



**AGREEMENT BETWEEN  
THE DOUGLAS COUNTY SCHOOL DISTRICT 0001  
AND THE CONTRACTOR**

**Project Name:** \_\_\_\_\_  
**Contractor:** \_\_\_\_\_

## **AGREEMENT**

This Agreement between the Douglas County School District 0001, (hereinafter "OPS") and the Contractor, whose name and mailing address is:

(hereinafter "Contractor.")

### **Witnesseth**

For the consideration hereafter agreed to be paid by OPS, the Contractor covenants, contracts and agrees to perform the Work herein contracted to be done in a good and workmanlike manner and in strict conformity to the Contract Documents (as such term is hereinafter defined) on a certain Project hereinafter identified in general terms in Article 1 of this Agreement, and shall further perform all Terms and Conditions of the Contract Documents required to be performed by Contractor.

### **Article 1**

#### **Work**

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work in general is described as: \_\_\_\_\_ and as herein above and in the Contract Documents defined shall be referred to as "Work," "Construction," "Construction Project," or "Project."
- 1.2 The Contractor will perform all of the work required by the Contract Documents and, without limitation of the foregoing, will furnish all skill, labor, materials, plant, supplies, equipment, transportation, services, and other facilities and things necessary or proper for or incidental to the carrying out and completion of the terms of the Contract Documents and also all other items of cost or value which the Contractor may utilize in full performance of the public work identified by the Contract Documents, and shall fully perform all obligations to be performed by Contractor under the Contract Documents.
- 1.3 In performing the work required by the Contract Documents, Contractor will at all times perform such work in a manner consistent with OPS's goals and objectives for Economic Inclusion and Small and Disadvantaged Business (S/DBE) participation. See Article 11.8 for additional information regarding Economic Inclusion.

### **Article 2**

#### **Architect and Project Manager**

- 2.1 The Architect designated by OPS for the Project is:

- 2.2 The Program Manager, whose name is Jacobs Facilities, Inc. (hereinafter called "PM"), and whose mailing address is 4041 North 72nd Street, Omaha, Nebraska 68134-4470, will verify that the Contractor and Architect perform the work herein contracted to be done in a good and workmanlike manner and in strict conformity to the Contract Documents (as such term is hereinafter defined). The PM is to act as OPS's representative, assume all duties and responsibilities and have the rights and authority assigned to the PM in the Contract Documents in connection with verification of the performance and completion of the Work in accordance with the Contract Documents. The Board of Education of OPS (hereinafter "Board of Education") shall have the right, from time to time, at any time, in its sole and absolute discretion, to name a new, supplemental or additional Project Manager(s).

### **Article 3**

#### **Contract Documents**

- 3.1 The Contract Documents consist of this Agreement, the Performance Bond, the Payment Bond, OPS's Standard General Conditions of the Construction Contract, any Supplemental Conditions and Other Conditions, Drawings, (see attached Exhibit A), Specifications (see attached Exhibit B), all Addenda issued prior to the execution of this Agreement (listed as Exhibit C), Contractor's Bid Form (attached as Exhibit D) including Form A of the Bid Form (General Contractor's S/DBE Contact/Solicitation List), Form B of the Bid Form (Evidence of Good Faith Efforts Form) and all written Modifications, including Change Orders, issued and signed subsequent thereto, so long as the Change Order is executed in the manner authorized herein. In the event of conflict between Contractor's Bid Form and the remainder of the Contract Documents, Contractor's Bid Form shall control. In addition, the Contract Documents include the following additional documents:
- 3.2 The following documents which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto shall also be considered a part of the Contract Documents: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 1.11 and 3.4 of the General Conditions, including the Contractor's Economic Inclusion Plan. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 1.10, 3.4, 7.4, 7.5, and 16.1 of the Standard General Conditions of the Construction Contract.
- 3.3 All of the above-described documents form the Contract Documents and all are as fully a part of the Agreement as if attached to this Agreement or as if copied herein. This Agreement and the other Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, or both.

## Article 4

### Contract Time

- 4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed from OPS and, unless the time for performance of the Work is extended as allowed in the Contract Documents, Contractor shall achieve Substantial Completion of the Work by \_\_\_\_\_.
- 4.2 Time is of the essence. The Contractor shall achieve Final Completion, as defined in the Standard General Conditions of the Construction Contract, by the date established in the Contract Documents for the Final Completion of the Work. This time shall be designated the Contract Time.
- 4.3 The PPN Attachment E (Preliminary Provisional Network Schedule) below contains certain specific dates that shall be adhered to and are the last acceptable dates unless modified in writing by mutual agreement between the Contractor and OPS. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under 12.3 Delays, Extensions of Time and Liquidated Damages.
- 4.4 Should the contractor fail to substantially complete the Work on or before the dates stipulated as milestone dates in the Construction Documents (or such later dates as may result from extension of time granted by OPS), he shall pay the Owner, as liquidated damages, the sum of Two Hundred Fifty Dollars (\$250.00) for each consecutive calendar day that terms of the contract remain unfulfilled beyond the applicable date of the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from failure of the Contractor to complete such portions of the work on schedule is uncertain and cannot be computed exactly. In no way shall liquidated damages be construed as a penalty on the Contractor.
- 4.5 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), Contractor shall pay OPS, as liquidated damages, the sum of Five Hundred Dollars (\$500.00) for each consecutive calendar day that Substantial Completion of the Work is not achieved beyond the date allowed by the Agreement, which sum is agreed upon as a reasonable and proper measure of damages which OPS will sustain per day by failure of the Contractor to complete work within time as stipulated; it being recognized by OPS and the Contractor that the injury to OPS which could result from a failure of the Contractor to achieve Substantial Completion is uncertain and cannot be computed exactly. In no way shall liquidated damages be construed as a penalty on the Contractor.
- 4.6 If Substantial Completion of the Work is achieved, for each consecutive calendar day that Final Completion of the Work is not achieved after the date established for Final Completion, the Contractor shall pay OPS, as liquidated damages, the sum of Two

Hundred Fifty Dollars (\$250.00). This amount is the minimum measure of damages OPS will sustain by failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified, which sum is agreed upon as a reasonable and proper measure of damages which OPS will sustain per day by failure of the Contractor to complete such work within the time stipulated, it being recognized by the Owner and the Contractor that the injury to the Owner which could result from failure of the Contractor to achieve Final Completion is uncertain and cannot be computed exactly. At no time shall the total assessment of liquidated damages assessed against Contractor exceed Five Hundred Dollars (\$500.00) per calendar day.

**Article 5**

**Contract Price**

5.1 OPS shall pay Contractor for full performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, in accordance with the Agreement, in current funds, the Contract Price of \$\_\_\_\_\_, computed as follows:

Base Bid	\$ _____
Alternate (Add/Deduct)	\$ _____
Alternate (Add/Deduct)	\$ _____
Alternate (Add/Deduct)	\$ _____
Total Contract Price	\$ _____

and, as so adjusted by Change Orders, constitutes the maximum liability and obligation of OPS for monetary payments and costs for the work done under this Agreement.

5.2 Unit Prices for the Work are as follows:

**Article 6**

**Payment Procedures**

6.1 Contractor shall submit Applications for Payment in accordance with Article 13.2 of the Standard General Conditions of the Construction Contract. Applications for Payment shall be submitted by Contractor twice each month and shall cover the period following the last Application for Payment. Contractor shall also require subcontractors to submit applications for Payment twice a month to Contractor. Applications for Payment will be processed by the PM as provided below and in the General Conditions.

6.2 OPS shall make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment submitted to the Architect, and upon Certificates of Approval of Payment, signed by the Architect and recommended by the PM and

submitted to OPS by the PM. Payment of amounts due under the Application for Payment will be made by Owner, following approval by the Board of Education, within \_\_\_\_ days after receipt by Owner from Architect of the approved Application for Payment.

- 6.3 Contractor will submit with each Application for Payment, upon a form acceptable to Owner, a Subcontractor Utilization Summary, identifying the name of each S/DBE Subcontractor whose work is included in the Application for Payment, the certification status (Tier 1 or Tier 2), the amount to be paid to the respective S/DBE subcontractor from the amount included in the Application for Payment and the cumulative amount of any retainage being withheld from each such Subcontractor.
- 6.4 Prior to Substantial Completion, each progress payment shall be equal to ninety percent (90%) of that proportion of the Contract Price properly allocable to labor, material, and equipment incorporated in the Work, less the aggregate of payments previously made and less such amounts as PM shall determine, or OPS may withhold, in accordance with Article 13.5 of the Standard General Conditions of the Construction Contract. Until Work is fifty percent (50%) complete, OPS will pay ninety percent (90%) of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete the retainage may be reduced and maintained at five percent (5%) of the Contract Price to date, providing the manner of completion of the Work and its progress are and remain satisfactory to the Architect, PM and Owner. Owner reserves the right to reinstate the full retainage at any time during the performance of the Work if the Contractor has not continued to perform satisfactory work or has not shown continued financial responsibility. Notwithstanding any provision in a subcontract that may be to the contrary, Contractor shall promptly release all retainage not previously released for an S/DBE Subcontractor if: (i) the S/DBE Subcontractor's subcontracted work has been fully and properly performed and completed; (ii) all such work has been approved by PM and Owner; and (iii) the S/DBE Subcontractor has complied with all other requirements in its subcontract for final payment.
- 6.5 The Contractor shall furnish to the Architect or PM, or both, such information as may be requested to aid the Architect or PM, or both, to estimate the proper amount of any partial payment.
- 6.6 The Architect, the PM or OPS, or any one of them, will have the authority to reject work which does not conform to the Contract Documents. Whenever, in the sole and absolute opinion of the PM, the PM considers it necessary or advisable for the implementation of the intent of the Contract Documents, the PM will have the absolute authority to require special inspection or testing of the work upon the written authorization of OPS. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the PM's additional services and any Consultant's services made necessary by such failure; otherwise, OPS shall bear costs, and an appropriate Change Order will be issued.
- 6.7 Final payment, constituting the entire unpaid balance of the Contract Price, shall be paid by OPS when the work has been fully completed to the satisfaction of both the Architect and the PM and the Agreement fully completed and performed by the Contractor and a

Contractor's Final Application for Payment submitted to the Architect, and upon Certificates of Approval of Final Payment signed by the Architect and the PM and submitted to OPS by the PM and approved by the Board of Education. Upon final completion and acceptance of the Work in accordance with the General Conditions, OPS shall pay the remainder of the Contract Price as recommended by PM as provided in this subparagraph and in Article 13.8 of the General Conditions.

## **Article 7**

### **Contractor's Representations**

- 7.1 In order to induce OPS to enter into this Agreement Contractor makes the following representations, warranties and agreements:
- 7.1.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
  - 7.1.2 Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Specifications and as provided in Article 7.6 of the Standard General Conditions of the Contract for Construction, and accepts the determination set forth therein to the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely.
  - 7.1.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies referenced in paragraph 7.1.2 above, which pertain to the subsurface or physical conditions at or contiguous to the site, or which may affect the cost, progress, performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including the provisions of the General Conditions. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be performed or contracted by Contractor for such purposes without written approval by OPS.
  - 7.1.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site. The Contractor warrants that in determining the amount of Contractor's bid on the Work, the Contractor considered all the work, if any, caused by the Underground Facilities at or contiguous to the site, if any, and further covenants and warrants that the Underground Facilities as described by site and document examination, as indicated in the Contract Documents, at or contiguous to the site, if any, will not affect the Work at the Contract Price, within the Contract Time and in accordance with the other terms

and conditions of the Contract Documents, including the provisions of the General Conditions.

- 7.1.5 Contractor has correlated the results of all such observations, and examinations as required in this Article 7 with the terms and conditions of the Contract Documents. Any deviation from the Contract Documents known to the Contractor but not reported to the PM prior to the execution of the Contract Documents are hereby agreed to be of no consequence and the Contractor may not rely upon such subsurface or physical conditions at or contiguous to the site or otherwise which may affect the cost, progress, performance or furnishing of the Work as a ground for nonperformance of this Agreement, necessity for a change order, change in this Agreement or bid price or any other change in this Agreement or the other Contract Documents.
- 7.1.6 Contractor has given PM written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the PM is acceptable to Contractor. Any conflict, errors or discrepancies discovered and not so noted prior to the execution of the Contract Documents or within the time allowed by the Standard General Conditions of the Construction Contract or Supplemental Conditions are hereby waived by Contractor.
- 7.1.7 Contractor represents and warrants to Owner that in connection with its bid for the Project and the Work to be performed by Contractor hereunder, Contractor has solicited proposals from potential S/DBE Subcontractors for the Project, has negotiated and acted in good faith in with respect to the potential S/DBE Subcontractors for performance of work on the Project for the purpose of meeting the intent of the Owner's Economic Inclusion Program and has undertaken those good faith efforts reflected in the Contractor's Evidence of Good Faith Effort Form that was a part of Contractors bid proposal.
- 7.1.8 Contractor agrees that changes or proposed replacements to the list of Subcontractors identified at time of bid award must be approved by the Owner and PM prior to Contractor entering into a subcontract with the proposed substitute Subcontractor.

## **Article 8**

### **Miscellaneous**

- 8.1 Capitalized terms used in this Agreement which are defined in Article 1 of the Standard General Conditions of the Construction Contract will have the meanings indicated therein unless otherwise defined in this Agreement.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent



(except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents, nor will any assignment create a contractual relationship between assignee and OPS. No subcontractor, laborer nor material supplier shall bring or maintain, either directly or indirectly, in his own name or in the name of the Contractor, any claim or suit against OPS for any amount payable under this Agreement or for breach of this Agreement.

- 8.3 OPS and Contractor each binds his, her, itself, or their partners, successors, assigns and legal representatives to the other party hereto, his, her, its or their partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents, excepting only the limitations set forth in paragraph 8.2 above.

## **Article 9**

### **Performance and Payment Bonds**

- 9.1 The Contractor at its own expense shall furnish OPS a performance, labor and material bond and payment bond, in the form required by the Contract Documents covering the full and faithful performance of the Agreement and the payment of all obligations arising thereunder. All premiums shall be paid by the Contractor. The Contractor shall deliver the required bonds to OPS not later than the date of execution of this Agreement. Each of the Bonds required hereunder shall be in an amount equal to the total Contract Price. The surety company executing the bonds shall be a duly authorized surety company licensed to do business in the State of Nebraska and acceptable to OPS. This Agreement shall not take effect until such Performance and Payment Bonds are furnished by the Contractor and approved by OPS.
- 9.2 Payment bonds from Subcontractors are not required by OPS and the decision as to whether to require such a bond from a Subcontractor is lies solely with the Contractor. Contractor's decision not to require a payment or performance bond from a S/DBE Subcontractor will be considered by Owner as evidence of Contractor's "good faith effort" to include S/DBE Subcontractors for the project.
- 9.3 Should it reasonably appear to OPS at any time during the existence of this Agreement, or from time to time, that the surety or sureties on said Contractor's Bonds have become insolvent, bankrupt, or in conservatorship, or otherwise financially unable to protect OPS under the terms of this Agreement and the bond issued by such surety, OPS may demand the Contractor furnish additional or new bonds issued by a surety company satisfactory to OPS. The act of OPS, with reference to demanding new or additional security, shall never be construed to relieve the original surety on its obligation under the said bonds, or to relieve the Contractor. OPS may stop the work under this Agreement until additional security has been furnished by the Contractor, and OPS shall in no case be liable to the Contractor on account thereof. OPS may exercise the rights as provided herein to take charge of the work in the event of the refusal or failure of the Contractor to comply with the demands of OPS with reference to furnishing additional security.

## **Article 10**

### **Guarantee**

- 10.1 The Contractor shall deliver to OPS Contractor's written guarantee, made out to OPS and in a form satisfactory to OPS, guaranteeing all of the Work performed under this Agreement to be complete, free from faulty materials in every particular, and free from improper or defective workmanship, and against injury except from proper and usual wear and tear; and agreeing to replace or re-execute without cost to OPS such work as may be found to be improper, imperfect or of unsatisfactory material and/or workmanship, without cost to OPS, and to make good all damage caused to other work or materials, or to OPS's property, real and personal, due to such improper, imperfect or faulty material and/or workmanship, and/or due to the required replacement or re-execution. This guarantee shall be made to cover a period of one (1) year from the date of Substantial Completion as certified by the PM and approved by the Board of Education under this Agreement. This guarantee must be furnished to OPS and approved by it before acceptance and final payment is made.
- 10.2 Contractor shall provide OPS with copies of all guarantees or warranties which have been or hereafter shall be made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to OPS; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph 10.1 of this Article 10 above in case of failure of subcontractors or suppliers to fulfill the provision of any such warranties or guarantees.
- 10.3 Neither the Final Certificate, nor payment, nor any provision in the Contract Documents, nor the completion of the Work under this Agreement, shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

## **Article 11**

### **Other Provisions**

- 11.1 OPS prohibits the illegal use of drugs, the possession of firearms, the consumption of alcoholic beverages, and the presence of any person under the influence of drugs, including alcohol, on and within the limits of OPS's property. There shall be no smoking or use of any tobacco products allowed on any OPS property. The Contractor agrees to take all necessary steps to ensure that each agent or employee of the Contractor and each Subcontractor complies with these prohibitions.
- 11.2 No materials shall be stored nor shall any equipment be parked on adjacent property without the express consent of the owner of the property concerned.
- 11.3 The Contractor shall have full responsibility for preventing overstress of any structure or any part or member of it during construction. The Contractor shall fully check the effect

of his operations in this regard, and shall provide all temporary support and connections required.

- 11.4 The Contractor shall protect and be responsible for any damage to or loss of its (his/her) work, tools, equipment, or material, from the date of the Agreement until the acceptance of the work and shall make good without cost to OPS, any damage or loss that may occur during this period. All material affected by weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site. The Contractor at its (his/her) own expense and option shall employ watchmen or erect fencing at such time as necessary to protect his work, tools, equipment or materials. OPS is not responsible for any loss of work, tools, equipment or material by the Contractor and the fact that OPS has a watchman, if any, shall not mean that OPS has undertaken, nor does OPS undertake, to protect work, tools, equipment and materials from theft or mysterious disappearance.
- 11.5 No signs or advertisement at the Project site will be allowed to be displayed without the prior written approval of OPS.
- 11.6 OPS has engaged the services of Jacobs Facilities, Inc., as its Project Manager to assist with the monitoring, coordination, communication, and administration of the construction and repairs required by this Agreement. The Contractor shall afford to PM the same courtesies, and privileges of access, notification, and communication as is required by OPS or the Architect, or both, under this Agreement and the other Contract Documents.
- 11.7 This Agreement is issued by an organization which qualifies for exemption from sales and use taxes pursuant to the provisions of the Nebraska Statutes. The Contractor performing this Agreement shall not include any sales or use tax in its Application for Payment as provided in the Standard General Conditions of the Contract for Construction.
- 11.8 Owner recognizes the benefits of creating fair opportunities for all vendors to participate in Owner's procurement and contracting opportunities. Owner is committed to economic inclusion and nondiscrimination in its business operations. Accordingly, Owner will make an effort to increase the utilization of small and disadvantaged business enterprises throughout the Project. Owner seeks to ensure that its contractors and their subcontractors recruit, train, hire and promote all personnel in an equitable and non-discriminatory fashion and that economically disadvantaged and small business enterprises are afforded an equitable and fair opportunity to share in OPS sponsored contracts. Owner encourages all of its vendors, contractors and their subcontractors to embrace a business culture of inclusion identify and eliminate barriers to small and disadvantaged businesses, while creating a level playing field for equitable participation and competition. To accomplish this, the owner has established a 7% S/DBE goal for this project.
- 11.9 Sexual harassment and other forms of employment discrimination of employees or subcontractors of the Contractor or sexual harassment or abuse of employees or students of OPS by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to

appropriate disciplinary action by the Contractor, including dismissal. Contractor shall take all reasonable measures necessary to avoid any contact between employees of Contractor or any Subcontractor and any students of OPS at the project site.

11.10 The Contractor shall indemnify and hold harmless OPS, the PM and the Architect and their agents, attorneys and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees and costs, arising out of or resulting from the performance of the Work, provided any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than to the Work itself including the loss of use resulting therefrom), and (2) is caused, in whole or in part, by any act or omission, negligent or otherwise, of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts the Contractor or any subcontractor is otherwise liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

11.11 This Agreement is subject to termination as provided in Article 18 of the Standard General Conditions of the Construction Contract.

In Witness Whereof, Omaha Public Schools and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Architect, Contractor and PM. All portions of the Contract Documents have been signed or identified by OPS and Contractor, or by PM on their behalf.

This Agreement will be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date").

WITNESS our hands the day and year first above written.

ATTEST:

DOUGLAS COUNTY SCHOOL DISTRICT 0001, a Nebraska political subdivision,

By: \_\_\_\_\_  
President, Board of Education

By: \_\_\_\_\_  
Secretary, Board of Education

\_\_\_\_\_  
Construction Firm Name

By: \_\_\_\_\_

Its: \_\_\_\_\_