- Visitation
- Central Warehouse
- Central Maintenance
- Correctional Industries (Cornhusker State Industries)
- Central Energy Plant

§ 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.)

The Owner's total project budget is Two Hundred Thirty Five Million Seven Hundred Eleven Thousand Dollars \$235,711,000 as identified in the Program Statement and the RFP solicitation dated June 2, 2021. This is distributed as follows:

- |                                       |               |
|---------------------------------------|---------------|
| 1. Construction (site and buildings): | \$182,808,000 |
| 2. FF&E:                              | \$4,953,000   |
| 3. Contingencies:                     | \$9,388,000   |
| 4. Inflation:                         | \$16,898,000  |
| 5. Professional Fees:                 | \$18,664,000  |
| 6. Site Acquisition Allowance:        | \$3,000,000   |

The project is, at the time of this Contract, only funded through the completion of Construction Documents, including site selection. If authorization is given, and funding appropriated, by the State Legislature to proceed with construction, then this Contract will be amended to incorporate the appropriate Architect services at such time.

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

.1 Design phase milestone dates, if any:

Design Start:	October 1, 2021	
Program Reconciliation and Conceptual Design:		November 12, 2021
Schematic Design:		March 4, 2022
Design Development:		July 22, 2022
Construction Documents:		December 23, 2022
Bidding & Negotiations:		April 14, 2023 (pending project funding)

.2 Construction commencement date:

Construction Start: April 2023 (pending project funding)

.3 Substantial Completion date or dates:

September 2025

.4 Other milestone dates:

Final Completion and Owner Occupancy: October 2025

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract.)

Competitive Bid

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

Multiple bid packages may include:

1. Site Rough-grading and Surcharge package
2. General Construction package

§ 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.)

None

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

Rodney Anderson and/or Nathan Bornemeier  
801 West Folsom, Building #1  
Lincoln, NE 68522  
P: 402-479-5778 or 402-479-5861

§ 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.)

State Building Division

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

None  
(Paragraph deleted)

.3 Geotechnical Engineer:

To Be Determined  
(Paragraph deleted)

.5 Other, if any:  
(List any other consultants and contractors retained by the Owner.)

Surveyor, if required

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

Martin Berglund  
6457 Frances Street, Suite 200  
Omaha, NE 68106

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P: 402-972-4042  
E: MBerglund@DLRGroup.com

§ 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:**

Davis Design Inc.  
1221 N Street, #600  
Lincoln, NE 68508  
Telephone Number: 402-476-9700

**.2 Mechanical Engineer:**

Davis Design Inc.  
1221 N Street, #600  
Lincoln, NE 68508  
Telephone Number: 402-476-9700

**.3 Electrical Engineer:**

Davis Design Inc.  
1221 N Street, #600  
Lincoln, NE 68508  
Telephone Number: 402-476-9700

**.4 Code Consultant:**

Woden  
  
555 W 5th Street, 35th Floor  
  
Los Angeles, CA 90013  
  
Telephone Number: 714-330-2181

**.5 Security Electronics Consultant:**

LattaTech  
  
500 N Central Expressway, Suite 310  
  
Plano, TX 75074  
  
Telephone Number: 972-633-5850

**.6 Security Hardware Consultant**

R&N Systems Design  
  
615 Oakleaf Office Lane  
  
Memphis, TN 38117  
  
Telephone Number: 901-309-0115

**.7 Food Service Consultant**

Halliday Associates, Inc

656 NW Norwood Street

Camas, WA 98607

Telephone Number: 360-834-6657

**.8 Cost Estimator:**

Parametrix

7186 Highland Drive

Salt Lake City, UT 84121

Telephone Number: 801-733-5900

**§ 1.1.12.2 Consultants retained under Supplemental Services:**

**.1 Real Estate Advisory Services**

CBRE

11213 Davenport Street, Suite 300

Omaha, NE 68154

Telephone Number: 402-697-5808

**.2 Site Evaluation Services**

Olsson

601 P St #200

Lincoln, NE 68508

Telephone Number: 402-474-6311

**.3 Public Outreach and Communications Consulting Services**

Olsson

601 P St #200

Lincoln, NE 68508

Telephone Number: 402-474-6311

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

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None

§ 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.

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

§ 2.4 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.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000 ) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.



§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000 ) each accident, One Million Dollars (\$ 1,000,000 ) each employee, and One Million Dollars (\$ 1,000,000 ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per claim and in the aggregate. Coverage shall be maintained for the term of services under this Agreement. If Owner chooses to acquire a project specific policy of professional liability insurance for the Project, then Owner and Architect must agree on the limits of coverage, parties covered, deductible required and length of the policy period after substantial completion of the services.

§ 2.5.7 **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.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project and the Consultant's scope of work, as determined by the Architect.

### 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 civil, structural, mechanical, and electrical engineering services, program reconciliation, security systems design, and low voltage engineering. Services not set forth in this Article 3 are Supplemental or Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner 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 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 Owner 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 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 approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information and participate in developing and revising the Project schedule as it relates to 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 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 in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

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

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, 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.

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

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for 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.

§ 3.2.5.1 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 4.1.1.

§ 3.2.5.2 The Architect shall consider 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.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner 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 in accordance with Sections 6.1.1 through 6.1.4.4.

*(Paragraph deleted)*

### § 3.3 Design Development Phase Services

§ 3.3.1 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 Owner's approval. The Design Development Documents 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.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and request the Owner's approval of the Design Development Documents. If revisions to the Design Development Documents are required to comply with the Owner's budget for the Cost of the Work at the



conclusion of the Design Development Phase, the Architect shall incorporate the required revisions in the Construction Document Phase in accordance with Sections 6.1.1 through 6.1.4.4.

*(Paragraph deleted)*

#### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** 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 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 Contractor 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.

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

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

**§ 3.4.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and request the Owner's approval of the Construction Documents. If revisions to the Construction Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase, the Architect shall incorporate the required revisions in the Construction Document Phase in accordance with Sections 6.1.1 through 6.1.4.4.

*(Paragraphs deleted)*

#### **ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

##### **§ 4.1 Supplemental Services**

**§ 4.1.1** The services listed below are not included in Basic Services but may be required for the Project. 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, 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.)*

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
<b>§ 4.1.1.1</b> Programming (B202)	Architect
<b>§ 4.1.1.2</b> Multiple preliminary designs	Not Provided
<b>§ 4.1.1.3</b> Measured drawings	Not Provided
<b>§ 4.1.1.4</b> Existing facilities surveys	Not Provided
<b>§ 4.1.1.5</b> Site evaluation and planning (B203)	Architect
<b>§ 4.1.1.6</b> Building Information Model management responsibilities	Architect
<b>§ 4.1.1.7</b> Development of Building Information Models for post construction use	Not Provided

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design (B252)	Architect
§ 4.1.1.11 Value analysis (B204)	Not Provided
§ 4.1.1.12 Cost estimating	Architect
§ 4.1.1.13 On-site project representation (B207)	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services (B210)	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning (B206)	Not Provided
§ 4.1.1.23 Commissioning (C203)	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 (E204)	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation (B205)	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design (FF&E) (B253)	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Architect
§ 4.1.1.30 Other Supplemental Services	Not Provided
§ 4.1.1.31 LEED Certification (B214)	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 (identified in parentheses above) that can be included as an exhibit to describe the Architect's Supplemental Services.)*

**Programming.** The Architect will conduct a reconciliation of the existing Program Statement dated April 9, 2021.

**Site evaluation and planning..** Architect will perform cursory site analysis of up to thirty (30) properties for consideration. Architect will then perform more detailed site evaluations on up to six (6) potential sites. This will include review of zoning implications, initial floodplain review, review any wetland implications, preliminary traffic issues, regulatory records review, summarize utility availability and capacities.

Upon Owner selecting a final property for consideration, the Architect will perform exploratory geotechnical investigations, complete a Phase I ESA, Traffic Analysis, and Wetland Delineation.

**Building information modeling (BIM).** The Architect will utilize BIM as its primary tool for generating construction documents. Architect shall have complete authority to determine the level of modeling required to convey design



intent in the Construction Documents. Typically, this will include generating BIM models to a Level of Development (LOD) 300, but at the discretion of the Architect, the LOD may deviate from this. BIM modeling will be executed according to the standards, procedures and nomenclature of the Architect. Specifically excluded are modifications to BIM models of the Architect or Architect's consultants for the purpose of conforming to standards of others, including the Owner and Contractor.

**Civil engineering.** The Architect will provide Civil engineering services as required to include the site area of the Project to include on-site utilities sizing and routing, design of parking, drives and walks, site grading and retaining wall design, storm water protection planning. This specifically excludes Civil engineering services associated with any off-site utilities, streets, roadways or traffic signals. Also excluded is Environmental engineering services.

**Landscape design.** The Architect will design and specify softscape and hardscape elements located on the project site and coordinate with Civil engineer

**Architectural interior design.** The Architect will provide interior design services to include color and material selections and coordinate these with other design services as provided by the Architect. Preliminary color and material selections will be provided and presented to the Owner for approval prior to being incorporated into construction documents.

**Cost estimating.** The Architect will retain the services of a professional cost estimator for the purpose of preparing a detailed estimate of probable construction cost.

**Telecommunications/data design.** The Architect will retain the services of a professional telecommunications/data designer. Systems included under this scope include telephone/data infrastructure/distribution systems within the confines of the Project and connection to existing system. These systems will be coordinated with any existing systems or standards as provided by the Owner. Specifically excluded is the design or specification of end-user equipment including, but not limited to telephone handsets, computer terminals, servers, printers/copiers, displays and monitors, and time-keeping equipment.

**Furniture, furnishings, and equipment design (FF&E).** Architect will prepare matrix to identify FF&E for the Project.

**Other services provided by Specialty Consultants.**

1. Real Estate Advisory Services. Architect will identify and provide cursory evaluations of up to thirty (30) potential sites in a variety of communities in the Omaha-Lincoln vicinity. Architect will assist Owner with negotiations pertaining to purchase of land options (up to six (6)), and final purchase of property.
  1. Assist in the development of a formal site selection process.
  2. Assist the Owner in preparing all documents needed to purchase agricultural land. (purchase agreement, survey, title search, appraisal, etc).
  3. Evaluate sites based on the final site selection criteria and evaluation matrix. This evaluation shall include the engineering analysis, (civil, mechanical, electrical, etc), economic analysis.
  4. Provide in-depth analysis of site proposals including, but not limited to, engineering reviews of soil conditions, contamination, and municipal infrastructure capacities (i.e., water, sewer, electric, natural gas, roadways, etc.) to ensure these systems are capable of handling the facilities initial population and projected growth.
  5. Provide site development cost estimates and other estimates relating to the site selection process.
  6. Visit all proposed viable sites.
2. Public Outreach and Communication Services to include development of public outreach plan, participation in, and assistance with preparation for, up to ten (10) public meetings during site evaluation process, and one (1) public open house meeting relative to the final site selected. Available to support Owner with communications support, including website and social media content, media releases, and stakeholder outreach, up until date of property closing.



1. Assist the Owner in coordinating and conducting open public hearings.
2. Development of educational materials for public involvement including media releases and formal presentations.

§ 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

*(Paragraph deleted)*

## § 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 the Owner 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 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 procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 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;
- .4 Services necessitated by decisions of the Owner 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;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9

*(Paragraphs deleted)*

Assistance to the Initial Decision Maker, if other than the Architect.

- .10 Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;

*(Paragraphs deleted)*

§ 4.2.5 If the services covered by this Agreement have not been completed within Fifty-four ( 54 ) 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.

## 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.



*(Paragraph deleted)*

§ 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 the Architect. The Owner and the Architect 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 Contractor 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 a representative 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.

*(Paragraphs deleted)*

§ 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.

§ 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 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 shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of



any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction 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 Contractor, 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 Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 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 contractors' 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 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.

*(Paragraphs deleted)*

§ 6.1.1 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect agrees that, if the lowest bona fide bid or negotiated price for the Cost of the Work exceeded the Architect's current, Owner-approved estimate of the Cost of the Work, the Owner may elect to require the Architect to perform, as an Additional Service, the services necessary to revise the scope and quality of the Project to indicate a design that is approved by the Owner and that conforms to the Owner approved estimate. If, however, such services are necessitated by the Architect's negligence in the preparation of its estimate, then such services shall be provided at no additional cost to the Owner. The Owner may exercise any of the other options listed in Section 6.1.4.

§ 6.1.2 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project, and; to include in the Contract Documents bid alternates as may be necessary to adjust the Cost of the Work to meet the Owner's approved estimate of the budget for the Cost of the Work.

§ 6.1.3 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry as set by the Engineering News-Record, 20-City Average Cost Price Index for Construction Cost® in the locality nearest to the Project.

§ 6.1.4 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5; or
- .4 cooperate with the Architect in revising the Project scope and quality as required to reduce the Cost of the Work provided for under Section 6.1.1.



## 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 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 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 Contractor, 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 9.4, 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, including the cost of defense, 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 9.4.

§ 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 binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 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 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

*(Paragraphs deleted)*

§ 8.1.5 **Design Contingency Reserve.** The Standard of Care requires the Architect perform its services consistent with the professional skill and care provide by architects practicing in the same or similar locality under the same or similar



circumstances. The Standard of Care does not require perfection, and the Architect does not guarantee or warrant perfection. The Architect is only liable for the failure to perform in accordance with the Standard of Care. Some errors and omissions may occur without a breach of the Standard of Care, and the Architect is not responsible for errors or omissions that do not constitute a breach of the Standard of Care. The Owner shall establish a design contingency reserve in an amount equal to three percent (3%) of the Cost of the Work and shall neither have nor make any claim for breach of the Standard of Care to the extent that the cumulative total of errors and omissions constituting a breach of the Standard of Care do not exceed that design contingency reserve.

**8.1.6 Betterment.** In no event shall the Architect be liable to the extent that damages constitute first costs or betterment. First costs or betterment are costs that the Owner would have incurred if an error or omission had not been made.

Betterment also results to the extent that errors or omissions are remedied with a more expensive alternative design, higher quality materials, or with repairs that increase useful life.

**§ 8.1.8 Limitation of Liability.** The Architect's cumulative total liability for claims arising from or relating to this Agreement shall not exceed one million dollars (\$1,000,000).

**§ 8.1.9 Direct Negotiation.** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a written request to seek to resolve such through direct negotiation at a meeting of the senior management of the Owner and the Architect. The parties shall endeavor to schedule a meeting within two weeks of such request. Direct Negotiation will be the initial process in dispute resolution.

## ARTICLE 9 TERMINATION OR SUSPENSION

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, 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 seven 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 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 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.

**§ 9.2** 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 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.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 9.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

**§ 9.7** In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*



.1 Termination Fee:

None

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

The Architect will provide the Owner a copy of the Architect's Instruments of Service upon receipt of a release of liability if used by others. The Owner agrees to only use the Architect's Instruments of Service for the completion of the Project and not for any other current or future projects, in whole or in part. The Architect's Instruments of Service specifically exclude the BIM model, which will not be released.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Nebraska.

§ 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.

§ 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 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 14 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.

*(Paragraph deleted)*

§ 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 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 7 days' notice to the other party, when required by law, arbitrator's order, 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 Sexual contact/abuse of an inmate.** Architect shall make its employees aware of the provisions of Neb. Rev. Stat. § 28-322.01, which states that a person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact, because an inmate or parolee is not legally capable of giving consent to any such relationship. Neb. Rev. Stat. § 28-322 states that individuals "working under contract with the department," are included in the list of persons prohibited from having sexual relations with an NDCS inmate. Architect will promptly notify NDCS if allegations of sexual abuse or contact become known to the Architect.

**§ 10.11 Work eligibility.** Architect is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of any newly hired employee.

**§ 10.12 Drug-free workplace.** The Architect shall comply with the Governor's Drug-Free Workplace Policy.

**§ 10.13 Tobacco policy.** The Tobacco Policy prohibits the use of tobacco-related products in or on any Department of Correctional Services' owned, leased or controlled property. This policy also prohibits the possession of tobacco or tobacco-related products on the Department of Correctional Services' owned, leased or controlled property except that these products may be secured in personal vehicles on said property. This policy applies to all staff, inmates and contractors.

## ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum  
(Insert amount)

(Paragraphs deleted) Thirteen Million Six-Hundred Thirteen Thousand Nine-Hundred Seventy-One dollars (\$13,613,971.00). See Exhibit B for distribution.

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 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.)

Compensation for services designated in Section 4.1.1. is included in the Architect's compensation for Basic Services per Section 11.1.1.

(Describe whether Supplemental Services are to be included in the compensation for the Architect's Basic Services, or is based on a stipulated sum, percentage basis, or hourly billing rates per § 11.7.)

**§ 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.)

Either as negotiated stipulated sum or hourly per Section 11.7 at the Architect's discretion.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10%), or as follows:

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

§ 11.5 When compensation for Basic Services is based on a stipulated sum, the proportion of compensation for each phase of services shall be approximately as follows:

Site Selection and Evaluation Services				
Program Reconciliation and	five	percent (	5	%)
Conceptual Design Phase	six	percent (	6	%)
				%)
Schematic Design Phase	twenty	percent (	20	%)
Design Development Phase	thirty-two	percent (	32	%)
Construction Documents Phase	thirty-seven	percent (	37	%)
Bidding and Negotiations Phase	zero	percent (	0	%)
Construction Phase	zero	percent (	0	%)
Close-out Phase	zero	percent (	0	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

*(Paragraphs deleted)*

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants 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 attached Exhibit A – DLR Group Hourly Billing Rates

#### § 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:

*(Paragraphs deleted)*

- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents used for the bidding process and for seeking approval of authorities having jurisdiction over the Project;
- .5 Postage, handling, and delivery of documents used for the bidding process and for seeking approval of authorities having jurisdiction over the Project;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials specifically requested by the Owner for the Project;

*(Paragraphs deleted)*

and,

- .12 Other similar Project-related expenditures.

Init.



§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent ( 0 %) of the expenses incurred.

*(Paragraphs deleted)*

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

§ 11.10.1.1 An initial payment of Zero ( \$ 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.

*(Paragraph deleted)*

**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable Forty-Five (45) days from the date of receipt of the Architect's invoice. Amounts unpaid forty-five ( 45 ) days after receipt of the invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

1 % one percent monthly

§ 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 or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 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.)*

Both parties recognize that this project is only authorized and funded through the completion of the Construction Document phase. In the event that subsequent phase(s) are authorized by the funding authority, this agreement shall be amended per amounts as indicated in Exhibit B, or as adjusted should project circumstances materially differ at such time.

**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 B103™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this agreement.)*

.3

*(Paragraphs deleted)*

Other documents:

*(List other documents, if any, forming part of the Agreement.)*

AIA Document A201-2017, General Conditions of the Contract for Construction

AIA Document C106-2013, Digital Data Licensing Agreement

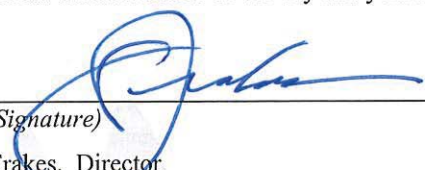
Exhibit A - DLR Group Hourly Billing Rates

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User Notes:


(1094870898)

Exhibit B – Fee Proposal dated September 13, 2021

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

  
OWNER (Signature)

Scott R. Frakes, Director  
(Printed name and title)

  
ARCHITECT (Signature)

O.H. Martin Berglund, Vice President  
(Printed name, title, and license number, if required)

Init.



# Additions and Deletions Report for AIA® Document B103™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:01:10 ET on 09/24/2021.

## PAGE 1

AGREEMENT made as of the 24th day of September in the year 2021

...

Nebraska Department of Correctional Services (NDCS)  
801 West Folsom, Building 1  
Lincoln, NE 68522  
Telephone Number: 402-471-2654

...

DLR Group, inc (a Nebraska Corporation)  
6457 Frances Street, Suite 200  
Omaha, NE 68106  
Telephone Number: 402-393-4100

...

### New Multi-Custody Correctional Facility

A site for the Project has not yet been identified, and assistance with site selection and procurement is part of the scope of services included with this Project.

The site required for the proposed facility should be approximately 160 acres, but not less than 100 acres. The site should be large enough to accommodate buffer zone areas between the property line and secure perimeter which could range between 300-600 feet. It should also be large enough to provide for future construction associated with a state correctional facility.

The proposed correctional facility will be a multi-custody classification facility, with minimum (3X), medium (2X), and maximum (1X) security classifications, organized in a campus configuration. The minimum-security compound will be located outside a double fenced secure perimeter and surrounded by a single line security fence.

The proposed design capacity of the multi-custody facility is 1,512 beds and will house an all-male adult population. The facility will be composed of a main compound for maximum/medium-security, enclosed by a secure perimeter fence and detection system, and a minimum-security compound located immediately adjacent to the main compound, and enclosed by a single security fence.

Minimum-security capacity is 600 beds and consists of a semi-autonomous compound located immediately adjacent to the maximum/medium security compound. Housing for the minimum-security facility will consist of three (3) housing units, each with a capacity of 200 beds. These housing units will contain both 2-person and 4-person rooms, and open dormitories.

The maximum/medium facility will have a capacity of 912 beds and consist of two (2) housing units for maximum-security inmates and two (2) housing units for medium-security. The maximum-security housing units will be all cells, with a mix of 40 single and 80 double occupancy cells. Each maximum-security housing unit will contain

200 beds but will be capable of accommodating up to 240 beds if all cells were double occupancy. The medium-security housing units will be all cells, each will be double occupancy. Each medium-security housing unit will contain 256 beds.

In addition to the inmate housing, the new facility will contain all the necessary support and inmate services, such as the following:

- Outside Administration
- Inside Administration
- Food Service and Laundry
- Recreation
- Education and Vocational Classrooms
- Medical, Mental Health, and Dental Services
- Religious Programs
- Visitation
- Central Warehouse
- Central Maintenance
- Correctional Industries (Cornhusker State Industries)
- Central Energy Plant

PAGE 3

The program for the project will be based on information contained in the Program Statement, dated April 9, 2021, as prepared by DLR Group. The Architect will verify and reconcile information contained in the Program Statement and prepare a reconciled Architectural Space Program to serve as basis for the Project.

...

Site and building design for a New 1,512-bed Multi-Custody Correctional Facility at a yet to be determined site. Per the program referenced in section 1.1.1, it is anticipated that total building area will encompass approximately 503,963 GSF.

Building functions are anticipated to be dispersed over multiple buildings organized in a campus-style layout, and are to include the following:

- Outside Administration
- Inside Administration
- High-security Housing (1X)
- Medium Security Housing (2X)
- Minimum Security Housing (3X)
- Food Service and Laundry
- Recreation
- Education and Vocational Classrooms
- Medical, Mental Health, and Dental Services
- Religious Programs
- Visitation
- Central Warehouse
- Central Maintenance
- Correctional Industries (Cornhusker State Industries)
- Central Energy Plant

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The Owner's total project budget is Two Hundred Thirty Five Million Seven Hundred Eleven Thousand Dollars \$235,711,000 as identified in the Program Statement and the RFP solicitation dated June 2, 2021. This is distributed as follows:

1. Construction (site and buildings):	\$182,808,000
2. FF&E:	\$4,953,000
3. Contingencies:	\$9,388,000
4. Inflation:	\$16,898,000
5. Professional Fees:	\$18,664,000
6. Site Acquisition Allowance:	\$3,000,000



The project is, at the time of this Contract, only funded through the completion of Construction Documents, including site selection. If authorization is given, and funding appropriated, by the State Legislature to proceed with construction, then this Contract will be amended to incorporate the appropriate Architect services at such time.

...

<u>Design Start:</u>	<u>October 1, 2021</u>
<u>Program Reconciliation and Conceptual Design:</u>	<u>November 12, 2021</u>
<u>Schematic Design:</u>	<u>March 4, 2022</u>
<u>Design Development:</u>	<u>July 22, 2022</u>
<u>Construction Documents:</u>	<u>December 23, 2022</u>
<u>Bidding &amp; Negotiations:</u>	<u>April 14, 2023 (pending project funding)</u>

...

Construction Start: April 2023 (pending project funding)

...

September 2025

...

Final Completion and Owner Occupancy: October 2025

...

Competitive Bid  
**PAGE 5**

Multiple bid packages may include:

1. Site Rough-grading and Surcharge package
2. General Construction package

...

None

...

Rodney Anderson and/or Nathan Bornemeier  
801 West Folsom, Building #1  
Lincoln, NE 68522  
P: 402-479-5778 or 402-479-5861

...

State Building Division

...

- .1 Cost Consultant:  
None
- .2 Scheduling Consultant:

...

To Be Determined

.4 Civil Engineer:

...

Surveyor, if required

...

Martin Berglund  
6457 Frances Street, Suite 200  
Omaha, NE 68106  
P: 402-972-4042  
E: MBerglund@DLRGroup.com  
**PAGE 6**

Davis Design Inc.  
1221 N Street, #600  
Lincoln, NE 68508  
Telephone Number: 402-476-9700

...

Davis Design Inc.  
1221 N Street, #600  
Lincoln, NE 68508  
Telephone Number: 402-476-9700

...

Davis Design Inc.  
1221 N Street, #600  
Lincoln, NE 68508  
Telephone Number: 402-476-9700

.4 Code Consultant:  
Woden

555 W 5th Street, 35th Floor  
Los Angeles, CA 90013  
Telephone Number: 714-330-2181

.5 Security Electronics Consultant:

LattaTech  
500 N Central Expressway, Suite 310  
Plano, TX 75074



Telephone Number: 972-633-5850

**.6 Security Hardware Consultant**

R&N Systems Design

615 Oakleaf Office Lane

Memphis, TN 38117

Telephone Number: 901-309-0115

**.7 Food Service Consultant**

Halliday Associates, Inc

656 NW Norwood Street

Camas, WA 98607

Telephone Number: 360-834-6657

**.8 Cost Estimator:**

Parametrix

7186 Highland Drive

Salt Lake City, UT 84121

Telephone Number: 801-733-5900

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**.1 Real Estate Advisory Services**

CBRE

11213 Davenport Street, Suite 300

Omaha, NE 68154

Telephone Number: 402-697-5808

**.2 Site Evaluation Services**

Olsson

601 P St #200

Lincoln, NE 68508

Telephone Number: 402-474-6311

### .3 Public Outreach and Communications Consulting Services

Olsson

601 P St #200

Lincoln, NE 68508

Telephone Number: 402-474-6311

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None

...

§ 2.5.1 Commercial General Liability with policy limits of not less than ~~(\$ ) One Million Dollars (\$1,000,000)~~ for each occurrence and ~~(\$ ) Two Million Dollars (\$2,000,000)~~ in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than ~~(\$ ) per accident~~ One Million Dollars (\$ 1,000,000 ) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.) each accident, One Million Dollars (\$ 1,000,000.) each employee, and One Million Dollars (\$ 1,000,000.) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ~~(\$ ) per claim and (\$ ) in the aggregate~~ Two Million Dollars (\$ 2,000,000 ) per claim and in the aggregate. Coverage shall be maintained for the term of services under this Agreement. If Owner chooses to acquire a project specific policy of professional liability insurance for the Project, then Owner and Architect must agree on the limits of coverage, parties covered, deductible required and length of the policy period after substantial completion of the services.

...

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project and the Consultant's scope of work, as determined by the Architect.

...

§ 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~~ civil, structural, mechanical, and electrical engineering services, program reconciliation, security systems design, and low voltage engineering. Services not set forth in this Article 3 are Supplemental or Additional Services.

...

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Owner ~~and the Scheduling Consultant's~~ 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 performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the ~~Owner and Scheduling Consultant,~~ Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the



Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Scheduling Consultant and participate in developing and revising the Project schedule as it relates to the Architect's services.

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§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Schematic Design Documents, 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 in accordance with Sections 6.1.1 through 6.1.4.4.

~~§ 3.2.7 Upon receipt of the Cost Consultant's 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.~~

...

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Design Development Documents, request the Owner's approval of the Design Development Documents. If revisions to the Design Development Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase, the Architect shall incorporate the required revisions in the Construction Document Phase in accordance with Sections 6.1.1 through 6.1.4.4.

~~§ 3.3.3 Upon receipt of the Cost Consultant's 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.~~

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§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Construction Documents, request the Owner's approval of the Construction Documents. If revisions to the Construction Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase, the Architect shall incorporate the required revisions in the Construction Document Phase in accordance with Sections 6.1.1 through 6.1.4.4.

~~§ 3.4.5 Upon receipt of the Cost Consultant's 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 Procurement Phase Services

### § 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.



### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by:

- .1 — facilitating the distribution of Bidding Documents to prospective bidders;
- .2 — organizing and conducting a pre-bid conference for prospective bidders;
- .3 — preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 — organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§ 3.5.3 Negotiated Proposals**

**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:

- .1 — facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 — organizing and participating in selection interviews with prospective contractors;
- .3 — preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

**§ 3.5.3.3** If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### **§ 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 Contractor as set forth below and in AIA Document A201™ 2017, General Conditions of the Contract for Construction. If the Owner and Contractor 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.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner 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 Contractor'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 Contractor or of any other persons or entities performing portions of the Work.

**§ 3.6.1.3** Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### **§ 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 (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, 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 Contractor, 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 Contractor. 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 Contractor, shall not show partiality to either, 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** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor 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 Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor 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 Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 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 Contractor'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 Contractor'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 Contractor'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 Contractor 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 Contractor'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.

**§ 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. 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 Contractor 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.

**§ 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 Contractor; 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 to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**§ 3.6.6.3** When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, 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 the following information received from the Contractor: (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 Contractor under the Contract Documents.



~~§ 3.6.6.5~~ Upon request of the Owner, and prior to the expiration of one 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.

...

§ 4.1.1.1	Programming (B202)	<u>Architect</u>
§ 4.1.1.2	Multiple preliminary designs	<u>Not Provided</u>
§ 4.1.1.3	Measured drawings	<u>Not Provided</u>
§ 4.1.1.4	Existing facilities surveys	<u>Not Provided</u>
§ 4.1.1.5	Site evaluation and planning (B203)	<u>Architect</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.8	Civil engineering	<u>Architect</u>
§ 4.1.1.9	Landscape design	<u>Architect</u>
§ 4.1.1.10	Architectural interior design (B252)	<u>Architect</u>
§ 4.1.1.11	Value analysis (B204)	<u>Not Provided</u>
§ 4.1.1.12	Cost estimating	<u>Architect</u>
§ 4.1.1.13	On-site project representation (B207)	<u>Not Provided</u>
§ 4.1.1.14	Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.15	As-designed record drawings	<u>Not Provided</u>
§ 4.1.1.16	As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.17	Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.18	Facility support services (B210)	<u>Not Provided</u>
§ 4.1.1.19	Tenant-related services	<u>Not Provided</u>
§ 4.1.1.20	Architect's coordination of the Owner's consultants	<u>Not Provided</u>
§ 4.1.1.21	Telecommunications/data design	<u>Architect</u>
§ 4.1.1.22	Security evaluation and planning (B206)	<u>Not Provided</u>
§ 4.1.1.23	Commissioning (C203)	<u>Not Provided</u>
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3 (E204)	<u>Not Provided</u>
§ 4.1.1.25	Fast-track design services	<u>Not Provided</u>
§ 4.1.1.26	Multiple bid packages	<u>Not Provided</u>
<del>§ 4.1.1.25</del> § 4.1.1.27	Historic preservation (B205)	<u>Not Provided</u>
<del>§ 4.1.1.26</del> § 4.1.1.28	Furniture, furnishings, and equipment design (FF&E) (B253)	<u>Architect</u>
<del>§ 4.1.1.27</del> § 4.1.1.29	Other services provided by specialty Consultants	<u>Architect</u>
<del>§ 4.1.1.28</del> § 4.1.1.30	Other Supplemental Services	<u>Not Provided</u>
§ 4.1.1.31	LEED Certification (B214)	<u>Not Provided</u>

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*(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 (identified in parentheses above) that can be included as an exhibit to describe the Architect's Supplemental Services.)*

**Programming.** The Architect will conduct a reconciliation of the existing Program Statement dated April 9, 2021.

**Site evaluation and planning.** Architect will perform cursory site analysis of up to thirty (30) properties for consideration. Architect will then perform more detailed site evaluations on up to six (6) potential sites. This will include review of zoning implications, initial floodplain review, review any wetland implications, preliminary traffic issues, regulatory records review, summarize utility availability and capacities.

Upon Owner selecting a final property for consideration, the Architect will perform exploratory geotechnical investigations, complete a Phase 1 ESA, Traffic Analysis, and Wetland Delineation.

**Building information modeling (BIM).** The Architect will utilize BIM as its primary tool for generating construction documents. Architect shall have complete authority to determine the level of modeling required to convey design intent in the Construction Documents. Typically, this will include generating BIM models to a Level of Development (LOD) 300, but at the discretion of the Architect, the LOD may deviate from this. BIM modeling will be executed according to the standards, procedures and nomenclature of the Architect. Specifically excluded are modifications to BIM models of the Architect or Architect's consultants for the purpose of conforming to standards of others, including the Owner and Contractor.

**Civil engineering.** The Architect will provide Civil engineering services as required to include the site area of the Project to include on-site utilities sizing and routing, design of parking, drives and walks, site grading and retaining wall design, storm water protection planning. This specifically excludes Civil engineering services associated with any off-site utilities, streets, roadways or traffic signals. Also excluded is Environmental engineering services.

**Landscape design.** The Architect will design and specify softscape and hardscape elements located on the project site and coordinate with Civil engineer

**Architectural interior design.** The Architect will provide interior design services to include color and material selections and coordinate these with other design services as provided by the Architect. Preliminary color and material selections will be provided and presented to the Owner for approval prior to being incorporated into construction documents.

**Cost estimating.** The Architect will retain the services of a professional cost estimator for the purpose of preparing a detailed estimate of probable construction cost.

**Telecommunications/data design.** The Architect will retain the services of a professional telecommunications/data designer. Systems included under this scope include telephone/data infrastructure/distribution systems within the confines of the Project and connection to existing system. These systems will be coordinated with any existing systems or standards as provided by the Owner. Specifically excluded is the design or specification of end-user equipment including, but not limited to telephone handsets, computer terminals, servers, printers/copiers, displays and monitors, and time-keeping equipment.

**Furniture, furnishings, and equipment design (FF&E).** Architect will prepare matrix to identify FF&E for the Project.

**Other services provided by Specialty Consultants.**

1. Real Estate Advisory Services. Architect will identify and provide cursory evaluations of up to thirty (30) potential sites in a variety of communities in the Omaha-Lincoln vicinity. Architect will assist Owner with negotiations pertaining to purchase of land options (up to six (6)), and final purchase of property.

1. Assist in the development of a formal site selection process.

2. Assist the Owner in preparing all documents needed to purchase agricultural land. (purchase agreement, survey, title search, appraisal, etc).



3. Evaluate sites based on the final site selection criteria and evaluation matrix. This evaluation shall include the engineering analysis, (civil, mechanical, electrical, etc), economic analysis.
  4. Provide in-depth analysis of site proposals including, but not limited to, engineering reviews of soil conditions, contamination, and municipal infrastructure capacities (i.e., water, sewer, electric, natural gas, roadways, etc.) to ensure these systems are capable of handling the facilities initial population and projected growth.
  5. Provide site development cost estimates and other estimates relating to the site selection process.
  6. Visit all proposed viable sites.
2. Public Outreach and Communication Services to include development of public outreach plan, participation in, and assistance with preparation for, up to ten (10) public meetings during site evaluation process, and one (1) public open house meeting relative to the final site selected. Available to support Owner with communications support, including website and social media content, media releases, and stakeholder outreach, up until date of property closing.
1. Assist the Owner in coordinating and conducting open public hearings.
  2. Development of educational materials for public involvement including media releases and formal presentations.

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Not applicable

~~§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.~~

...

- ~~.9 Evaluation of the qualifications of entities providing bids or proposals;~~
- ~~.10 Consultation concerning replacement of Work resulting from fire or other cause during construction;~~  
~~or,~~
- ~~.11 Assistance to the Initial Decision Maker, if other than the Architect.~~
- ~~.10 Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;~~

~~§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify 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 Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
- ~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor'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 Contractor 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:~~



- ~~1.1 ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- ~~1.2 ( ) visits to the site by the Architect during construction~~
- ~~1.3 ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~1.4 ( ) 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 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 Contractor, 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 Fifty-four ( 54 ) 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.~~

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~~§ 5.2 The Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.~~

~~§ 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. The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. completion If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.~~

...

~~§ 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 Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement.~~

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~~§ 6.2 The Owner's budget for the Cost of the Work is provided in 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 Cost Consultant 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 Cost Consultant 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 Cost Consultant's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Cost Consultant'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.~~

~~§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant'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 Cost Consultant, 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 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 9.5;~~
- ~~.3 in consultation with the Architect, 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, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~

§ 6.1.1 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect agrees that, if the lowest bona fide bid or negotiated price for the Cost of the Work exceeded the Architect's current, Owner-approved estimate of the Cost of the Work, the Owner may elect to require the Architect to perform, as an Additional Service, the services necessary to revise the scope and quality of the Project to indicate a design that is approved by the Owner and that conforms to the Owner approved estimate. If, however, such services are necessitated by the Architect's negligence in the preparation of its estimate, then such services shall be provided at no additional cost to the Owner. The Owner may exercise any of the other options listed in Section 6.1.4.

§ 6.1.2 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project, and; to include in the Contract Documents bid alternates as may be necessary to adjust the Cost of the Work to meet the Owner's approved estimate of the budget for the Cost of the Work.

§ 6.1.3 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry as set by the Engineering News-Record, 20-City Average Cost Price Index for Construction Cost® in the locality nearest to the Project.

§ 6.1.4 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5; or
- .4 cooperate with the Architect in revising the Project scope and quality as required to reduce the Cost of the Work provided for under Section 6.1.1.

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~~§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of~~



the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## § 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 binding dispute resolution. 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 by binding dispute resolution.

§ 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, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. 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 or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) 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 thereof.

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

*(Check the appropriate box.)*

☐ — Arbitration pursuant to Section 8.3 of this Agreement

☐ — Litigation in a court of competent jurisdiction

☐ — Other: *(Specify)*

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

## § 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations



purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

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

§ 8.1.5 Design Contingency Reserve. The Standard of Care requires the Architect perform its services consistent with the professional skill and care provide by architects practicing in the same or similar locality under the same or similar circumstances. The Standard of Care does not require perfection, and the Architect does not guarantee or warrant perfection. The Architect is only liable for the failure to perform in accordance with the Standard of Care. Some errors and omissions may occur without a breach of the Standard of Care, and the Architect is not responsible for errors or omissions that do not constitute a breach of the Standard of Care. The Owner shall establish a design contingency reserve in an amount equal to three percent (3%) of the Cost of the Work and shall neither have nor make any claim for breach of the Standard of Care to the extent that the cumulative total of errors and omissions constituting a breach of the Standard of Care do not exceed that design contingency reserve.

8.1.6 Betterment. In no event shall the Architect be liable to the extent that damages constitute first costs or betterment. First costs or betterment are costs that the Owner would have incurred if an error or omission had not been made. Betterment also results to the extent that errors or omissions are remedied with a more expensive alternative design, higher quality materials, or with repairs that increase useful life.

§ 8.1.8 Limitation of Liability. The Architect's cumulative total liability for claims arising from or relating to this Agreement shall not exceed one million dollars (\$1,000,000).

§ 8.1.9 Direct Negotiation. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a written request to seek to resolve such through direct negotiation at a meeting of the senior management of the Owner and the Architect. The parties shall endeavor to schedule a meeting within two weeks of such request. Direct Negotiation will be the initial process in dispute resolution.

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None

...



The Architect will provide the Owner a copy of the Architect's Instruments of Service upon receipt of a release of liability if used by others. The Owner agrees to only use the Architect's Instruments of Service for the completion of the Project and not for any other current or future projects, in whole or in part. The Architect's Instruments of Service specifically exclude the BIM model, which will not be released.

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3, State of Nebraska.

...

§ 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. 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 9.4.

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§ 10.10 Sexual contact/abuse of an inmate. Architect shall make its employees aware of the provisions of Neb. Rev. Stat. § 28-322.01, which states that a person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact, because an inmate or parolee is not legally capable of giving consent to any such relationship. Neb. Rev. Stat. § 28-322 states that individuals "working under contract with the department," are included in the list of persons prohibited from having sexual relations with an NDCS inmate. Architect will promptly notify NDCS if allegations of sexual abuse or contact become known to the Architect.

§ 10.11 Work eligibility. Architect is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of any newly hired employee.

§ 10.12 Drug-free workplace. The Architect shall comply with the Governor's Drug-Free Workplace Policy.

§ 10.13 Tobacco policy. The Tobacco Policy prohibits the use of tobacco-related products in or on any Department of Correctional Services' owned, leased or controlled property. This policy also prohibits the possession of tobacco or tobacco-related products on the Department of Correctional Services' owned, leased or controlled property except that these products may be secured in personal vehicles on said property. This policy applies to all staff, inmates and contractors.

...

.2 — Percentage Basis  
— (Insert percentage value)

— ( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.



~~3~~ Other  
(Describe the method of compensation)

Thirteen Million Six-Hundred Thirteen Thousand Nine-Hundred Seventy-One dollars (\$13,613,971.00). See Exhibit B for distribution.

§ 11.2 For the Architect's Supplemental 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:

...

Compensation for services designated in Section 4.1.1, is included in the Architect's compensation for Basic Services per Section 11.1.1.

(Describe whether Supplemental Services are to be included in the compensation for the Architect's Basic Services, or is based on a stipulated sum, percentage basis, or hourly billing rates per § 11.7.)

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Either as negotiated stipulated sum or hourly per Section 11.7 at the Architect's discretion.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent (— %), Ten percent (10%),~~ or as follows:

...

§ 11.5 When compensation for Basic Services is based on a stipulated ~~sum or a percentage basis,~~ sum, the proportion of compensation for each phase of services shall be approximately as follows:

<u>Site Selection and Evaluation Services</u>				
<u>Program Reconciliation and</u>	<u>five</u>	<u>percent (</u>	<u>5</u>	<u>%)</u>
<u>Conceptual Design Phase</u>	<u>six</u>	<u>percent (</u>	<u>6</u>	<u>%)</u>
Schematic Design Phase	<u>twenty</u>	percent (	<u>20</u>	%)
Design Development Phase	<u>thirty-two</u>	percent (	<u>32</u>	%)
Construction Documents Phase	<u>thirty-seven</u>	percent (	<u>37</u>	%)
<del>Procurement Bidding and Negotiations</del>	<u>zero</u>	percent (	<u>0</u>	%)
Phase				
Construction Phase	<u>zero</u>	percent (	<u>0</u>	%)
Close-out Phase	<u>zero</u>	percent (	<u>0</u>	%)

...

~~§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.~~

~~§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~

...

See attached Exhibit A – DLR Group Hourly Billing Rates

Employee or Category

Rate (\$0.00)

...

- ~~.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;~~
- ~~.4 Printing, reproductions, plots, and standard form documents; documents used for the bidding process and for seeking approval of authorities having jurisdiction over the Project;~~
- ~~.5 Postage, handling, and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; delivery of documents used for the bidding process and for seeking approval of authorities having jurisdiction over the Project;~~
- ~~.7 Renderings, physical models, mock-ups, professional photography, and presentation materials specifically 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,~~

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent ( 0 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 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 2.5, and for which the Owner shall reimburse the Architect.)*

...

§ 11.10.1.1 An initial payment of Zero (\$ 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.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ — ) 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.

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation Forty-Five (45) days from the date of receipt of the Architect's invoice. Amounts unpaid forty-five ( 45 ) days after receipt of the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.



...

1 % one percent monthly

...

Both parties recognize that this project is only authorized and funded through the completion of the Construction Document phase. In the event that subsequent phase(s) are authorized by the funding authority, this agreement shall be amended per amounts as indicated in Exhibit B, or as adjusted should project circumstances materially differ at such time.

...

**.3 Exhibits:**

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

☐ ~~— AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204 2017 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.)~~

**.4 Other documents:**

*(List other documents, if any, forming part of the Agreement.)*

AIA Document A201-2017, General Conditions of the Contract for Construction  
AIA Document C106-2013, Digital Data Licensing Agreement  
Exhibit A - DLR Group Hourly Billing Rates  
Exhibit B – Fee Proposal dated September 13, 2021

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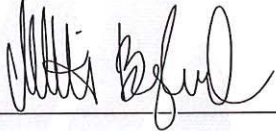
Scott R. Frakes, Director

O.H. Martin Berglund, Vice President

## ***Certification of Document's Authenticity***

**AIA® Document D401™ – 2003**

I, O.H. Martin Berglund, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:01:10 ET on 09/24/2021 under Order No. 1199539277 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B103™ – 2017, Standard Form of Agreement Between Owner and Architect for a Complex Project, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



*(Signed)*

Vice President

*(Title)*

September 24, 2021

*(Dated)*



**Exhibit 'A'**  
**Hourly Rates**

All rates below are subject to adjustment on October 1 every year.

**1. Prime Architect, Civil Engineer – DLR Group**

Senior Expert	\$350
Expert	\$300
Practice Leader	\$265
Project Leader	\$235
Senior Professional	\$205
Professional II	\$175
Professional	\$145
Professional Support	\$115
Technical/Clerical	\$90

**2. M/E/P, Structural Engineer – Davis Design**

Principal, Project Manager	\$220
Senior Engineer	\$170
Engineer	\$145
Engineering Designer	\$135
Senior Construction Administrator	\$162
Construction Administrator	\$145
Administrative	\$75

**3. Code Consulting – Woden**

Principal	\$300
Vice President	\$285
Director	\$245
Senior Associate	\$210
Associate	\$185
Project Consultant	\$160

**4. Electronic Security Systems – LattaTech**

Project Manager	\$205
Senior Systems Designer	\$180
Systems Designer	\$155
Construction Administrator	\$130

**5. Security Systems, Fire Alarm – R&N Systems Design**

Principal	\$270
Senior Security Specialist	\$195
Security Specialist	\$160
Technical Support	\$110
Clerical	\$60

**6. Food Service Design – Halliday**

Design Professional	\$150
Clerical/Support	\$70

**7. Cost Estimating – Parametrix**

Principal Estimator	\$175
Estimator	\$130
Clerical/Support	\$60

**8. Real Estate Advisory – CBRE**

Real Estate Professional	\$350
Clerical/Support	\$90

**9. Site Evaluation and Communications – Olsson**

Regional/Practice Leader	\$274
Market Sector Leader	\$274
Office Leader	\$228
Senior Project Manager	\$228
Client Relations Manager / Industry Expert	\$228
Industry Expert	\$228
Program Leader	\$199
Business Development Leader/Sr Specialist	\$199
Team Leader	\$196



Technical Leader	\$178
Senior Engineer	\$169
Project Engineer	\$138
Associate Engineer	\$116
Assistant Engineer	\$98
Senior Scientist	\$150
Project Scientist	\$117
Associate Scientist	\$98
Assistant Scientist	\$80
Senior Planner	\$150
Project Planner	\$117
Associate Planner	\$99
Assistant Planner	\$80
Senior Landscape Architect	\$153
Project Landscape Architect	\$122
Associate Landscape Architect	\$102
Assistant Landscape Architect	\$83
Stormwater Compliance/SWPP Manager	\$157
Database Manager	\$148
CAD Manager	\$153
BIM Manager	\$153
Civil 3D Trainer	\$153
GIS Specialist	\$122
Systems Specialist	\$119
Senior Architect	\$157
Project Architect	\$128
Associate Architect	\$105
Assistant Architect	\$86
Senior Construction Manager	\$159
Project Construction Manager	\$128
Associate Construction Manager	\$107
Assistant Construction Manager	\$88
Design Manager	\$136
Design Technical Manager	\$136

## Exhibit 'B'

Nebraska DCS - New Multi-Custody Correctional Facility  
DLR Group: Fee Proposal  
September 13, 2021

Comprehensive A/E Services	Amount	Estimated Duration	Notes
Program Reconciliation and Conceptual Design	\$ 756,517	6 wks	
Schematic Design	\$ 2,689,881	16 wks	
Design Development	\$ 4,370,359	20 wks	
Construction Documents	\$ 5,040,952	22 wks	
Bidding & Negotiations	\$ -	16 wks	\$526,168 pending funding
Construction Administration (Basic)	\$ -	130 wks	\$3,158,204 pending funding
			\$452,387 pending funding;
Close-out/Record Documents	\$ -	10 wks	incl. 11 month Warranty Walk
<b>Sub-Total</b>	<b>\$ 12,857,709</b>	220 wks	\$4,136,759 additional for BN and CA phases pending funding
<b>Enhanced A/E Services</b>			
Construction Administration (Enhanced)	\$ -		\$489,402 pending funding; Davis Design
Geotechnical Investigation	\$ -		Contracted and managed by NDCS
Survey	\$ -		Contracted and managed by NDCS
Special Inspections	\$ -		Contracted and managed by NDCS
Real Estate Advisory Services	\$ 434,600		Up to 30 initial and 6 final sites - CBRE
Site Evaluation Services	\$ 151,983		Up to 30 initial and 6 final sites - Olsson
Public Outreach associated with Site Selection	\$ 57,903		Olsson
<b>Sub-Total</b>	<b>\$ 644,485</b>		\$489,402 additional for BN and CA phases pending funding
<b>Total Labor</b>	<b>\$ 13,502,194</b>		\$4,626,161 additional for BN and CA phases pending funding
<b>Expenses</b>			
Travel	\$ 93,757		\$136,006 for Bidding & Construction phases pending funding
			Bid documents printing not included;
Printing	\$ 5,830		\$6,360 for Bidding & Construction phases pending funding
Renderings & Models	\$ 10,600		
Shipping & Postage	\$ 1,590		
<b>Sub-Total</b>	<b>\$ 111,777</b>		\$142,366 additional for BN and CA phases pending funding
<b>Grand Total Labor + Expenses</b>	<b>\$ 13,613,971</b>		\$4,768,528 additional for BN and CA phases pending funding



# **AIA** Document C106™ – 2013

## **Digital Data Licensing Agreement**

**AGREEMENT** made as of the 24th day of September in the year 2021  
(In words, indicate day, month and year.)

**BETWEEN** the Party transmitting Digital Data ("Transmitting Party"):  
(Name, address and contact information, including electronic addresses)

DLR Group, inc (a Nebraska Corporation)  
6457 Frances Street, Suite 200  
Omaha, NE 68106  
Telephone Number: 402-393-4100

and the Party receiving the Digital Data ("Receiving Party"):  
(Name, address and contact information, including electronic addresses)

for the following Project:  
(Name and location or address)

Nebraska Department of Correctional Services (NDCS)  
New Multi-Custody Correctional Facility  
A site for the Project has not yet been identified.  
DLR Group Project No.: 10-21108-00

The Transmitting Party and Receiving Party agree as follows.

### **TABLE OF ARTICLES**

- |          |  |
|----------|--|
| <b>1</b> | <b>GENERAL PROVISIONS</b>                  |
| <b>2</b> | <b>TRANSMISSION OF DIGITAL DATA</b>        |
| <b>3</b> | <b>LICENSE CONDITIONS</b>                  |
| <b>4</b> | <b>LICENSING FEE OR OTHER COMPENSATION</b> |
| <b>5</b> | <b>DIGITAL DATA</b>                        |

### **ARTICLE 1 GENERAL PROVISIONS**

§ 1.1 The purpose of this Agreement is to grant a license from the Transmitting Party to the Receiving Party for the Receiving Party's use of Digital Data on the Project, and to set forth the license terms.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

§ 1.2 This Agreement is the entire and integrated agreement between the parties. Except as specifically set forth herein, this Agreement does not create any other contractual relationship between the parties.

§ 1.3 For purposes of this Agreement, the term Digital Data is defined to include only those items identified in Article 5 below.

§ 1.3.1 Confidential Digital Data is defined as Digital Data containing confidential or business proprietary information that the Transmitting Party designates and clearly marks as "confidential."

## ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The Transmitting Party grants to the Receiving Party a nonexclusive limited license to use the Digital Data identified in Article 5 solely and exclusively to perform services for, or construction of, the Project in accordance with the terms and conditions set forth in this Agreement.

§ 2.2 The transmission of Digital Data constitutes a warranty by the Transmitting Party to the Receiving Party that the Transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data to the Receiving Party for its use on the Project in accordance with the terms and conditions of this Agreement.

§ 2.3 If the Transmitting Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Receiving Party that the Transmitting Party is authorized to transmit the Confidential Digital Data. If the Receiving Party receives Confidential Digital Data, the Receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.3.1.

§ 2.3.1 The Receiving Party may disclose the Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Receiving Party may also disclose the Confidential Digital Data 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 Confidential Digital Data as set forth in this Agreement.

§ 2.4 The Transmitting Party retains its rights in the Digital Data. By transmitting the Digital Data, the Transmitting Party does not grant to the Receiving Party an assignment of those rights; nor does the Transmitting Party convey to the Receiving Party any right in the software used to generate the Digital Data.

§ 2.5 To the fullest extent permitted by law, the Receiving Party shall indemnify and defend the Transmitting Party from and against all claims arising from or related to the Receiving Party's modification to, or unlicensed use of, the Digital Data.

## ARTICLE 3 LICENSE CONDITIONS

The parties agree to the following conditions on the limited license granted in Section 2.1:

*(State below rights or restrictions applicable to the Receiving Party's use of the Digital Data, requirements for data format, transmission method or other conditions on data to be transmitted.)*

Architect-Engineer of Record (AER) makes no representation as to the compatibility of the Computer Aided Drafting/Building Information Model (CAD/BIM) files with any hardware or software.

AER makes no representation regarding the accuracy, completeness, or permanence of CAD/BIM files, nor for their merchantability or fitness for a particular purpose. Addenda information or revisions made after the date indicated on the CAD/BIM files may not have been incorporated. In the event of a conflict between the AER's sealed Contract Drawings and CAD/BIM files, the sealed Contract Drawings shall govern. It is the Owner, Contractor, or Third Party's (OCT) responsibility to determine if any conflicts exist. The CAD/BIM files shall not be considered to be Contract Documents as defined by the General Conditions of the Contract for Construction.

The use of CAD/BIM files prepared by the AER shall not in any way obviate the OCT's responsibility for the proper checking and coordination of dimensions, details, member sizes and gage, and quantities of materials as required to facilitate complete and accurate fabrication and erection.

Init.



This Agreement shall be governed by the laws of the State of Nebraska.

#### ARTICLE 4 LICENSING FEE OR OTHER COMPENSATION

§ 4.1 There is no charge to the Owner receiving Architect-Engineer generated Digital Data for its internal facility management use.

The Transmitting Party agrees to send the Digital Data upon receipt of the fee or other compensation as indicated in Specification Section 013333, Electronic Drawings, for the Receiving Party's use of the Digital :

*(State the fee, in dollars, or other method by which the Receiving Party will compensate the Transmitting Party for the Receiving Party's use of the Digital Data.)*

The Transmitting Party will provide the Digital Data, dated \_\_\_\_\_, for the following drawings:

_____	_____
_____	_____
_____	_____
_____	_____

Drawings were prepared on the following:

Computer Software: \_\_\_\_\_ / Version: \_\_\_\_\_.

#### ARTICLE 5 DIGITAL DATA

The Parties agree that the following items constitute the Digital Data subject to the license granted in Section 2.1: *(Identify below, in detail, the information created or stored in digital form the parties intend to be subject to this Agreement.)*

This Agreement is entered into as of the day and year first written above and will terminate upon Substantial Completion of the Project, as that term is defined in AIA Document A201™–2007, General Conditions of the Contract for Construction, unless otherwise agreed by the parties and set forth below. *(Indicate when this Agreement will terminate, if other than the date of Substantial Completion.)*

\_\_\_\_\_  
TRANSMITTING PARTY (Signature)

\_\_\_\_\_  
RECEIVING PARTY (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

# Additions and Deletions Report for

AIA® Document C106™ – 2013

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:01:20 ET on 09/24/2021.

## PAGE 1

AGREEMENT made as of the 24th day of September in the year 2021

...

DLR Group, inc (a Nebraska Corporation)  
6457 Frances Street, Suite 200  
Omaha, NE 68106  
Telephone Number: 402-393-4100

...

Nebraska Department of Correctional Services (NDCS)  
New Multi-Custody Correctional Facility  
A site for the Project has not yet been identified.  
DLR Group Project No.: 10-21108-00

## PAGE 2

Architect-Engineer of Record (AER) makes no representation as to the compatibility of the Computer Aided Drafting/Building Information Model (CAD/BIM) files with any hardware or software.

AER makes no representation regarding the accuracy, completeness, or permanence of CAD/BIM files, nor for their merchantability or fitness for a particular purpose. Addenda information or revisions made after the date indicated on the CAD/BIM files may not have been incorporated. In the event of a conflict between the AER's sealed Contract Drawings and CAD/BIM files, the sealed Contract Drawings shall govern. It is the Owner, Contractor, or Third Party's (OCT) responsibility to determine if any conflicts exist. The CAD/BIM files shall not be considered to be Contract Documents as defined by the General Conditions of the Contract for Construction.

The use of CAD/BIM files prepared by the AER shall not in any way obviate the OCT's responsibility for the proper checking and coordination of dimensions, details, member sizes and gage, and quantities of materials as required to facilitate complete and accurate fabrication and erection.

This Agreement shall be governed by the laws of the State of Nebraska.

## PAGE 3

The Receiving Party agrees to pay the Transmitting Party the following fee or other compensation ~~§ 4.1 There is no charge to the Owner receiving Architect-Engineer generated Digital Data for its internal facility management use.~~

The Transmitting Party agrees to send the Digital Data upon receipt of the fee or other compensation as indicated in Specification Section 013333, Electronic Drawings, for the Receiving Party's use of the Digital Data:;

...



The Transmitting Party will provide the Digital Data, dated \_\_\_\_\_, for the following drawings:

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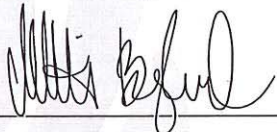
Drawings were prepared on the following:

Computer Software: \_\_\_\_\_ / Version: \_\_\_\_\_.

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:01:20 ET on 09/24/2021 under Order No. 1199539277 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C106™ – 2013, Digital Data Licensing Agreement, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Vice President

(Title)

September 24, 2021

(Dated)



# DRAFT AIA® Document E203™ – 2013

## Building Information Modeling and Digital Data Exhibit

This Exhibit dated the « » day of « » in the year « » is incorporated into the agreement (the "Agreement") between the Parties for the following Project:  
(Name and location or address of the Project)

«Nebraska Department of Correctional Services (NDCS)  
New Multi-Custody Correctional Facility»  
«A site for the Project has not yet been identified. »

### TABLE OF ARTICLES

- |   |  |
|---|--|
| 1 | GENERAL PROVISIONS                         |
| 2 | TRANSMISSION AND OWNERSHIP OF DIGITAL DATA |
| 3 | DIGITAL DATA PROTOCOLS                     |
| 4 | BUILDING INFORMATION MODELING PROTOCOLS    |
| 5 | OTHER TERMS AND CONDITIONS                 |

### ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

### § 1.3 Adjustments to the Agreement

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201–2013 and G202–2013, will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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 incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

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notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

« »

## **§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202-2013, Project Building Information Modeling Protocol Form.

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202-2013.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.



## ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data 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 Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 Anticipated Types of Digital Data. The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

Anticipated Digital Data	Applicability to the Project (Indicate Applicable or Not Applicable)	Location of Detailed Description (Section 3.1.1 below or in an attachment to this exhibit and identified below)
Project Agreements and Modifications		
Project communications		
Architect's pre-construction submittals		
Contract Documents		
Contractor's submittals		
Subcontractor's submittals		
Modifications		
Project payment documents		
Notices and claims		
Building Information Modeling		

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

« »



§ 3.2 As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§ 3.2.1 Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

« »

§ 3.2.2 The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

#### § 3.4 Unauthorized Use

##### § 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### § 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

#### § 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

☐ « » The Parties intend to use a centralized electronic document management system on the Project.

☐ « » The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*



Responsible Project Participant

Project Milestone

« »

#### ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

[ « » ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ « » ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

§ 4.2 **Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

Project Portion for Modeling

Responsible Project Participant

« »

§ 4.3 **Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in AIA Document G202-2013.

« »

§ 4.4 **Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202-2013, if any.

*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

« »

§ 4.5 **Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202-2013.

§ 4.5.1 The Modeling protocols shall address the following:

- .1 Identification of the Model Element Authors;
- .2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- .3 Identification of the required LOD of each Model Element at each identified Project milestone;
- .4 Identification of the construction classification systems to be used on the Project;
- .5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202-2013;
- .6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- .7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
- .8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- .9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

« »

§ 4.5.2 Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.  
(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)

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§ 4.5.3 The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.

§ 4.5.4 The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

§ 4.6 The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

#### § 4.7 Unauthorized Use

##### § 4.7.1 Prior to Establishment of Modeling Protocols

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### § 4.7.2 Following Establishment of Modeling Protocols

Following agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

#### § 4.8 Model Management

§ 4.8.1 The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

Responsible Project Participant

Project Milestone

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§ 4.8.2 Model Management Protocol Establishment. The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions
- .5 Processes for aggregating Model files from varying software platforms
- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: (Identify additional Model management protocols to be addressed.)

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§ 4.8.3 Ongoing Responsibilities. The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
  - .1 Coordinate submission and exchange of Models
  - .2 Create and maintain a log of Models received
  - .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
  - .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: *(Identify additional responsibilities.)*

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§ 4.8.4 Model Archives. The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

§ 4.8.4.1 Additional Model Archive requirements, if any, are as follows:

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§ 4.8.4.2 The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

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§ 4.9 Post-Construction Model. The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.  
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

Post-Construction Model	Applicability to Project (Applicable or Not Applicable)	Responsible Project Participant	Location of Detailed Description of Requirements and Services (Section 4.10 below or in an attachment to this exhibit and identified below)
§ 4.9.1 Remodeling			
§ 4.9.2 Wayfinding and Mapping			
§ 4.9.3 Asset/FF & E Management			
§ 4.9.4 Energy Management			
§ 4.9.5 Space Management			
§ 4.9.6 Maintenance Management			

§ 4.10 Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

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## ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

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