

RESOLUTION NO. 2022-0035

City Clerk Office Use Only:

Publication Date (if applicable): \_\_\_\_\_

Agenda Date: 2/1/2022

Department: Mayor's Office

Submitter: Tholy Anderson

CITY OF OMAHA  
LEGISLATIVE CHAMBER  
Omaha, Nebraska

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, owner's representative/project management services are needed in conjunction with the relocation of the W. Dale Clark (Main) Library; and,

WHEREAS, in accordance with Omaha Municipal Code, Section 10-187, Noddle Development Company, LLC, was selected to provide owner's representative/project management services, and additional services as delineated in the attached Owner's Representative Agreement; and,

WHEREAS, Noddle Development Company, LLC, has agreed to perform these services for a fee of \$390,000.00, to be paid from the General Fund 11111, Library Facilities Capital Organization 131593, year 2022 funding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, as recommended by the Mayor, the Owner's Representative Agreement with Noddle Development Company, LLC, to provide owner's representative/project management services on the relocation of the W. Dale Clark (Main) Library, is hereby approved.

BE IT FURTHER RESOLVED:

THAT, the Finance Department is authorized to pay a fee of \$390,000.00, from the General Fund 11111, Library Facilities Capital Organization 131593, year 2022 funding.

APPROVED AS TO FORM

[Signature]  
Asst CITY ATTORNEY

1/7/2022  
DATE

Adopted: FEB 01 2022 7-0

Attest: [Signature]  
City Clerk

Approved: [Signature]  
Mayor



## OWNER'S REPRESENTATIVE AGREEMENT

THIS AGREEMENT is made by and between City of Omaha Nebraska ("Owner") and Noddle Development Company, LLC ("Owner's Representative"), as of the 3<sup>rd</sup> day of ~~January~~, February, 2022.

1. **General.** This Agreement shall define the agreed upon services to be provided and terms of performance as Owner's Representative for the City of Omaha, on behalf of the Omaha Public Library, to facilitate the Relocation of the Downtown Omaha Library Branch, and all associated administrative services and public library functions, as specifically identified by the Owner, to the following locations (the "Project"):

1401 Jones Street Omaha, NE  
84<sup>th</sup> & Frederick Streets Omaha, NE

2. **Services.** The "Owner's Representative Services" as set forth in Exhibit "A" attached hereto shall be provided to Owner by Owner's Representative pursuant to the terms and conditions set forth herein. Owner's Representative understands that Owner's priority for the Project is to minimize the interruption of library services wherever possible.

3. **Owner's Representative's Performance.** Owner's Representative warrants that the Owner's Representative Services shall be performed in a professional and workmanlike manner in an effort to achieve the intended objective, in accordance with current industry standards prevailing in the location where the Owner's Representative Services are performed.

4. **Fees.** The fee for Owner's Representative Services shall be a fixed amount of **Three Hundred Ninety Thousand Dollars (\$390,000.00)** (the "Fee"). Should the Owner elect to change the scope of the Project in a way which materially affects the Owner's Representative's Services or the resources required in order to perform the Owner's Representative Services and complete the Project, the above fee shall be adjusted upward or downward to fairly compensate the Owner's Representative for such changes, as provided for herein.

The Fee shall be payable in eight (8) equal monthly installments of **Forty-Eight Thousand Seven Hundred Fifty Dollars (\$48,750.00)**, commencing with the first full calendar month following the date of this Agreement. Payments are due and payable on the fifth (5<sup>th</sup>) day of each month. The final payment (which shall include multiple, accelerated installments, if appropriate) shall be paid no later than 30 days following substantial completion. At the Owner's sole discretion, the payment dates for the Owner's Representative's fee may be changed (only within each month, and not such that payments are made on less than a monthly basis) to coincide with the payment date agreed to with the contractor hired to construct the Project.

5. **Representatives.** All communication, coordination, direction and decision-making between the parties shall be conducted by the Designated Representatives of each Owner and Owner's Representative. Such individual(s) are authorized to bind the party which they represent, to the extent allowed by law, except with respect to modifications to the scope of this Agreement, which modifications shall be effective only if in writing and signed by an officer of



each party. The parties acknowledge and agree that such modifications shall be approved by the Omaha City Council.

Owner

City of Omaha Nebraska  
1819 Farnam Street, Suite 300  
Omaha, NE 68183

Owner's Representative's Representative

Tarna Kidder  
c/o Noddle Companies  
2285 S. 67<sup>th</sup> Street, Suite 250  
Omaha, NE 68102  
402-496-1616  
[tarna@noddlecompanies.com](mailto:tarna@noddlecompanies.com)

provided that notices to Owner's Representative shall also be sent to:

Jay B. Noddle and Paul Dietsch  
c/o Noddle Companies  
2285 S. 67<sup>th</sup> Street, Suite 250  
Omaha, NE 68102  
402-496-1616  
[jay@noddlecompanies.com](mailto:jay@noddlecompanies.com)  
[paul@noddlecompanies.com](mailto:paul@noddlecompanies.com)

Either party may change their Designated Representative or contact information upon ten (10) days prior written notice.

6. **Schedule.** Owner desires that the Project be complete on or before September 30th, 2022, with Owner's Representatives Services beginning no later than January 17<sup>th</sup>, 2022. The final space plans for improvements associated with the locations identified in Section 1 above will be approved by Owner no later than March 7<sup>th</sup>, 2022. It is anticipated that all Owner's Representative Services shall be completed within 30 days following substantial completion as referenced herein. If the time to complete is extended for any reason, the parties shall discuss a change in the fee provided in Section 3 above.

Owner's Representative shall assist in the preparation of a schedule with respect to completion of the Project, including necessary activities and associated durations not covered by this Agreement but which the Project goals may be dependent. When approved by the Owner, the Owner's Representative shall use good faith efforts to meet the timelines and milestones provided relating to the Project activities, and to coordinate and manage the advancement of the Project, as provided in the Schedule. In the event the Owner's Representative is made aware of or anticipates any material change in the Schedule through completion of Owner's Representative Services, Owner's Representative will make Owner aware of any such changes and provide Owner with any opportunity to attempt to minimize impacts.



7. **Reimbursable Costs.** The following expenses ("Reimbursable Costs") are in addition to the fee listed above, and consist of expenses incurred by the Owner's Representative directly related to the Project including the following:

- a. Authorized out-of-town travel and associated expenses, with Owner's prior authorization;
- b. Dedicated data and communication services, teleconference service, and web-based hosting services;
- c. Printing, reproductions, plotting, and standard form documents;
- d. Postage, handling, and delivery;
- e. When authorized in advance, expense of overtime work requiring premium rates;
- f. Renderings, Models, Mock-Ups, Professional Photography, and Presentation Materials requested by the Owner;
- g. Professional Liability Insurance and other insurance policies specific to this project or Owner-requested insurance deductibles in excess of what is normally carried by the Owner's Representative and its team members;
- h. Taxes levied on reimbursable expenses; and
- i. Other minor Project-related necessary and reasonable expenditures.

All Reimbursable Costs (other than those set forth in subparagraphs h. and i. above) will be billed as actual costs plus a 5% mark-up for administrative expenses and overhead.

Notwithstanding the foregoing, the parties acknowledge that under no circumstances shall Owner's Representative be expected to directly pay any invoices or otherwise expend its own funds for any portion of the Project costs, including but not limited to architectural or engineering fees, construction costs, permit fees or other costs not provided under this Agreement.

8. **Owner's Representative's Responsibilities.**

- a. The Owner's Representative shall provide the Owner's Representative Services as set forth in this Agreement, and specifically set forth in Exhibit A, and include the usual and customary construction coordination and scheduling, constructability review, budget review, cost analysis, and allocation of construction activities among the contractors hired to construct the Project.
- b. The Owner's Representative shall exercise reasonable care in preparing the Schedule and cost estimates, and endeavor to complete the Project in accordance with the Schedule and cost estimates, provided that the Owner's Representative does not warrant or guarantee such estimates or the Schedule.
- c. The Owner's Representative shall prepare a budget of all anticipated expenses necessary to complete the Project, including necessary expenses not covered by this Agreement but on which the Project goals may be dependent. When approved by the Owner, Owner's Representative shall use good faith efforts to coordinate and manage the advancement of the Project, as provided in the Budget. In the event of any material change in any item indicated in the Budget,



Owner's Representative shall promptly prepare and submit to Owner a revised Budget reflecting such material changes, for approval by Owner.

- d. In rendering the Owner's Representative Services, the Owner's Representative shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Agreement. Any services contracted or provided for by a third-party shall be procured as required by Omaha Municipal Code and any associated contracts shall be approved by the Omaha City Council. This shall include the fees and costs associated with contractors, engineers, architects, or consultants necessary to the performance and completion of the Project, any required permits, or other such related expenditures, which services, fees and costs are separate from and in addition to the Fee.

**9. Owner's Responsibilities.** The duties to be performed (or caused to be performed) by Owner shall include all acts reasonably necessary, proper and appropriate to facilitate Owner's Representative's performance of the Owner's Representative Services, including, without limitation, the following:

- a. **Cooperation.** The Owner and its staff shall reasonably and timely cooperate with Owner's Representative's efforts in accordance with this Agreement, in support of the City's required procurement processes, and to actively support achievement of Project goals dependent on Owner's action, specifically including but not limited to (i) respond promptly to all requests for consent and/or approval received from Owner's Representative or third parties; (ii) take all such other reasonable actions with respect to third parties or requested by Owner's Representative to facilitate Owner's Representative's performance of the Owner's Representative Services under this Agreement; (iii) promptly, fully and currently inform Owner's Representative of any material information and developments with respect to the Project; and (iv) execute and deliver such applications, agreements or amendments to the foregoing, including all contracts with architects, engineers, contractors or consultants, as may be necessary or desirable to fully complete the Project.
- b. **Payments.** The Owner shall timely pay all sums directly, or deposit funds into the account(s) established by Owner's Representative for payment, in accordance with this Agreement. Owner shall be responsible for the direct payment of all costs and fees due to architects, engineers, contractors or consultants required in order to complete the Project.
- c. **Legal Advice.** The Owner shall be solely responsible for selecting and retaining its own legal counsel with respect to this Project, including but not limited to the review and negotiation of any and all contracts and documents, to the extent and at such time the Owner may deem appropriate.



- d. **Public Approvals.** The Owner shall cooperate and facilitate the review and award of any contracts contemplated herein, and the presentation of those contracts to the Omaha City Council.

10. **Conflict Resolution.** Both parties agree to resolve conflicts starting with mediation. Both parties agree that their liability for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services hereunder shall not exceed the total compensation received by Owner's Representative hereunder, and Owner hereby releases and holds harmless Owner's Representative and its employees from any liability above such amount.

11. **Mutual Indemnification.** Subject to the limitations in Section 9 above, each party hereby agrees to indemnify, defend and hold the other party and its owners, officers, representatives, agents and employees harmless from and against any and all liabilities, losses, costs or expenses resulting from any claim, demand, complaint, action, suit, proceeding or similar action, which is made or initiated by a third party and which is in any way connected with the Project, but only to the extent that any of the foregoing are the result of any grossly negligent or willful acts, omissions to act or forbearance's of the indemnifying party or its agents, employees or representatives. **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES CONSTITUTING LOST PROFITS, SUFFERED BY EITHER PARTY UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT OF ANY SUCH DAMAGES PAID TO A THIRD PARTY AS A PART OF A CLAIM SUBJECT TO INDEMNIFICATION HEREUNDER.**

In claims against any person or entity indemnified under this Section by an employee of the Owner's Representative or anyone directly or indirectly employed by the Owner's Representative, the indemnification obligation under the Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Owner's Representative under workers' compensation acts, disability benefit acts or other employee benefit acts.

12. **Termination.** The Owner may terminate this Agreement upon thirty (30) days written notice with or without cause. If payment terms are not met or Agreement is extended past the agreed upon schedule, the Owner's Representative shall provide the Owner with thirty (30) days' notice of its intent to terminate the Agreement. In the event of any termination, Owner's Representative shall be paid for all Construction Management Services provided or Reimbursable Costs incurred up to the date of termination, plus reasonable demobilization costs.

13. **Insurance.** Owner's Representative shall procure, and at all times maintain with insurers domiciled in the United States, licensed to do business in Nebraska, and reasonably acceptable to Owner, the following minimum insurance:

- a. Commercial General Liability – Owner's Representative shall maintain a policy of commercial general liability insurance written on an occurrence basis with policy limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury and damage to property.



- b. **Automobile Liability** – Owner's Representative shall maintain automobile liability insurance written on an occurrence basis covering all owned, rented, and non-owned vehicles operated by Owner's Representative with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage combined.
- c. **Workers Compensation** – Owner's Representative shall provide statutorily required Workers' Compensation insurance. Owner's Representative shall maintain coverage for employers' liability with a policy limit as required by law, but not less than \$500,000.
- d. **Builder's Risk** – Owner's Representative shall provide, or cause others to provide, Builder's Risk insurance with coverage for work to be executed under this Agreement, except that the cost of such Builder's Risk coverage will be considered a Reimbursable Expense.

**14. Ownership and Use of Documents.** The Owner's Representative shall be deemed the author and owner of all instruments of service, including drawings, plans, and specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The contractors, subcontractors, and material or equipment suppliers shall not own or claim a copyright in the instruments of service.

**15. Limited Warranties.** Except as specifically set forth in this Agreement, neither party makes any warranties, representations, or guarantees (either express or implied) and all such warranties, representations, and guarantees, including the warranties of fitness are expressly disclaimed.

**16. Independent Contractor.** Owner's Representative shall be, and remain throughout the Project, an independent contractor of Owner. Subcontractors who perform any portion of the Owner's Representative Services shall do so as independent contractors, and not as employees of Owner's Representative or Owner. Nothing in this Agreement shall be construed as inconsistent with this status.

**15. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, without giving effect to the conflicts of law rules thereof.

**16. Assignment.** The Owner and Owner's Representative, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Owner's Representative 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.

**17. Notice.** Except for routine communications in the course of performance of this Agreement, which may be transmitted in accordance with any procedures established by agreement or acquiescence of the parties, all notices and other communications under this Agreement shall be in writing and shall be delivered in person or sent by email or sent (postage prepaid) by registered, certified, or express U.S. mail or sent by overnight a nationally recognized



courier service, and shall be deemed given and received when delivered in person, or when sent by email, or three days after sent by mail (one business day in the case of express mail), or one business day after sent by overnight courier service posted for next business day deliver, addressed in each case to the respective party at its address specified above, or at such other address or addresses as such party may from time to time designate by written notice to the other party as herein provided.

18. **Amendments.** No amendments, modifications, alterations, or waivers of the terms of this Agreement shall be binding unless made in writing and executed by both of the parties hereto.

19. **Scope of Agreement.** This Agreement represents the entire and integrated agreement between Owner and the Owner's Representative and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties. The parties acknowledge and agree that any changes to the Fee shall require approval of the Omaha City Council

20. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party. Counterparts and signatures transmitted by facsimile shall be valid as originals.

21. **Severability.** The provisions of this Agreement are severable. If any provision hereof should be void, voidable, or unenforceable under any applicable law, such void, voidable, or unenforceable provision shall not affect or invalidate any other provision of this Agreement, and this Agreement shall continue to govern the relative rights and duties of the parties as though the void, voidable, or unenforceable provision were not a part hereof. The parties agree that all of the terms and conditions hereof shall be enforced to the fullest extent permitted by law.

The undersigned agree to the terms of this Agreement and hereby gives notice to proceed with the Owner's Representative Services described herein.

City of Omaha Nebraska

Name (Print): JEAN STOTHERT  
Title: MAYOR

Signature: Jean Stothert  
Date: 2/3/2022

Noddle Development Company, LLC

Name (Print): JAM B. NODDLE  
Title: PRESIDENT

Signature: [Signature]  
Date: 01/07/2022

APPROVED AS TO FORM:

[Signature] 1/7/2022  
Jennifer J. Taylor  
Assistant City Attorney



## **Exhibit "A"**

### **Administration**

- Review and process monthly pay applications from Designer, Contractor, and Vendors
- Prepare project progress communication materials regularly for Owner.
- Develop project schedule strategy and set associated milestones.
- Work with Owner to establish target project budget and procurement strategy.
- Develop project options for consideration; either to provide additional value or to reduce project budget.
- Attend meetings on behalf of Owner and provide timely notification of decisions required.
- Solicit proposals and negotiate Agreements for Design, Construction, and Vendor Services required for the project.
- Negotiate Guaranteed Maximum Price with Contractor.
- Coordinate between project team members, stakeholders, and Owner's staff and vendors.
- Coordinate among team members to execute the procurement process in the most efficient and effective manner.

### **Programming**

- Develop a working program upon which the tenant improvement design and relocation plans would be based.
- Coordinate programming meetings with appropriate user groups for utilization input.
- Review analyses prepared on existing building systems to determine limitations (if any).

### **Design and Consulting**

- Coordinate design development meetings with appropriate team members
- Oversee production of Schematic/Design Development Level Design documents for review; code and programming compliance.
- Oversee production of Construction Documents for review; code and programming compliance.
- Review requests for Additional Services from Designer and/or Consultants.

### **Construction**

- Review construction costs and negotiate change order expenses.
- Coordinate and negotiate with Architect for design services as necessary
- Review and critique the Project Schedule to ensure timely completion
- Coordinate and negotiate with contractors for construction and other services as necessary.
- Oversee construction activities.
- Regular site visits to review quality of work and schedule progress.
- Consultation on construction means and methods
- Punch list Management
- Project Closeout Management

### **Relocation**

- Coordinate inventory management during relocation process.
- Manage relocation vendors to ensure coordination with construction schedule.

### **Exclusions and Clarifications**

- The Owner's Representative can award to contractors and vendors based on a best value fee and qualifications competitive evaluation.
- There are no restrictions on contractors or vendors that can be utilized.



- The Owner will support an expedited permitting process, with proactive collaboration in advance of submission.
- Renovations to the Core & Shell of the 1401 Jones and 84<sup>th</sup> & Frederick buildings will not negatively affect the timeline for this project.
- Renovations to the Core & Shell of the 1401 Jones and 84<sup>th</sup> & Frederick buildings will be adequate for the intended use to be programmed in this project.
- The leases will require that the landlord(s) for the existing facilities are to provide a construction ready Core & Shell that is code compliant and outfitted with building systems (including mechanical, electrical, fire suppression, utility services space and restroom facilities) appropriate for the intended use. All such landlord work provided through this agreement will meet the developed program, all pertinent code requirements, and will be proactively coordinated with the C&S.
- A detailed inventory of the Dale Clark Library contents (other than FF&E) is available.
- Owner's Representative, Owner and the library staff will collaborate an inventory and assessment of FF&E items to be reused, newly purchased, and/or eliminated. Owner's Representative will coordinate work schedules with all Owner provided material providers and vendors for the benefit of the Project.
- The library staff will need some time to reach operational readiness after the completion of the work defined in this Agreement. Preliminary schedules include time allowances for IT/Network installation, staff member orientation, and branding/signage installation. To the extent that this work can be condensed or overlapped with construction activities, the Owner's Representative will coordinate with Owner and the library staff for the benefit of the Project.
- The existing building will be turned over empty apart from items not to be relocated.
- De-commissioning or demolition of the existing facility is not included.
- Property General Liability Insurance will be maintained on the Dale Clark Library, 1401 Jones, and 84<sup>th</sup> & Frederick properties should there be claims related to the Core, Shell, and exterior Property during this project.
- Building Services, to include: utility services, snow removal, lawn services, trash removal, and repair/maintenance, will be maintained by others on the Dale Clark Library, 1401 Jones, and 84<sup>th</sup> & Frederick properties throughout the Project.

Additional labor expenses incurred for scope not specifically listed above will be billed according to the following:

TEAM MEMBER	HOURLY RATE
Principal	\$350.00
Executive	\$225.00
Owner's Representative/ Project Manager	\$150.00
Administrative	\$75.00