



Agreement No.	
Effective (NTP) Date	
Agreement Amount	

**PROFESSIONAL SERVICES AGREEMENT**  
**STATE PROJECTS**  
**CONSTRUCTION ENGINEERING SERVICES**

**OPTIONAL DESCRIPTION.** this is where a brief description of the agreement can be added, similar to what was on the cap sheets, 2 lines max. like "type of service"

NEBRASKA DEPARTMENT OF ROADS  
**CONSULTANT FIRM NAME**  
 PROJECT NO. Project #  
 CONTROL NO. Control #  
 Project Location – ex. Brownson East Crossovers

**THIS AGREEMENT** is between the Nebraska Department of Roads ("State") and **Consultant firm name** ("Consultant"), collectively referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, State used a qualification based selection process to select Consultant to provide Construction Engineering services ("Services") for the above named project ~~USE/DELETE FOR LOCATION MAP EXHIBIT~~ at the location shown on Exhibit "**<location map>**", attached ~~END USE/DELETE FOR LOCATION MAP EXHIBIT~~, and

**WHEREAS**, Consultant is qualified to do business in Nebraska and has met all requirements of the Nebraska Board of Engineers and Architects to provide consultant engineering services in the State of Nebraska, and

**WHEREAS**, Consultant is willing to perform Services in accordance with the terms hereinafter provided, and

**WHEREAS**, Consultant is required to use State provided construction recordkeeping system (Trans•Port SiteManager), for the Services provided under this agreement.

**NOW THEREFORE**, in consideration of these facts and mutual promises, the Parties hereto agree as follows:

## **SECTION 1. CONTACT INFORMATION**

Contact information, for the convenience of the Parties, is as follows:

### 1.1 Consultant Project Manager

Firm Name	Firm name
Address	Firm address
Project Manager's Name	PM's name
Project Manager's Phone	xxx-xxx-xxxx

USE/DELETE FOR SUBS

### 1.2 Subconsultant Project Manager

Firm Name	Sub name
Address	Sub address
Project Manager's Name	PM's name
Project Manager's Phone	xxx-xxx-xxxx

END USE/DELETE FOR SUBS

### 1.3 State Project Coordinator (Central)

Name	name
Phone Number	xxx-xxx-xxxx

### 1.4 State Representative (District)

Name	name
Phone Number	xxx-xxx-xxxx

### 1.4 State Agreements Specialist

Name	name
Phone Number	xxx-xxx-xxxx

**SECTION 2. *This section has intentionally been left blank.***

**SECTION 3. *This section has intentionally been left blank.***

## **SECTION 4. DURATION OF THIS AGREEMENT**

4.1 Effective Date – This Agreement is effective upon the earlier of the date (1) State issued the Notice to Proceed, or (2) the Parties executed this Agreement.

4.2 Renewal, Extension or Amendment – This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.

4.3 Identifying Date – For convenience, this Agreement's identifying date will be the date

State signed the agreement.

**>USE FOR LUMP SUM AGREEMENTS<**

4.4 Duration – State will treat this Agreement as completed or inactive upon acceptance by Consultant of the final payment from State.

**>USE FOR ALL OTHER AGREEMENTS<**

4.4 Duration – State will treat this Agreement as completed or inactive upon (1) the final completion of an audit review by State or its authorized representative and the resolution of all issues identified in the audit report, or (2) the waiver of an audit review.

4.5 Termination – State reserves the right to terminate this Agreement as provided herein.

**SECTION 5. SCOPE OF SERVICES**

5.1 Consultant agrees that the Scope of Services for this work will be in two parts. Part one of the Scope of Services is contained within the “Basic Scope of Services” set out below. Part two of the Scope of Services is set out on the document attached hereto as Exhibit “(12)”, which is hereby fully incorporated herein and made a part hereof by this reference. Exhibit “(12)” is the result of the following process:

- 1) State provided Consultant with a document describing the detailed proposed Scope of Services for this project.
- 2) Consultant made necessary and appropriate proposed additions, deletions, and revisions to State’s detailed Scope of Services document.
- 3) State and Consultant together reviewed the proposed Scope of Services, the proposed revisions and negotiated the final detailed Scope of Services and Fee Proposal document, which is attached as Exhibit “(12)”.

Consultant and State have agreed that Exhibit “(12)” sets out the Services reasonably necessary and the costs reasonably estimated for Consultant Services to adequately observe, monitor, inspect, measure, manage, document and report so that State’s project is constructed by the contractor in compliance with the Construction Contract Documents (definition below), the Manuals (definition below), State and Federal law, rule or regulation and policy. Consultant agrees to provide the services listed on Exhibit “(12)” for Project (3), Control No. (4), in (13) County, Nebraska.

**Basic Scope of Services:**

- 5.2 Consultant services generally include, but are not limited to: project management; construction engineering; pre-construction staking; traffic control plans; conducting the preconstruction conference; preparing daily work reports, construction staking; and inspection, and materials sampling and testing during project construction; monitoring environmental commitments; preparing as-built plans; progress computations; final computations; preparing contractor change orders and work orders; and all project communications.
- 5.3 Consultant shall review and have a working knowledge of the project plans, special provisions, standard specifications (the Standard Specifications for Highway Construction of NDOR (Current Edition)), change orders and all other project related contract documents for the construction of State's project. The project plans, special provisions, standard specifications, and other contract documents are hereby incorporated by reference into this agreement, as if they were fully set forth herein, and collectively, may be referred to as the Construction Contract Documents. Consultant shall assume the duties of "Inspector", (also referred to in the NDOR Construction Manual as "Construction Technician"); "Project Manager;" and also "Engineer" (unless the context of use of the term "Engineer" would otherwise require), as those terms are defined and duties set out in the Standard Specifications for Highway Construction (2007 Edition). Consultant shall assume that it is responsible for all duties of the "Engineer" unless notified otherwise State.
- 5.4 Additionally, Consultant shall review and have a working knowledge of the following authoritative guides and manuals related to highway construction, and materials:
- 1) NDOR Construction Manual - Current Edition
  - 2) Materials Sampling Guide (NDOR)
  - 3) Standard Methods of Tests – 2006 (NDOR)
  - 4) The Manual on Uniform Traffic Control Devices
  - 5) AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing
  - 6) The ASTM Standards
  - 7) NDOR Final Review Manual

- 5.5 These documents are hereby incorporated herein by reference as if fully set forth, and these documents, collectively, may be referred to as the Manuals. Unless required otherwise by the Construction Contract Documents, Consultant shall be responsible for timely completion of all applicable checklists, tests, samples, duties, requirements and provisions of the Manuals. The Manuals will be used to determine what, when, how, the sequence, and other details of the work that must be provided by Consultant, whenever Consultant's duties in these respects are not clearly set out in the Construction Contract Documents. Consultant shall employ a sufficient number of qualified employees on the project to adequately observe, monitor, inspect, measure, manage, document, report and carry out the other duties of this agreement, so that the project is constructed by the contractor in compliance with the Construction Contract Documents, the Manuals, State and Federal law, rule or regulation and policy. Consultant shall fulfill all contract duties of inspection, project management and construction engineering for the project in a timely manner and shall communicate regularly about the progress of the construction with State.
- 5.6 Consultant is required to use Trans•Port Site Manager as the construction record-keeping system for Services under this Agreement.
- 5.7 Consultant shall be present at the project site when appropriate for each applicable phase of construction to inspect, observe, monitor, measure, manage, document and report on the progress of the work or as State agrees.
- 5.8 The Parties understand that Consultant is not responsible for the Contractor's means and methods of construction. To the extent the Construction Contract Documents and the Manuals specify sequencing of work, equipment requirements, or other construction methods, Consultant shall keep the Owner's RC informed about the progress and quality of the portion of the work and shall advise the RC about observed or measured deficiencies in the work.
- 5.9 Additional Requirements:
- 5.9.1 Consultant shall advise State when it appears any Disadvantaged Business Enterprise (DBE) working on the project is in need of assistance.
- 5.9.2 Consultant shall make every effort to assist the Contractor or any Subcontractor in interpreting Project Plans, Special Provisions, Standard Specifications, other Construction Contract Documents, or the Manuals.

- 5.9.3 Consultant will be present at the project site or available locally beginning on the date specified in the State's notice to proceed to the contractor, unless project work has not begun at the site; or, with at least 24 hours' notice, at any prior date when contract work begins or when materials are delivered to the project that need to be tested, sampled or inspected to verify conformance to the requirements of the Construction Contract Documents.
- 5.9.4 Consultant will promptly review and approve or reject all construction work on the project. State and FHWA have the right, but not the duty, to review the work for compliance and funding eligibility.
- 5.9.5 All reports of field tests performed by Consultant will be submitted weekly to State Representative. Consultant will take prompt and appropriate action to reject or cause Contractor to remedy the work or materials that do not strictly conform to the contract documents. Additionally, Consultant shall promptly notify State of work that does not strictly conform to the contract documents.
- 5.9.6 Consultant shall comply with all Federal, State and local laws, rules or regulations, policies or procedures, and ordinances applicable to the work contemplated in this agreement.
- 5.9.7 Project time delays attributed solely to the Contractor will constitute a basis for a request for an equivalent extension of time for Consultant. The Parties understand that reimbursement of extra compensation must be approved in advance as described in the Fees and Payments Section of this agreement.
- 5.9.8 The sampling and testing type, method and frequency must be completed by Consultant according to the current State of Nebraska Manuals, including the Materials Sampling Guide and the State Standard Methods of Tests ([www.transportation.nebraska.gov](http://www.transportation.nebraska.gov)), and the Construction Contract Documents. For sampling or testing issues or situations that are not covered in the Construction Contract Documents or the Manuals, Consultant shall notify State, provide its advice and request that State decide what testing type, method or frequency should be applied for this project. Any test methods or procedures that are proposed to be used and are not covered by NDOR procedures must receive prior concurrence for use from State and FHWA.

## **SECTION 6. NOTICE TO PROCEED AND COMPLETION**

- 6.1 State will issue Consultant a written Notice-to-Proceed upon complete execution of this agreement. **OR** Consultant was issued a Notice-to-Proceed effective **<NTP date>**. Services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be paid by State.
- 6.2 Consultant shall complete all work under this agreement within 60 calendar days from the construction completion date stated on the DR Form 91 "Notification of Contract Completion", and the work must be invoiced within 105 calendar days of the construction completion date. Any exception to this deadline will require prior approval from the State's Construction Division Project Coordinator. If justification is approved, a time extension will be granted. Any costs incurred by Consultant after the completion deadline will not be eligible for reimbursement.

## **SECTION 7. STAFFING PLAN**

- 7.2 Consultant has provided State with a Staffing Plan, described in Exhibit "**<staffing plan>**", attached and incorporated herein by this reference. The Staffing Plan identifies the employees of Consultant who will be part of the primary team for this project. The primary team members will be agreed upon and identified in Exhibit "**<staffing plan>**". The primary team is expected to be directly responsible for providing the Services under this Agreement. The Staffing Plan specifies the role assigned to each member of the primary team. Consultant may make occasional temporary changes to the primary team. However, any permanent change to the primary team will require prior written approval from State.
- 7.3 Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended Services. Failure on the part of Consultant to provide acceptable replacement personnel or qualified new personnel as determined by State will be cause for termination of this Agreement, with settlement to be made as provided in Exhibit "**<fees & payments exhibit>**".

## **SECTION 8. STATE'S SOVEREIGN IMMUNITY**

Notwithstanding any other provision of this Agreement, Consultant understands and agrees that (1) the State of Nebraska is a sovereign State and its authority to contract is therefore subject to limitations by constitution, statute and common law, (2) this Agreement shall be interpreted under the laws of the State of Nebraska and it is enforceable only to the extent that it does not violate the constitution and the laws of the State of Nebraska, (3) any action to enforce the provisions of this Agreement must be brought in the State of Nebraska, (4) the person signing this Agreement on behalf of State has neither the authority, nor the intention, to waive State's sovereign immunity.

## **SECTION 9. NEW EMPLOYEE WORK ELIGIBILITY STATUS**

- 9.1 Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Consultant hereby agrees to contractually require any Subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
- 9.2 The undersigned duly authorized representative of Consultant, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

**Neb.Rev.Stat. § 4-114.** I certify compliance with the provisions of Section 4-114 and, hereby certify that this Consultant shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all Subconsultants, by contractual agreement, to require the same registration and verification process.

- 9.3 If Consultant is an individual or sole proprietorship, the following applies:
- a. Consultant must complete the United States Citizenship Attestation form and attach it to this agreement. This form is available on the Department of Roads website at [www.transportation.nebraska.gov/projdev/#save](http://www.transportation.nebraska.gov/projdev/#save).
  - b. If Consultant indicates on such Attestation form that he or she is a qualified alien, Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
  - c. Consultant understands and agrees that lawful presence in the United States is required and Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

## **SECTION 10. FEES AND PAYMENTS**

- 10.1 Consultant's fee proposal is attached as Exhibit "<fee proposal exhibit>" and incorporated herein by this reference.
- 10.2 The general provisions concerning payment under this agreement are attached as Exhibit "<fees & payments exhibit>".
- 10.3 For performance of the services as described in this agreement, Consultant will be paid a **fixed-fee-for-profit** of \$?? and up to a maximum amount of \$?? for actual costs in accordance with Exhibit "<fees & payments exhibit>". The total agreement amount is \$??.

## **SECTION 11. CONSULTANTS PERFORMANCE**

### **11.1 Standard of Performance**

Consultant shall complete the Services under this Agreement exercising the degree of skill, care, and diligence consistent with the applicable professional standards recognized by such profession and observed by national firms performing services of the type provided for in this Agreement. Consultant shall complete the Services exercising good and sound professional judgment and practices. Consultant's Services shall conform to applicable licensing requirements, industry standards, statutes, laws, acts, ordinances, and rules and regulations.

## 11.2 Quality of Service

Consultant agrees to perform all Services hereunder using qualified personnel consistent with good professional practice in the state of the art involved, and that performance of its personnel will reflect their best professional knowledge, skill, and judgment. Consultant agrees to permit State access at all times to the work product for purposes of reviewing same and determining that the Services are being performed in accordance with the terms of this Agreement.

## 11.3 Performance Evaluation

11.3.1 State retains the discretion to conduct an evaluation of Consultant's performance at any time. Consultant's performance may be subject to an evaluation in the following performance categories: (1) communication and cooperation; (2) quality; (3) recordkeeping; (4) timeliness; (5) scope and budget; (6) project manager; and (7) technical performance. Consultant understands that if State determines that Consultant's performance is not meeting, has not met, or is at risk of not meeting the Standard of Performance set out herein, State may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If State chooses to conduct a Consultant Performance Evaluation, State will notify Consultant of the evaluation including necessary instructions and procedures for complying with the evaluation.

11.3.2 Consultant shall, to the fullest extent reasonable, implement and make modifications and changes in response to the evaluation, correct deficiencies, implement improvements, and improve performance to comply with the terms of this Agreement in response to the Performance Evaluation. State's remedies for substandard performance will apply even in the absence of a Consultant Performance Evaluation.

## 11.4 State's Remedies for Substandard Performance

Upon notice of substandard performance of Services revealed during or after the construction of the project, Consultant shall re-perform the Services at no cost to State. Further, Consultant shall reimburse State for any costs incurred by State for necessary remedial work. Consultant shall respond to State's notice of any errors, omissions, or negligence within twenty four (24) hours and give immediate attention to necessary corrections to minimize any delays to the project. This may involve visits by Consultant

to the project site, if directed by State. If Consultant discovers errors, omissions, or negligence in its Services, Consultant shall notify State of the errors within three (3) business days. Failure of Consultant to notify State will constitute a breach of this Agreement.

If Consultant fails to re-perform the Services, or if State determines that Consultant will be unable to correct substandard Services before the time specified for completion in this Agreement, State may correct such unsatisfactory Services itself or by the use of third parties and charge Consultant for the costs incurred.

If State requires Consultant to remedy any deficiencies in the Services, Consultant shall make such corrections at no additional cost to State. Any increase or decrease in the scope of the Services or any modification of the specifications will be made only by written agreement signed by the Parties. Consultant shall bear legal liability for all damages incurred by State caused by Consultant's errors, omissions, or negligent acts without liability or expense to State. The rights and remedies of State provided herein are in addition to any other remedies provided by law.

## **SECTION 12. CONSULTANT'S ACCOUNTABILITY FOR ITS SERVICES**

- 12.1 Consultant agrees that State will rely on the professional training, experience, performance and ability of Consultant. Consultant agrees that examination by State, or Federal Highway Administration of the United States Department of Transportation (FHWA), approval, acceptance, use of, or acquiescence in Consultant's Services, will not be considered a full and comprehensive examination and will not be considered approval of Consultant's Services that would relieve Consultant from liability or expense connected with Consultant's sole responsibility for the propriety and integrity of Consultant's Services pursuant to this Agreement. Consultant agrees that State's declining to approve Consultant's services will not be deemed an acceptance of defective Services or relieve Consultant of its obligations and liabilities with respect to such Services.
- 12.2 Consultant agrees that acceptance or approval of any of the Services of Consultant by State or of payment, partial or final, will not constitute a waiver of any rights of State to recover from Consultant damages caused by Consultant due to error, omission, or negligence of Consultant in its Services.

### **SECTION 13. DISPUTES**

Any dispute concerning a question of fact in connection with the services not disposed of by this Agreement will be referred for determination to the Director-State Engineer or a duly authorized representative, whose decision in the matter will be final and conclusive on the Parties to this agreement, using the process set out on Exhibit “<dispute resolution exhibit>”, attached hereto and made a part of this Agreement.

### **SECTION 14. SUSPENSION OR TERMINATION**

#### **14.1 Suspension or Termination**

State has the absolute and exclusive right to suspend the work, or terminate the Agreement at any time and for any reason and such action on its part will in no event be deemed a breach of this Agreement by State. Without limiting the rights set out in this section, the following is a non-exclusive list of the examples of the circumstances under which this Agreement may be suspended or terminated:

- a. A loss, elimination, decrease, or re-allocation of funds that, in the sole discretion of State make it difficult, unlikely or impossible to have sufficient funding for the Services or the project;
- b. State abandons the Services or the project for any reason;
- c. State's funding priorities have changed;
- d. State determines, in its sole discretion, that State's interests are best protected by suspension or termination of this Agreement;
- e. Consultant fails to meet the schedule, milestones, or deadlines established in this Agreement or agreed to in writing by the Parties;
- f. Consultant fails to provide acceptable replacement personnel or qualified new personnel as determined by State;
- g. Consultant has not made sufficient progress to assure that the Services are completed in accordance with the schedule in attached Exhibit “<project schedule>” or in a timely manner;
- h. Consultant fails to meet the standard of care applicable to the Services;
- i. Consultant fails to meet the performance requirements of this Agreement;
- j. Consultant's breach of a provision of this Agreement or failure to meet a condition of this Agreement;

- k. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity;
- l. Consultant fails to complete the project design in a form that is ready for letting a contract for construction according to the approved contract documents, including, but not limited to, project plans and specifications;
- m. (25) USE/DELETE(26). END (25)

#### 14.2 Suspension

- a. Suspension for Convenience. If State suspends the work for convenience, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide State a detailed summary of the current status of the Services completed and an invoice of all costs incurred up to and including the date of suspension.
- b. Suspension for Cause. If State suspends Consultant's work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. State's notice of suspension will provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, and a description of the actions that must be taken for State to rescind the suspension. Consultant's right to incur any additional costs will be suspended at the end of the day of suspension and will continue until all remedial action is completed to the satisfaction of State. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

#### 14.3 Termination

If State terminates this Agreement, State shall give Consultant notice of the date of termination, which shall be no fewer than three (3) business days after notice is given. State's notice of termination shall provide Consultant with a description of the reason(s) for the termination. State's notice must specify when the Agreement will be terminated along with the requirements for completion of the work under the Agreement.

Consultant's right to incur any additional costs shall cease at the end of the day of termination or as otherwise provided by State.

14.4 Compensation upon suspension or termination

If State suspends the work or terminates the Agreement, Consultant must be compensated in accordance with the provisions set out in Exhibit “<fees and payments exhibit>”, provided however, that in the case of suspension or termination for cause or for Consultant's breach of this Agreement, State will have the power to suspend payments, pending Consultant's compliance with the provisions of this Agreement. In the event of termination of this Agreement for cause, State may make the compensation adjustments set out in Exhibit “<fees and payments exhibit>”.

**SECTION 15. OWNERSHIP OF DOCUMENTS**

- 15.1 All surveys, maps, studies, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other documents prepared or obtained under the terms of this Agreement are the property of State and Consultant shall deliver these documents to State at the conclusion of the project without restriction or limitation as to further use.
- 15.2 State acknowledges that such data may not be appropriate for use on an extension of the services covered by this Agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at State's sole risk and without legal exposure or liability to Consultant.
- 15.3 Further, Consultants' time sheets and payroll documents must be kept in Consultants' files for at least three years from the completion of final cost settlement by FHWA and project closeout by State.

**SECTION 16. CONFLICT OF INTEREST LAWS**

Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for State's project to remain fully eligible for federal funding. By signing this agreement, Consultant certifies that Consultant is not aware of any financial or other interest Consultant has that would violate the terms of these federal provisions.

**SECTION 17. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION**

- 17.1 Certain information provided by State to Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between a State employee and Legal Counsel. This confidential and privileged information is vital and essential to Consultant in order that Consultant adequately design the project at hand on behalf of State.
- 17.2 Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for State for the project at hand only. Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. State agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information (Approved 11/4/11):
- “CONFIDENTIAL INFORMATION:** Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The State of Nebraska has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”
- 17.3 Consultant agrees to obtain the written approval of State prior to the dissemination of any privileged or confidential information or documentation if it is unclear to Consultant whether such information or documentation is in fact privileged or confidential.
- 17.4 Consultant and State agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant will create liability on

the part of Consultant to State for any damages that may occur as a result of the unauthorized dissemination. Consultant agrees to hold harmless, indemnify, and release State for any liability that may ensue on the part of State for any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant.

#### **SECTION 18. FORBIDDING USE OF OUTSIDE AGENTS**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, State has the right to annul this agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **SECTION 19. GENERAL COMPLIANCE WITH LAWS**

Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work. If Consultant is found to have been in violation of any applicable federal, state, or local laws and ordinances, such violation may be the basis for the suspension or termination under this Agreement.

#### **SECTION 20. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE (1-24-12)**

20.1 Consultant agrees to hold harmless State from all claims and liability due to the error, omission, or negligence of Consultant or Consultant's agents or employees in the performance of services under this Agreement. Further, it is expected that in carrying out the work under this Agreement, Consultant will make various decisions and judgments and Consultant will determine what actions are required by Consultant and by others to properly complete the work. Nothing in this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to State in carrying out the work under this Agreement.

20.2 Finally, Consultant shall for the life of this Agreement, carry insurance as outlined in Exhibit “<Insurance exhibit>” and attached and incorporated herein by this reference. In any contract Consultant has with a subconsultant, Consultant shall require that subconsultant meet the insurance requirements outlined in Exhibit “<Insurance exhibit>”.

## **SECTION 21. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION**

### **21.1 Coordinating Professional**

As required by Neb.Rev.Stat. § 81-3437, State has designated its Roadway Design Engineer as the Coordinating Professional for this project. The definition of “Coordinating Professional” set out in § 81-3408 (Neb. Rev. Stat. § 81-3401 et seq.) of the Nebraska Engineers and Architects Regulation Act applies. The Coordinating Professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional will verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. The Coordinating Professional will also comply with the provisions of the Act, including Neb.Rev.Stat. § 81-3437(3)(f), and the implementing Rules and Regulations, Title 110, NAC section 6.3, and when applicable, will complete the duties of design coordination set out in Neb.Rev.Stat. § 81-3421. Consultant agrees to cooperate with the State’s Coordinating Professional to meet the requirements of state law. Consultant further agrees to require its subconsultants to cooperate with the State’s Coordinating Professional.

### **21.2 Professional Registration:**

To the extent the work requires engineering services, Consultant shall affix and sign the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all applicable documents, plans, specifications, and reports prepared under this Agreement as required by the Nebraska Engineers and Architects Regulations Act, Neb.Rev.Stat. § 81-3401 et.seq.

## **SECTION 22. SUCCESSORS AND ASSIGNS**

This agreement is binding on successors and assigns of either party.

## **SECTION 23. DRUG-FREE WORKPLACE POLICY**

Consultant shall have an acceptable and current drug-free workplace policy on file with State.

## **SECTION 24. FAIR EMPLOYMENT PRACTICES ACT**

Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. §§ 48-1101 through 48-1126.

## **SECTION 25. DISABILITIES ACT**

Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35.

## **SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES**

- 26.1 Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this agreement.
- 26.2 Consultant shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the award and performance of FHWA-assisted contracts. Failure of Consultant to carry out the requirements set forth above will constitute a breach of this Agreement and, after the notification of the FHWA, may result in termination of this Agreement by State or such remedy as State deems appropriate.

## **SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES**

### 27.1 Compliance with Regulations:

During the performance of this agreement, Consultant, for itself and its assignees and successors in interest, agrees to comply with the regulations of the DOT relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR 21 and 27, hereinafter referred to as the Regulations).

### 27.2 Nondiscrimination:

Consultant, with regard to the Services performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.

27.3 Solicitations for Subagreements, Including Procurements of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by Consultant for Services to be performed under a subagreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.

27.4 Information and Reports:

Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall certify to State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.

27.5 Sanctions for Noncompliance:

In the event of Consultant's noncompliance with the nondiscrimination provisions of this agreement, State will impose such agreement sanctions as it or State and FHWA may determine to be appropriate, including but not limited to withholding of payments to Consultant under this agreement until Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.

27.6 Incorporation of Provisions:

Consultant shall include the provisions of subsections 27.1 through 27.6 of this Agreement in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. Consultant shall take such action with respect to any subagreement or procurement as State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/ Subcontractor as a result of such direction, Consultant may request that State enter into such litigation to protect the interests of State and, in addition, Consultant may request that the United States enter into such litigation to protect the interests of the United States.

**SECTION 28. SUBLETTING, ASSIGNMENT, OR TRANSFER**

**>USE FOR SUBCONSULTANT PROVIDED SERVICES<**

- 28.1 The Subconsultant will provide <description of subconsultant services>.
- 28.2 Any other subletting, assignment, or transfer of any professional services to be performed by Consultant is hereby prohibited unless prior written consent of State is obtained.
- 28.3 At State's discretion, Consultant may enter into an agreement with any Subconsultants/Subcontractors for work covered under this agreement. All subconsultant/subcontractor agreements for work covered under this agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against State will accrue to any Subconsultant/Subcontractor by reason of this agreement.
- 28.4 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

**>USE WHEN NO SUBCONSULTANTS<**

- 28.1 Any subletting, assignment, or transfer of any professional services to be performed by Consultant is hereby prohibited unless prior written consent of State is obtained.
- 28.2 At State's discretion, Consultant may enter into an agreement with any Subconsultants/Subcontractors for work covered under this agreement. All subconsultant/subcontractor agreements for work covered under this agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against State will accrue to any Subconsultant/Subcontractor by reason of this agreement.
- 28.3 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

## **SECTION 29. CONSULTANT CERTIFICATIONS**

The undersigned duly authorized representative of Consultant, by signing this agreement, hereby swears, under the penalty of law, to the best of my knowledge and belief, the truth of the following certifications, and agrees as follows:

- 29.1 Neb.Rev.Stat. § 81-1715(1). I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum, actual cost-maximum-not-to-exceed, or actual cost-plus-fixed-fee type professional service Agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in this Agreement are accurate, complete, and current as of the date of this agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which State determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 29.2 Neb.Rev.Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:
- a. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
  - b. Has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
  - c. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).
- 29.3 Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions. Section 29.3a below contains 10 instructions that consultant agrees to follow in making the certifications contained in 29.3b.
- a. Instructions for Certification
    1. By signing this agreement, Consultant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with State's determination whether to enter into this agreement. However, failure of Consultant to furnish a certification or an explanation will disqualify Consultant from participation in this agreement.
3. The certification in this clause is a material representation of fact upon which reliance was placed when State determined to enter into this agreement. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, State may terminate this agreement for cause or default.
4. Consultant shall provide immediate written notice to State if at any time Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 – Debarment and suspension. Exec. Order No. 12,549, 51 Fed. Reg. 6370 (1986).
6. Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by State before entering into this agreement.
7. Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred,

suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.

9. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  10. Except for transactions authorized under paragraph 6. of these instructions, if Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, State may terminate this agreement for cause or default.
- b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions
1. By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
    - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph a.(ii) above; and

- d) Have not within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- 2. Where Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this agreement. I acknowledge that this certification is to be furnished to State and the FHWA in connection with this agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.

**SECTION 30. NEBRASKA DEPARTMENT OF ROADS CERTIFICATION**

- 30.1 By signing this agreement, I do hereby certify that, to the best of my knowledge, Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:
  - a. employ or retain, or agree to employ or retain, any firm or person, or
  - b. pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.
- 30.2 I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

**SECTION 31. ENTIRE AGREEMENT**

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

**IN WITNESS WHEREOF**, the Parties hereby execute this agreement pursuant to lawful authority as of the date signed by each party. Further, the Parties, by signing this agreement, attest and affirm the truth of each and every certification and representation set out herein.

**EXECUTED** by the Consultant on:

\_\_\_\_\_

CONSULTANT FIRM NAME  
Consultant Signatory Name

\_\_\_\_\_

Consultant Signatory Title

**EXECUTED** by the State on:

\_\_\_\_\_

NEBRASKA DEPARTMENT OF ROADS  
NDOR Signatory Name

\_\_\_\_\_

NDOR Signatory Title