

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE DOUGLAS COUNTY UNIFIED JUSTICE CENTER DEVELOPMENT
CORPORATION**

AND

BURLINGTON CAPITAL CONSTRUCTION SERVICES, LLC

This Master Agreement for Professional Services (Agreement) is entered into as of the ____ day of December, 2018, by and between The Douglas County Unified Justice Center Development Corporation (JCDC), a Nebraska nonprofit corporation and a 501(c)(3) organization (hereinafter referred to as the ("Owner")) and Burlington Capital Construction Services, LLC, (BCCS) having an address of 1004 Farnam Street, Suite 400, Omaha, Nebraska 68102, (hereinafter referred to as the "Consultant").

The Douglas County Unified Justice Center Development Corporation is serving as the authorized "Owner Representative" for the Omaha-Douglas Public Building Commission (PBC) and the County of Douglas County, Nebraska (the County) in connection with the construction of a Juvenile Justice Center Complex, which shall include the Douglas County Youth Center (Youth Center), the Juvenile Justice Center Tower (Justice Tower), and a Skywalk connection from the new Justice Tower to existing facilities North of Harney Street (Skywalk); collectively known as the "Project".

The parties hereby acknowledge the following in connection with the ownership structure of the Project:

1. the County will own the land and improvements upon which the Project is located;
2. The County will enter or amend/extend an appropriate lease with the ODPBC for the project.
3. the JCDC is serving as the authorized "Owner's Representative" for both the County and ODPBC in connection with the Project and all references to "Owner" in this Agreement shall refer to the JCDC as the Owner's Representative;
4. the JCDC shall administer the control budget and provide oversight and direction for planning, financing, developing and constructing the Project;
5. Owner's Representative has been authorized by the County and ODPBC respectively to review and approve payments owing under this Agreement, and the entirety of funding for payment of monies owing to the CM shall be provided by the ODPBC;
6. Commencement of any services or Work is contingent upon Project funding by the Owner and/or the PBC consisting of approval of the Project related to (a) bond financing documents and (b) a Civic Center lease amendment by both the County and ODPBC or (c) a written Conditional Notice to Proceed (CNTP) signed by the Owner;
7. The JCDC shall appoint an Advisory Committee and Project Manager to assist with the oversight and direction of the Project.
8. The Project will be built pursuant to Neb. Stat. Section 13-1304(11) which provides the powers and contracting authority of the Omaha Douglas Public Building Commission as follows: Make all other contracts, leases, and instruments necessary or convenient to the carrying out of the corporate purposes of the commission.

WHEREAS, the Consultant desires to provide the Services identified in each Authorization accepted by Consultant.

IT IS HEREBY AGREED THAT:

1. DEFINITIONS

1.1 General Definitions. As used in this Agreement:

- a. If not defined in this Section 1, the capitalized terms in this Agreement shall have the meanings specifically set forth herein.
- b. "Agreement" shall mean and include this document and any amendments made in accordance with the provisions herein.
- c. "Authorization" shall mean and include any Authorization for Services, and any amendments made in accordance with the provisions herein.
- d. "Services" shall mean the consulting services to be provided for each Project as set out in each Authorization for Services executed by the parties hereto.
- e. "Contract Documents" shall mean the construction contracts and related documents associated with the Project, including, but not limited to all drawings, specifications and other documents associated with such Project.
- f. "Owner Design Guidelines" shall mean those certain design guidelines provided by the Owner with respect to the Project, if any.
- g. "Integrated Project Services" shall mean the Owner has determined that the Project is a consolidated and cooperative effort that requires comprehensive and all-inclusive planning, developing, coordinating of funding, implementing as a single project, including administration, Site related services, and Project close out, all as set forth in this Agreement.

1.2 Construction of Agreement. The headings in this Agreement are for guidance only and shall not affect construction.

2. EFFECTIVE DATE AND COMMENCEMENT OF SERVICES. This Agreement shall be effective immediately after signature by both parties hereto (the "Effective Date"). After the Effective Date of this Agreement, the Consultant shall commence the Services upon receipt from the Owner of Authorization for Services, including the applicable Attachments, and subject to the following:

- a. receipt by Consultant of any advance payment or retainer specified in Attachment "B"

- to the Authorization (Compensation and Reimbursement of the Consultant); and
- b. the Owner meeting any conditions precedent required in Attachment “C” to the Authorization (Data, Information, Assistance, Site Access and Approvals).

The term of this Agreement shall begin on Effective Date and shall terminate upon Substantial Completion of the entire Project. “Substantial Completion” means:

- the first day on which a Certificate of Occupancy has been issued for the last building or facility on the Project; and
 - the conditions for substantial completion of the Project have otherwise occurred; and
 - the Architect has issued a Certificate of Substantial Compliance with respect to the last facility or building on the Project.
3. PERFORMANCE OF SERVICES. The Consultant shall, subject to the provisions of this Agreement and to timely receipt of all data, information, approvals, site access or other information or assistance to be provided by the Owner pursuant to Attachment “C” to that particular Authorization, carry out and complete the Services required under each Authorization as Integrated Project Services. The Consultant's Services are limited only to the Services described in each Authorization and Attachment “A” to such Authorization, or subsequent Authorizations under Section 4 herein. Where the Consultant has deemed a particular service outside the current scope of the Authorization is needed or advisable, the Consultant shall advise the Owner. The Owner shall confirm: (a) that such services are not included, except as described in each Authorization; or (b) that the Owner has made or will make alternate arrangements to obtain the excluded services from a source other than the Consultant; or (c) that the Consultant shall provide such additional services as set forth in Section 4 herein. The Consultant will assist the Owner in applying for those permits and approvals typically required by law for completion of the Project. All permit fees payable to an issuing authority shall be paid directly by the Owner unless otherwise agreed in the Authorization. In consideration for carrying out the Services under a particular Authorization, the Consultant shall be compensated and reimbursed in accordance with the terms of Attachment “B” to such Authorization.
 4. ADDITIONAL SERVICES. In the event that the Owner requests in writing that the Consultant provide services in addition to the Services described in any Authorization, the parties shall enter into a mutually agreeable written amendment to the Authorization or shall enter into a new mutually agreeable Authorization covering the additional services. The Consultant shall be compensated by the Owner for the additional services in accordance with the rates in Attachment “B” or as attached to the amended or new Authorization, as applicable; provided that the Consultant shall have the right to modify its rates on an annual basis by providing written notice of the rate changes to the Owner, and the Attachment “B” shall be modified to reflect the new rates for any additional services. Notwithstanding anything to the contrary herein, Consultant shall not increase Consultant’s rates more than three percent (3%) per year without the express written consent of the Owner or as identified in Attachment “B”.

5. OWNER'S RESPONSIBILITIES

- 5.1 Project Information. The Owner shall provide information regarding requirements for the Project, including the Owner's objectives, schedule, constraints and criteria, including, where applicable, space requirements and relationships, flexibility, expandability, special equipment systems and site requirements not outlined in the Contract Documents or the Owner Design Guidelines. Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to minimize unreasonable delays on the Project.
- 5.2 Budget. The Owner and its representatives shall establish and update an overall budget for the Project based on consultation with the Consultant regarding all costs and reasonable contingencies related to such costs.
- 5.3 Owner Representatives. The Owner shall designate, Executive Director for the Building Commission and the Chief Financial Officer for the County, or their designated person or persons to temporarily act in their stead, as Representatives authorized to advise the Consultant on the Owner's behalf with respect to the Project (the "Owner Representatives"). The Owner Representatives shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to minimize unreasonable delay and support the orderly and sequential progress of the Consultant's services. Only decisions authorized by the Owner's Board of Directors will be deemed final decisions of the Owner.
- 5.4 Project Defects. Prompt written notice shall be given by the Owner to the Consultant if the Owner becomes aware of fault or defect in the Project or nonconformance with the Contract Documents or this Agreement that materially affects Consultant or the Services to be provided by Consultant.
- 5.5 Owner Construction/Operations. The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Consultant's responsibilities under this Agreement. Related Owner services shall be included in the overall project budget.

6. CONSULTANT'S RESPONSIBILITIES

- 6.1 Budget. Consultant shall coordinate and cooperate with the Owner in establishing a budget for the Project in a timely manner.
- 6.2 Project Defects. Prompt written notice shall be given by the Consultant to the Owner if the Consultant becomes aware of fault or defect in the Project or nonconformance with the Contract Documents or this Agreement.
- 6.3 Timely Performance of Services. Consultant shall perform the Services in a timely manner so as to avoid unreasonable delays on the Project.

6.4 Authorization Scope of Services. Consultant shall comply fully and completely with all responsibilities and obligations of Consultant contained in the applicable Authorization.

7. TERMINATION, SUSPENSION OR ABANDONMENT

7.1 Failure to Substantially Perform. This Agreement may be terminated by either party upon seven days' written notice should the other party fail to substantially perform in accordance with the terms of this Agreement, any Authorization, the Contract Documents or the Owner Design Guidelines through no fault of the party initiating termination.

7.2 Payment Upon Termination. In the event the termination of this Agreement is not in any way due to the fault of the Consultant, the Consultant shall be paid compensation due and owing for Services performed to the termination date, including reasonable Reimbursable Expenses then due and reasonable Termination Expenses. Termination Expenses are defined as Reimbursable Expenses due at time of termination, plus 10 percent of total Services earned, not as a penalty, at the time of termination.

7.3 Project Suspension. If the Project is suspended by the Owner for more than 30 consecutive days, the Consultant shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Consultant's compensation shall be equitably adjusted to provide for reasonable expenses incurred in the interruption and resumption of the Consultant's Services.

7.4 Project Abandonment. This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Consultant in the event that the Project is permanently abandoned. If the Project is temporarily abandoned by the Owner for more than 90 consecutive days, the Consultant may terminate this Agreement by giving seven (7) days' written notice.

7.5 No Commission. The Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that Consultant has not paid a percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. Upon violation of Consultant's warranty regarding commissions contained in this section, the Owner shall have the right to immediately terminate this Agreement without liability to the Owner and, at the Owner's sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage or consideration.

8. PAYMENTS TO CONSULTANT

8.1 Payment for Basic and Additional Services. In full consideration for all Basic and Additional Services rendered by Consultant and for all rights granted or relinquished by Consultant under this Agreement, Owner shall pay Consultant in accordance with the agreed terms for each Authorization for Services as specified in Attachment "B" thereto.

8.2 Reimbursable Expenses.

- 8.2.1 General. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Consultant and his employees and consultants in the interest of the Project as specifically identified herein. General expenses shall include printing, postage, and related costs in connection with the Project.
- 8.2.2 Transportation Expenses. Reimbursable Expenses may include the Consultant's reasonable expense of transportation in connection with the Project, including parking expenses incurred by the Consultant or its affiliates; authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project (collectively, "Transportation Expenses"). However, any Transportation Expenses must be authorized by the Owner.
- 8.2.3 Overtime Expenses. Reimbursable Expenses may include Consultant's reasonable expenses of overtime work requiring higher than regular rates (collectively, "Overtime Expenses"); provided, however, Overtime Expenses must be authorized by the Owner in writing either: (a) in advance of the Consultant's commencement of Services at the beginning of the Project; or (b) in advance of Consultant's commencement of Services to be provided under a revised scope of work.
- 8.2.4 Insurance Expenses. Reimbursable Expenses may include Consultant's reasonable expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Consultant related to the performance of the Services (the "Insurance Expenses"). However, any Insurance Expenses must be identified in Attachment "B" or as authorized by the Owner in writing in advance of the Consultant's commencement of Services.

8.3 Payment Process. Payments for the Consultant's Basic Services, Additional Services and for approved Reimbursable Expenses shall be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred with supporting documentation acceptable to the Owner, including, but not limited to, prior written approvals and receipts for approved expenses, as well as all appropriate lien waivers. Payments to the Consultant shall be in accordance with the State of Nebraska prompt payment requirements.

8.4 Payments Withheld. The Owner may offset from any payments due to Consultant any amounts that the Owner deems, in good faith and with sufficient justification, to be payment for Services that have not been performed in full compliance with this Agreement or any Authorization. The Owner may also withhold amounts related to unperformed Services, with sufficient justification, until such Services are performed in accordance with this Agreement and the Authorizations.

9. INDEPENDENT CONTRACTOR. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, and any social security, income tax or other withholdings, deductions or payments that may be required by federal, state, or local law with respect to any sums paid Consultant hereunder. Consultant shall not be entitled to any Owner employee benefits of any nature whatsoever.
10. NO AGENCY. Consultant is not the Owner's agent or representative and has no permission or authority to bind or commit Owner to any agreements or other obligations unless authorized in writing by the Owner's Representatives or the Owner's Board of Directors as defined in Article 5.3.

11. GENERAL CONDITIONS AND INFORMATION

- 11.1 Entire Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.
- 11.2 No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or Consultant.
- 11.3 Assignment. This Agreement shall not be transferred or assigned by the Consultant without prior written consent of Owner.
- 11.4 Insurance.
- 11.4.1 Coverage. The Consultant shall maintain in full force and effect at Consultant's sole expense, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, on or about Owner property. Such insurance shall be in the comprehensive general liability form, or commercial general liability form, including but not limited to, general liability, automobile liability, and liability related to loading and unloading, collapse, explosion, underground operations, elevators and escalators. Such public liability insurance shall also provide contractual liability insurance which shall specifically refer to and cover the obligation of the Consultant to indemnify and hold harmless The Douglas County Unified Justice Center Development Corporation, its officers, employees, and agent. Such insurance shall afford protection for injury or death of a single person to the limit of not less than \$2,000,000 for any one occurrence, and to the limit of not less than \$1,000,000 for property damage. In addition, Consultant shall procure and maintain workers compensation insurance covering all employees of the Consultant working on or in connection with the activities described herein, in accordance with the Nebraska workers compensation

laws, and carrying an "All States" endorsement during the entire term of this Agreement.

- 11.4.2 **Personal Property.** Owner shall not be responsible for any loss of or damage to Consultant's personal property. Consultant, at its own expense, will maintain insurance with respect to the personal property used in connection with the Project or used at or in the vicinity of Owner property against loss by fire, lightning, and other perils covered by the standard all-risk endorsement, in an amount equal to at least 100% of the full replacement value thereof, with no deductions for depreciation.
- 11.4.3 **Policy Requirements.** All insurance described in this section shall be obtained from a reliable insurance company authorized to do business in the State of Nebraska, insuring Owner, "as an additional insured". Consultant shall provide Owner with evidence of insurance, documenting the existence and enforceability of all required insurance during any and all times Consultant uses or occupies any Owner property. Consultant agrees that it will not take any action or fail to take any action, or permit the same to be done, or bring or store anything in or on Owner property, which conflicts with the conditions of any insurance policy related to the Project.
- 11.4.4 **Contractor/Subcontractor Insurance.** Consultant shall verify that all contractors and sub-contractors providing equipment, materials, or services directly to Consultant and/or Owner have obtained, maintain, and keep in force during the time in which they are involved in the performance of the services: primary third-party liability insurance, automobile liability insurance, workers' compensation insurance coverage, and if applicable, professional liability coverage.
- 11.5 **Governing Law; Venue.** The laws of the State of Nebraska shall govern this Agreement and any Authorization awarded to the Consultant. Any dispute arising under this Agreement or any Authorization awarded, which is not settled by agreement of the parties hereto, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska. Notwithstanding anything to the contrary, any dispute arising out of or related to this Agreement or any Authorization shall be subject to mediation prior to the institution of legal or equitable proceedings by either party.
- 11.6 **Force Majeure.** Neither party to the Agreement shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in the United States; (3) act or omission of the other party or any governmental authority; (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power

to satisfy); (5) non-performance by a third party (including any voice or data telecommunications common carrier); (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment; (7) the real, potential, or credible threat of terrorist activity; or (8) a health emergency (e.g. serious outbreak of contagious disease such as an influenza pandemic) which, in the judgment of Owner, poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided, however, that the parties hereto may mutually agree that such excusable delay is cause to cancel this Agreement in its entirety, in which case neither party shall be liable to the other for any further performance in relation to obligations arising after cancellation.

- 11.7 Compliance with Laws and Regulations; Gramm Leach Bliley; and other Owner policies. This Agreement must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by the Consultant, such as the Gramm Leach Bliley Act, which requires specific Agreement provisions; and all other applicable policies of the Owner. Consultant agrees to indemnify Owner against any loss, cost, liability, or damage by reason of Consultant's violation of any applicable law or regulation. Consultant must be qualified to conduct the business necessary to the performance of the Agreement in the State of Nebraska throughout the duration of this Agreement term or any renewal thereof. The Consultant shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Consultant's business. Consultant and its subcontractors shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. 4-108 to 4-114 as amended.
- 11.8 Sexual Harassment. State and federal law, as well as the policies of The Owner prohibits sexual harassment of members of the Owner community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. Owner consultants, contractors, subcontractors and suppliers for any Project are required to exercise control over their employees so as to prohibit acts of sexual harassment of Owner employees, students and other members of the Owner community. The employer of any person who Owner, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of this Agreement and any Authorization awarded hereunder to cause such person to be removed from the

project site and from Owner premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

- 11.9 Drug Free Workplace. The Consultant agrees that in the performance of this Agreement and any Authorization awarded hereunder, neither the Consultant nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by this Agreement. Owner reserves the right to request a copy of the Consultant's Drug Free Workplace Policy.
- 11.10 Weapons Policy. Possession of dangerous weapons (concealed or unconcealed) on Owner property, on the work site, in Owner vehicles, or in personal vehicles when on Owner property shall be a violation of Owner policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by Owner in the Owner's sole discretion, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the PBC and/or provided by the Owner to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should Owner in its reasonable judgment determine that the Consultant or its employee or agent has committed an act in violation of this policy, the Consultant agrees as a term and condition of the Agreement awarded hereunder to cause such person and weapon to be removed from the Project site and from Owner premises and to take such other action as may be reasonably necessary to ensure compliance with this weapons policy.
- 11.11 Equal Opportunity in Procurement and Contracts. Owner recognizes the importance of a strong, culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. Owner assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska. Accordingly, Owner reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged and women-owned business enterprises in all aspects of Owner's procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and license agreements. It is also Owner's policy that any person or business seeking the opportunity to do business with Owner shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability, marital status, or veteran status. Owner conducts its procurement and contracting activities in a manner designed to prevent unlawful discrimination. Owner policies are consistent with applicable state and federal laws and regulations prohibiting unlawful discrimination. Consultant shall not take any action in violation of applicable laws and regulations or Owner policies in this regard.

- 11.12 Proprietary Information: Confidential Employee Information: HIPAA. FERPA. Consultant will not, either directly or indirectly as an agent, consultant, partner, or in any other capacity, use or disclose any confidential or proprietary information, including without limitation employee and student data, financial data and mailing lists of Owner for any purpose of than performance of this Agreement unless Consultant has received prior written consent from Owner to make such disclosure. In the circumstance that performance of the Agreement should result in sharing of employee information protected by law or Owner policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to this Agreement agree to maintain the confidentiality of such information to the extent and manner required by the law and Owner policy.
- 11.13 Ownership of the Work. Any work product of the Consultant delivered to the Owner (the "Work") shall become the property of Owner. The Owner's right to the Work shall be exclusive and Consultant will not use, license or permit the use of the Work for any other purposes.
- 11.14 Copyright. The Consultant affirms to the best of its knowledge all materials furnished and used are its own original material or material which they have obtained the copyright to use for the purposes of this Agreement. Written copies of copyright clearances may be required by Owner. The parties hereto agree that Consultant's Services under this Agreement are a "work for hire" and that the owner of such Work is The Douglas County Unified Justice Center Development Corporation. If for any reason the Services performed by Consultant under the Agreement are found not to constitute a work for hire, then, in consideration for the payment set forth under this Agreement, Consultant hereby assigns all rights in the intellectual property created, including the copyright, to The Douglas County Unified Justice Center Development Corporation. The Consultant agrees that the copyright and all other rights pertaining to the Work furnished under this agreement, including any royalties or fees that may accrue, shall belong to The Douglas County Unified Justice Center Development Corporation. Consultant shall not release such work product or other information obtained and produced pursuant to this Agreement without the prior written consent of Owner.
- 11.15 Examination of Records. All records incurred under this Agreement are subject to audit by Owner and/or the applicable state and/or federal audit agency. The Consultant agrees to give Owner and government auditors access to its records where necessary to support costs relating to this Agreement. Consultant shall retain all records associated with each Project for at least five (5) years after completion of the Project.
- 11.16 Severability and Survival. Any provisions of this Agreement later held to be unenforceable for any reason shall be deemed void and all remaining provisions shall continue in full force and effect. All obligations arising prior to the

termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Owner and Consultant shall survive the completion of the Services hereunder and the termination of this Agreement.

- 11.17 Waiver. The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted shall not constitute a waiver of such provision or of such right to enforce any or all of the provisions of this Agreement.
- 11.18 Subcontractors. The Consultant shall subcontract with 4FRONT Project Development Services, LLC (4FRONT); primarily for the Pre-construction Phase of the Project and subsequent oversight of the Construction Phase services to be performed directly by the Consultant. No other subcontractor will be utilized by the Consultant for any facet or any Authorization without the prior written approval of Owner. The Consultant shall be fully responsible for the acts and omissions of 4FRONT or any other of its subcontractors and of the persons directly or indirectly employed by them. Every subcontractor shall be bound by the terms of the applicable Authorizations awarded under this Agreement; provided; however, that no contractual relationship shall exist between any subcontractor and Owner, unless it is evidenced in a separate contract independent of this Agreement or Authorizations awarded hereunder.
- 11.19 Funding Out Clause. Notwithstanding any provision in this Agreement to the contrary, if PBC or Douglas County does not allocate sufficient funds to allow Owner to make any periodic payment agreed to in this Agreement or any Authorization hereunder for any future fiscal period, Owner will be obligated to pay, in accordance with Article 7, any balance remaining at the time of the governmental funding short- fall.
- 11.20 Not Used.
- 11.21 Building Rules and Regulations: Tobacco Use. Employees of the Consultant and any subcontractors shall comply with all Owner rules and regulations pertaining to conduct in Owner's facilities. Owner reserves the right to request the removal or replacement of any Consultant employee who fails to comply with such rules and regulations. All buildings and Owner owned vehicles on the Owner campus are tobacco-free. Use of tobacco products is not permitted inside any Owner facility. The Consultant shall respect this tobacco-free policy and fully comply with it.
- 11.22 Use of Premises. To the extent that any Authorization awarded requires the Consultant or its employees or agents to be present on or within Owner's properties, the Consultant shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the Authorization. The Consultant shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to the Consultant's activities within the scope of the Authorization and agrees to be responsible and/or carry out any repairs for which it is liable, as a

result of its performance under this Agreement or any Authorization awarded hereunder.

- 11.23 Federal, State and Local Sales Taxes. Federal Excise Taxes. Purchases made by Owner are exempt from the payment of State sales and use taxes and Federal excise taxes. Certification of these exemptions will be provided to the Consultant upon request.
- 11.24 Ambiguities. Should the Consultant perceive an ambiguity in this Agreement or an Authorization, the Consultant shall request an interpretation from Owner before proceeding. If Consultant fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.
- 11.25 Use of Owner Names and Logos. The Consultant shall not use any Owner name, sign, logo, symbol, etc. for any purpose, without the prior written approval of Owner. Use of Owner brands generally requires licensing, which, if authorized, would be addressed in a separate agreement.
- 11.26 Improper Business Relationships and Conflict of Interest Prohibited. In connection with this Agreement, the Consultant shall ensure that no improper, unethical, or illegal relationships, nor conflict of interest, exists between or among the Consultant, Owner and any staff and faculty, and any other party to this Agreement. Owner reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not, and to decide whether or not Consultant's disqualification and/or cancellation of this Agreement shall result. Such disqualification and/or cancellation shall be at no fault or liability whatsoever to the Owner.
- 11.27 Policies. The Consultant agrees to abide by the reasonable policies of the Owner of which it is aware.
- 11.28 Waiver of Consequential Damages. Neither party shall be liable for any economic, indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income or revenue, reputation, or any other consequential damages incurred from any cause of action whatsoever.
- 11.29 Notice. All notices, approvals or authorizations required to be in writing under the terms of this Agreement shall be sent to the other parties listed below at the address identified on page one of this Agreement, or such other address as such party shall direct in writing, via first class mail, reputable national delivery service, facsimile transmission or electronic mail, provided written confirmation of receipt is received by the sender.

THE DOUGLAS COUNTY UNIFIED JUSTICE CENTER DEVELOPMENT CORP (JCDC):

By: _____
Mary Ann Borgeson, JCDC Chair

By: _____
Diane M. Carlson, JCDC Secretary

Date: _____

Date: _____

BURLINGTON CAPITAL CONSTRUCTION SERVICES, LLC (BCCS):

By: _____
Dominic Vaccaro, President

Date: _____

AUTHORIZATION FOR SERVICES
NO. 001

Pursuant to the terms of the Agreement between Burlington Capital Construction Services, LLC, (Consultant) and The Douglas County Unified Justice Center Development Corporation (Owner), effective the ____ day of December, 2018 (Agreement), Owner authorizes and Consultant agrees to provide the services described in Attachment “A” hereto (the "Services"). Owner agrees to compensate Consultant for the Services based on Attachment “B” hereto. If applicable, Attachment “C” includes any requirements of Owner prior to Consultant commencing the Services. Capitalized terms not defined in this Authorization shall have the meanings given to them in the Agreement.

All Services provided under this Authorization shall be subject to the terms of the Agreement unless otherwise noted below:

THE DOUGLAS COUNTY UNIFIED JUSTICE CENTER DEVELOPMENT CORP (JCDC):

By: _____
Mary Ann Borgeson, JCDC Chair

By: _____
Diane M. Carlson, JCDC Secretary

Date: _____

Date: _____

BURLINGTON CAPITAL CONSTRUCTION SERVICES, LLC (BCCS):

By: _____
Dominic Vaccaro, President

Date: _____

ATTACHMENT A

Scope of Consultant's Services

1. PROJECT DESCRIPTION:

The new Justice Center includes the following: construction of a Juvenile Justice Center Complex which shall include construction of the Douglas County Youth Center (Youth Center) consisting of approximately sixty thousand gross square feet (60,000 GSF); the Juvenile Justice Center Tower (Justice Tower) consisting of approximately one-hundred-sixty-eight thousand gross square feet (168,000 GSF); and a Skywalk connection from the new Justice Tower to existing facilities North of Harney (Skywalk); collectively the Project.

2. BASIC SERVICES:

- 2.1 Basic Services. Consultant's Basic Services consist of the project management for the planning, design, construction, and occupancy of the Project (the "Services"). The Consultant will provide those services in coordination and cooperation with the Owner, other consultants to the Owner, all construction contractors to the Owner, and any other service contracts to the Owner.
- 2.2 Additional Services. Consultant represents that the Services as referred to in this Agreement are complete and adequate for the Project proposed by the Owner. If additional consultants are required by the Consultant for the Project, such consultants will be paid for by the Consultant as approved in writing by the Owner prior to the commencement of services performed for additional consultants. The Consultant recognizes that in no way will subcontracts or consulting agreements diminish or supplant the ultimate responsibilities it assumes pursuant to its contractual obligations under this Authorization or the Agreement.
- 2.3 Additional Costs. It is the intent of this Authorization that the fee mentioned in Attachment B to the Master Agreement between Owner and Consultant is the complete compensation for Services rendered by the Consultant and any subcontractors or consultants retained by Consultant, and no additional charges will be made by the Consultant for the Services. In the event services, in addition to those listed herein, are required of the Consultant by the Owner, no additional charges will be made to the Owner unless otherwise agreed to in writing and executed by the Owner consistent with the Agreement.

3. GENERAL REQUIREMENTS:

- 3.1 E-Verify. Consultant shall use an electronic verification system to determine the work eligibility status of any new employees physically performing services within the State of Nebraska, as required pursuant to Neb.Rev.Stat. §§4-108 to 4-114 as of the effective date of this Authorization, or as such law may be amended from time-to-time. Compliance with these Nebraska statutes shall be considered a material term of this Authorization and the Agreement.

3.2 Deliverables. The Consultant will provide to the Owner the following written deliverables:

3.2.1 A written list of the Project team to include the Consultant, the Owner's Architectural and Engineering staff, and additional consultants, assigned to the Project. Consultant shall update the Project team list as necessary throughout the Project.

3.2.2 A written work flow plan and a schedule for the performance of the Consultant's Services which will include allowances for periods of time required for the Owner's review and approval and for approval of submissions by authorities having jurisdiction over the Project. The plan will be provided to the Owner Consistent with the Agreement, for approval, at the beginning of the Planning Phase, as defined below. The Consultant and Owner will not, except for reasonable cause, exceed time limits established by the schedule approved by the Owner. Consultant shall revise the plan and schedule as necessary throughout the Project. Any revision must be approved by the Owner in writing.

3.3 Phased Completion. The Consultant will not proceed with subsequent phases of the Project until the current phase, including any adjustments authorized by the Owner, is completed and approved in writing by the Owner Consistent with the Agreement; however, the Parties recognize that multiple phases of the Project may be ongoing simultaneously and therefore Consultant and Owner may agree to modifications of this Section 3.3.

3.4 Owner Guidelines and Procedures. The Consultant shall ensure conformance with the Owner's current version of guidelines for capital construction processes, which are incorporated herein by reference (the "Owner Guidelines and Procedures") or as identified in the agreement for the ARCHITECT/ENGINEER.

3.5 Owner Contracts. The Consultant shall utilize all Owner approved contracts between the Owner and consultants or contractors. In no case, may the Consultant utilize a contract form which has not been reviewed, approved and executed by the Owner.

4. WORKING PRINCIPLES:

4.1 Communication of Project Information. The Consultant shall ensure clear communication between all parties involved in the Project is maintained following industry best practices, Consultant, at a minimum, must:

- Coordinate and lead kick-off meetings;

- Establish communication protocols and expectations for occupants and design team;
- Define roles and responsibilities for all Project team members;
- Maintain periodic Project review meetings with leadership, Financial Services, upper management and Owner's Board of Directors;
- Lead "lessons learned" discussions at the end of each phase with appropriate feedback to the Owner and all other consultants and contractors;
- Strive to reduce the appearance of risk aversion through accurate project planning and estimating;
- Actively seek Owner input to maximize building efficiencies and reduce project costs;
- Ensure timely billing of all contractors to the Owner; and
- Ensure a timely completion of the Project.

4.2 Communication Tools. The Consultant shall utilize appropriate tools (reports, forms, graphics, etc.) to effectively communicate complete Project information to the Owner.

4.3 Total Life Cycle Cost. The Consultant shall assist the Owner in making Total Life Cycle Cost decisions at all phases of the Project.

5. PLANNING PHASE:

5.1 Program Materials. The Consultant shall work with the Owner's Programming Consultant (to be identified and engaged separately by the Owner) to develop programmatic materials for the Project, based on the Owner's vision and goals for the Project. The programmatic materials will include, but may not be limited to:

- Sizes and uses for each space in the building;
- Detailed room data sheets, which provide specification for each room in the building using a format approved by the Owner;
- Conceptual site plan and bubble diagram showing the general sizes and adjacencies of spaces in the new building;
- Proposed site, a topographical survey and soil analysis that will be provided by a separate consultant;
- Description of all building systems proposed for the new building; and
- A construction cost estimate.

5.2 Total Project Budget. The Consultant will assemble materials provided by the Programming Consultant and combine the construction cost estimate with specific internal costs identified by the Owner, to form the total project budget.

5.3 Program Statement. The Consultant will observe and review development of the Program Statement, to be approved by the Owner. The Consultant will provide the Owner with any comments and recommendations on the Program Statement.

- 5.4 Architectural Program Procedures. The Consultant will observe and review preparation of the Architectural Program Procedures document for submittal to the Owner. The Consultant will provide the Owner with any comments and recommendations on the Architectural Program Procedures.
- 5.5 Program Statement Presentations. The Consultant will participate in presentations to entities charged with reviewing the Program Statement, including, but not limited to, the Owner's Board of Directors, and the Owner's Project Review Committee.
- 5.6 Risk Analysis. The Consultant shall assist the Programming Consultant with submittals to the Owner, for its review and approval, providing a review of all applicable codes for the Project. In addition, the Consultant will develop an analysis of risks which may affect the successful completion of the Project on time, in budget, to the planned scope.

6. DESIGN CONSULTANT and CONSTRUCTION SELECTION PHASE:

- 6.1 Reserved.
- 6.2 Design Consultant and Construction Manager Selection Criteria. Unless specifically approved by formal action of the Owner, the Consultant shall develop the criteria for the Design Consultant selection which recognizes the needs of the Project Program Statement, Design Guidelines, and any other criteria identified by the Owner.
- 6.3 Design Consultant and Construction Manager Selection Process. Unless specifically approved by formal action of the Owner, the Consultant shall coordinate with the Owner's Representatives on the Design Consultant Selection Process.
- 6.4 Design Consultant and Construction Manager Interviews. Unless specifically approved by formal action of the Owner, the Consultant shall notify short-listed AIE firms and CM firms and arrange the time and location in which to conduct interviews.
- 6.5 Design Consultant and Construction Manager Fee Negotiation. Unless specifically approved by formal action of the Owner, the Consultant shall notify the Design Consultant and Construction Manager selected by the Owner following the interviews and arrange for a fee negotiation session between the Owner, Design Consultant or Construction Manager, and Consultant. The Consultant shall facilitate fee negotiation meetings between the Design Consultant and Construction Manager with the Owner.

7. DESIGN PHASE:

- 7.1 Management of Design Consultant. The Consultant shall manage the Design Consultant and Construction Manager throughout the Design Phase. The Consultant shall arrange for any additional consultants whom the Owner has agreed shall be outside the design

scope of services and coordinate additional consultants with the Design Consultant and the Owner.

- 7.2 Design Process. The Consultant must be an active participant in the design process, challenging assumptions, testing decisions, and ensuring the occupants and Owner will be completely satisfied with the resultant design after the construction is complete.
- 7.3 Application of Program Statement. The Consultant shall ensure consistent application of the approved project Program Statement through the design phase. This includes the compliance with the quantity and type of spaces.
- 7.4 Waivers. The Consultant shall ensure compliance with the Owner Design Guidelines and obtain a waiver from the Owner for any deviations from the Design Guidelines, if any.
- 7.5 Review Committee. The Consultant shall ensure appropriate reviews and approvals of the design by the Owner's Representatives and other designated parties or entities.
- 7.6 Occupancy Needs. The Consultant shall ensure review the needs of the occupants, identified by the Architect, are addressed. Any inconsistency between occupant needs identified during the Design Phase and the Program Statement, the Architectural Program Procedures, or the Room Data Sheets shall be addressed and documented. The Consultant shall identify these inconsistencies and deviations from the approved Project with the Owner, provide an analysis of any issues, and recommend a solution, to the Owner before proceeding.
- 7.7 Reserved.
- 7.8 Intermediate Design Report. If required, the Consultant shall prepare Intermediate Design Report (IDR) materials for the Owner to present to PBC at an appropriate time in the Design Phase.
- 7.9 Project Schedule. The Consultant shall ensure a Project construction schedule is developed and is coordinated with the Design Consultant, Construction Manager, and Owner's operations. Consultant shall update the construction schedule as necessary throughout the Project with Owner approval.

8. BIDDING PHASE:

- 8.1 Bid Documents. The Consultant shall oversee the assembly of the bid documents in conjunction with the Design Consultant (Architect) and Construction Manager (Contractor) and shall coordinate with the Contractor to ensure the Project is advertised to potential construction subcontractors, and material suppliers to achieve the lowest and best bids.

- 8.2 Pre-Bid Meeting. The Consultant shall arrange for a pre-bid meeting to address any questions about the Project.
- 8.3 Pre-Bid Questions. The Consultant shall ensure all questions arising out of the pre-bid meeting are addressed in writing and shared with all bidders.
- 8.4 Addenda. The Consultant shall ensure all Addenda to the Bid Documents are distributed to all bidders.
- 8.5 Alternates. The Consultant shall ensure that all additive or deductive alternates in the bid documents are prioritized to the bid opening.
- 8.6 Low Bidder Identification. The Consultant shall participate in the public or private bidding process and shall advise the Owner of the apparent low bidder and ensure that the bidder is also responsible.
- 8.7 Contract Documents. The Consultant, in conjunction with the Construction Manager, shall notify the apparent low bidders and assist in the preparation of Contract Documents for the Owner.

9. CONSTRUCTION PHASE:

- 9.1 Oversight. The Consultant shall oversee all phases of the construction of the Project.
- 9.2 Critical Path Method. The Consultant shall be knowledgeable of Critical Path Method (CPM) scheduling and ensure the Project is managed appropriately by all parties pursuant to the CPM.
- 9.3 Progress Payments. The Consultant shall timely review all progress payment requests and ensure they are consistent with the work completed. The review shall include a review of the construction schedule identifying any tasks that are late or delayed.
- 9.4 Payment Concerns. The Consultant shall report any concerns with any payment request or schedule to the Owner in writing with a recommended action.
- 9.5 Construction Meetings. The Consultant shall participate and lead all Owner-Architect-Contractor meetings ("OAC meetings") and be knowledgeable of all construction activities and the status of the Project at all times. Consultant shall make frequent visits to the Project site. On the basis of on-site observations, Consultant shall endeavor to guard the Owner against defects and deficiencies in the design and construction of the Project and shall assist the Owner in obtaining faithful performance of the Contract Documents.

- 9.6 Shop Drawings. In conjunction with the Owner, Architect, and Contractor, the Consultant shall manage the shop drawing process and provide the Owner with written documentation of any concerns or issues.
- 9.7 Service Provider Coordination. The Consultant shall assist in the coordination of work between the Contractor and the Owner's Internal Service Providers.
- 9.8 Unforeseen Conditions. The Consultant shall notify the Owner immediately of any previously unforeseen conditions and provide recommendations for any actions requiring the Owner's approval.
- 9.9 Changes to Contract Documents. The Consultant shall coordinate all changes to the Contract Documents, including, but not limited to ASI, CPR, CCD, RFI and Change Orders with Owner approval.
- 9.10 Change Orders. The Consultant shall obtain the Owner's periodic written approval on all Change Orders prior to allowing the Contractor to perform work unless a delay will result in a materially higher cost or safety problem.
- 9.11 Code Inspections. The Consultant shall arrange, in conjunction with the Contractor, for all inspections by the applicable code authorities.
- 9.12 Inspection of Construction. The Consultant shall inspect the construction work in place for conformance with the Contract Documents.
- 9.13 Substantial Completion. The Consultant shall assist the Owner in determining the date of Substantial Completion of the Project to the Owner and shall facilitate the process of attaining and confirming Substantial Completion.
- 9.14 Punchlist Development. The Consultant shall oversee the development of a Punchlist by the Design Consultant and Contractor and shall provide input on any items that should be identified on the Punchlist.
- 9.15 Punchlist Completion. The Consultant shall oversee the completion of the Punchlist by the Contractor in timely fashion to include final inspections by the Architect.
- 9.16 Final Completion. The Consultant shall assist the Owner in determining the date of Final Completion and ensure timely payment of all contractors and service providers.
- 9.17 Timely Completion. The Consultant shall perform all Services in a timely manner recognizing the Owner's need to manage funds wisely.

10. OCCUPANCY PHASE:

- 10.1 Occupancy Assistance. The Consultant shall assist the Owner with the occupancy of the project including acquisition and installation of all moveable equipment as provided within the Project Budget.
- 10.2 Occupancy Schedule. The Consultant shall develop a schedule for occupancy of the project during the Planning Phase and update the schedule as necessary during the Construction Phase with notice of any updates to the Owner.
- 10.3 Communication with Occupants. The Consultant shall inform the Owner and the occupants of the written occupancy schedule in advance, adjust the schedule as appropriate with notice to the occupants and the Owner, and execute the plan to comply with the occupancy schedule.

11. WARRANTY PHASE:

- 11.1 Warranty Issues. The Consultant shall assist the Owner with any warranty issues arising during the first year following the date of Substantial Completion of the Project. The Consultant shall prepare any warranty claims and coordinate with the Contractor and warranty provider to adequately address such warranty issues in a timely manner.
- 11.2 Timely Completion. The Consultant shall ensure timely completion of warranty issues.

ATTACHMENT B
 Compensation and Reimbursement of the Consultant

(for Scope of Services under Attachment A
 and any Additional Services under Section 4 and Section 8.2 of the Master Agreement)

As consideration for these services, Consultant shall, receive compensation in the amount equal to 2.25% of the final total Project Budget (“Consultant Compensation”); less any previous payments. The Consultant Compensation shall be payable as follows:

Burlington Fee Calculation:

Total Project Cost		To Be Determined (TBD)	
Total Burlington Fee		TBD x 2.25%	<u>Total Fee</u>
<u>Pre-Construction Fee (progress payments)</u>			Total Fee x 40%
HDR Program / Schematic	27%	x Pre-con Fee	
HDR Design Development	40%	x Pre-con Fee	
HDR Contract Documents	33%	x Pre-con Fee	
<u>Construction Fee (equal monthly payments)</u>			Total Fee x 60%
Start at Kiewit Site Mobilization	TBD		
End at Substantial Completion	TBD		
Duration to Substantial Compl.	TBD	Total Months	
Monthly Fee (estimate)	TBD	Constr. Fee / Total Mo.	
	Total Burlington Fee		<u>Total Fee x 100%</u>
		Less previous payments:	(xxx,xxx)

Services performed sixty (60) days after Substantial Completion shall be considered Additional Services in accordance with Section 4 of the Master Agreement.

Consultant shall be paid for Reimbursable Expenses as referenced in Section 8.2 of the Master Agreement.

Attachment C, Date, Info, Assistance, Site Access & Approvals – Master Service Agreement
The Douglas County Unified Justice Center Development Corp and BCCS

ATTACHMENT C
Data. Information. Assistance. Site Access and Approvals

(including any conditions precedent to be provided or obtained by the Owner)

NONE