

Agreement No.	QK1500
Effective (NTP) Date	10/10/2015
Agreement Amount	SRC \$10,000.00

## PROFESSIONAL SERVICES AGREEMENT FOR CAPITAL FACILITIES

NEBRASKA DEPARTMENT OF ROADS  
 CONSULTANT NAME  
 AFE NO. AFE #  
 Project Location and Building #

**THIS AGREEMENT** is between the Nebraska Department of Roads ("State") and (1) ("Consultant"), collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, State used a qualification based selection process to select Consultant to render professional services for the project generally identified as follows: (4) PROJECT DESCRIPTION, 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 professional services in the State of Nebraska, and

**WHEREAS**, Consultant is willing to provide professional services in accordance with the terms hereinafter provided.

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

**SECTION 1. DEFINITIONS**

WHEREVER in this Agreement the following terms are used, they will have the following meaning:

"CONSULTANT" means the firm of (1) and any employees thereof, whose business and mailing address is (5), and

USE/DELETE (6) "SUBCONSULTANT" means the firm of (7), and any employees thereof, whose business and mailing address is (8), and END USE/DELETE (6)

USE/DELETE (9) "SUBCONSULTANT" includes the following firms and any employees thereof:

(7), whose business and mailing address is (8)

(7), whose business and mailing address is (8)

(7), whose business and mailing address is (8), and END USE/DELETE (9)

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative, and

**SECTION 2. DURATION OF THIS AGREEMENT**

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

**Renewal, Extension or Amendment** --The Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.

**Identifying Date** – For convenience, the Agreement’s identifying date will be the date the State signed the agreement.

**Duration** – (10) DELETE FOR LUMP SUM State will treat the Agreement as inactive upon the happening of either (1) the waiver of an audit review, or (2) the final completion of an audit

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review by the State or its authorized representative and the resolution of all issues identified in the audit report. (10) END DELETE FOR LUMP SUM (11) USE FOR LUMP SUM State will treat the Agreement as inactive upon acceptance by the Consultant of the final payment from the State.(11) END USE FOR LUMP SUM

**Termination** -- Further, State reserves the right to terminate the agreement as provided herein.

### **SECTION 3. SCOPE OF SERVICES AND CONSULTANT'S FEE PROPOSAL**

The Scope of Services, Exhibit "(12)", and Consultant's Fee Proposal, Exhibit "(13)" are attached and incorporated herein by this reference. Upon receiving a written Notice to Proceed from State, Consultant shall complete the Scope of Services ("Services"). State reserves the unconditional right to add to, subtract from, or alter the Services at any time and such action on its part will in no event be deemed a breach of this Agreement. The addition, subtraction, or alteration will become effective seven (7) days after mailing written notice of such addition or subtraction. Any change in the Services shall follow the process specified in SECTION 8. FEES AND PAYMENTS, SUBSECTION 8.6. OUT-OF-SCOPE SERVICES.

### **SECTION 4. STAFFING PLAN**

Consultant has provided State with a Staffing Plan, described in Exhibit "(13)". 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 "(13)". 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.

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 SECTION 8. FEES AND PAYMENTS SUBSECTION 8.13.

### **SECTION 5. 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 does not have the authority to waive State's sovereign immunity.

### **SECTION 6. NEW EMPLOYEE WORK ELIGIBILITY STATUS**

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

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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.

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.** Consultant hereby certifies compliance with the provisions of § 4-114 and, and 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. Consultant agrees to require all Subconsultants, by contractual Agreement, to require the same registration and verification process.

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 <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 this Agreement terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

### **SECTION 7. NOTICE TO PROCEED AND COMPLETION**

(14) USE/DELETE State will issue Consultant a written Notice-to-Proceed upon full execution of this Agreement. (14) END USE/DELETE (15) USE/DELETE Consultant was issued a Notice-to-Proceed effective (16). (15) END USE/DELETE Any Services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed will not be paid by State.

Consultant shall complete all the Services according to the schedule in attached Exhibit "(12)" and shall complete all Services required under this Agreement in a satisfactory manner by (17). Any costs incurred by Consultant after the completion date, are not eligible for reimbursement unless Consultant has received a written extension of time from State.

The completion date will not be extended because of any avoidable delay attributed to Consultant, but delays not attributable to Consultant, such as delays attributable to State, may constitute a basis for an extension of time.

**SECTION 8. FEES AND PAYMENTS**

**8.1 Payment Method.**

Payment under this Agreement will be made based on acceptable actual costs up to a Maximum-Not-To-Exceed amount of \$(18).

**8.2 Total Agreement Amount.**

For performance of the Services as specified in this Agreement, the Consultant will be compensated for acceptable actual costs incurred up to a maximum amount of \$(18) in accordance with Subsection 8.7. The Consultant's compensation shall not exceed this maximum amount without prior written approval of State.

**8.3 Ineligible Costs.**

State is not responsible for costs incurred prior to the Notice to Proceed date or after the completion deadline date set out herein in SECTION 7. NOTICE TO PROCEED AND COMPLETION, or as approved in writing by State.

**8.4 Federal Cost Principles.**

For performance of Services as specified in this Agreement, State will pay Consultant subject to the terms of this Agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31).

**8.5 Subconsultant Over-runs and Under-runs.**

Consultant shall require any Subconsultant to notify Consultant if at any time the Subconsultant determines that its costs will exceed its negotiated fee estimate (over-run). Consultant shall not allow any Subconsultant costs to over-run without prior written approval of the State. Consultant understands that the amount of any Subconsultant cost under-run will be subtracted from the total compensation to be paid to Consultant under this Agreement, unless prior written approval is obtained from State.

**8.6 Out-of-Scope Services.**

State may request that Consultant provide Services that, in the opinion of Consultant, are in addition to or different from those set out in the Scope of Services. When State decides that these Services may require an adjustment in costs, Consultant shall provide in writing:

- a. A description of the proposed services,
- b. An explanation of why Consultant believes that the proposed services are not within the original Scope of Services and additional work effort is required
- c. An estimate of the cost to complete the Services.

Consultant must receive written approval from State before proceeding with the Out-of-Scope Services. Before written approval will be given by State, State must determine that the situation meets the following criteria:

- a. The proposed services are not within the original Scope of Services and additional work effort is required
- b. The proposed services are within the scope of the Request for Proposal under which Consultant was selected and Agreement entered into; and
- c. It is in the best interest of State that the proposed services be performed under this Agreement.

Once the need for a modification has been established, a supplemental agreement shall be prepared and executed.

**8.7 Payments.**

Payment for Services under this Agreement will be made based on acceptable costs up to a Maximum-Not-To-Exceed amount identified in Subsection 8.2, Total Agreement Amount. Acceptable costs include wages, Subconsultant costs and direct non-labor costs.

- a. Wages are defined as the actual hours an employee works directly on the project multiplied by the weighted labor rates, as indicated in Exhibit "(13)", Consultant's Fee Proposal.
  1. Time reports: The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects: such as project description, project number, pertinent work phase, dates of service, and the individual's name and position. There must be an adequate system of internal controls in place to ensure that time charges are correct and have the appropriate supervisory approval.
- b. Subconsultant Costs: Subconsultant costs shall not exceed the costs shown on the attached Consultant's Fee Proposal for each Subconsultant unless agreed upon by the parties. These costs include the Sub Consultant's wages and direct non-labor costs.
- c. Direct Non-Labor Costs (Reimbursables): These costs include all necessary, actual, and allowable costs related to the Consultant completing the Services, including but not limited to: meals, lodging, mileage, subject to the limitations specified below; communication costs; reproduction and printing costs; special equipment and materials required for the project; special insurance premiums if required solely for this Agreement; and such other allowable items.

Consultant shall submit to the State an invoice or billing itemizing all direct non-labor costs claimed for Services under this Agreement, and all supporting receipts or invoices.

State will pay the Consultant for all necessary, allowable, eligible and properly documented direct non-labor costs related to the Services under this Agreement.

The following expenses will be reimbursed at actual costs, not to exceed the rates as shown below.

1. The reimbursement for mileage associated with the use of company owned vehicles shall be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:
  - a) The mileage rate which the Consultant reimbursed to the person who submitted the claim for POV use, or
  - b) The prevailing standard rate as established by the IRS.
2. Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable the Consultant shall give State the benefit of all discounts.

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3. The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated on the website address for U.S. General Services Administration's (GSA) rates at <http://www.gsa.gov/portal/category/100120>.

a) For Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

- Employee is required to depart at or before 6:30 a.m., or
- Employee is on overnight travel.

Lunch:

- Employee must be on overnight travel. No reimbursement for same day travel.
- Employee is required to leave for overnight travel at or before 11:00 a.m., or
- Employee returns from overnight travel at or after 2:00 p.m.

Dinner:

- Employee returns from overnight travel or work location at or after 7:00 p.m., or
- Employee is on overnight travel.

b) Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.

c) Consultant shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town. The total daily meal costs must not exceed the GSA rates set out above.

Consultant shall give State the benefit of all meal or lodging discounts.

### **8.8 Invoices and Progress Reports.**

Consultant shall submit invoices to State no more frequently than at monthly intervals.

The invoices must present actual wages, Subconsultant costs, and actual direct non-labor costs. The invoices must identify each employee by name and classification, the hours worked, and each individual's weighted labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed. For Subconsultant Services, the invoice must include the same supporting documentation. Each monthly invoice must include a completed "Cost Breakdown Form" (see State's webpage at <http://www.transportation.nebraska.gov/rfp>) and must be substantiated by a progress report which is to include/address, as a minimum, the following:

- a. A description of the Services completed for that period
- b. A description of the Services anticipated for the next pay period
- c. Information needed from State
- d. Percent of Services completed to date

Consultant shall submit a progress report monthly even if Consultant does not submit a monthly invoice.

All invoice packages must be submitted electronically through State's invoice workflow system OnBase, for review, approval, and payment. The user guide for the OnBase system along with training videos can be found at <http://vimeo.com/album/1798952>.

**8.9 Progress Payments.**

State will pay Consultant upon receipt of Consultant's invoices and determination by State that the invoice and Progress Report adequately substantiate the Services provided, and the Services were completed in accordance with this Agreement. Payments will not be made if the monthly progress reports do not provide adequate substantiation for the Services or State determines that the Services have not been properly completed. State will make a reasonable effort to pay Consultant within 30 days of receipt of Consultant's invoices.

**8.10 Suspension of Payments.**

When work is suspended on this project, payments shall be suspended until the work resumes or this Agreement is terminated. Consultant shall not be compensated for any work completed or costs incurred on the project after the date of suspension. When work is suspended for convenience, Consultant shall be compensated for work completed or costs incurred prior to the date of suspension. When work is suspended for cause, payments shall be withheld until all remedial action is completed by Consultant to the satisfaction of State, at Consultant's sole cost.

**8.11 Final Invoice and Payment.**

Upon completion of the Services under this Agreement, Consultant shall submit their final invoice. Upon receipt of final invoice and determination by State that the invoice and Progress Report adequately substantiate the Services provided and the Services were completed in accordance with this Agreement, State will pay Consultant. The acceptance by Consultant of the final payment will constitute and operate as a release to State for all claims and liability to Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the Services rendered by or in connection with this Agreement or any part thereof.

**8.12 Agreement Close-out.**

Upon submitting its final invoice, the Consultant must complete and submit to the State DR Form 39 – Pre-letting Professional Services Notification of Completion. The form must be submitted electronically in accordance with the instructions on the form. DR Form 39 is available on the Department of Roads' website at <http://www.transportation.nebraska.gov/rfp/>.

**8.13 Termination Cost Adjustment.**

If the Agreement is terminated prior to project completion, State will compare the percentage of work actually completed by Consultant, to the total amount of work contemplated by this Agreement. This comparison will result in a payment by the State for any underpayment, no adjustment, or a billing to Consultant for overpayment. The State's final audit may result in an additional cost adjustment.

**8.14 Audit and Final Cost Adjustment.**

Upon State's determination that Consultant has completed Services under this Agreement, State, or its authorized representative, may complete an audit review of the payments made under this Agreement. The Parties understand that the audit may require an adjustment of the payments made under this Agreement. Consultant agrees to reimburse State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

**8.15 Consultant Cost Record Retention.**

Consultant shall maintain, and also require that its Subconsultants maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of project closeout by State. Such materials must be available for inspection by State, and when requested, Consultant shall furnish copies.

**SECTION 9. STANDARD OF PERFORMANCE**

**9.1 Standard of Performance.**

Consultant shall perform its Services with the degree of skill, care, and diligence in accordance with the applicable professional standards currently recognized by such profession and observed by national firms performing the same or similar Services. Consultant shall perform the Services in compliance with all applicable federal, State, and local laws, statutes, acts, ordinances, rules, regulations, codes, and licensing and industry standards, and according to good, sound design and engineering practices, and in conformance with applicable data and specifications. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other items and services furnished under the Agreement. If Consultant fails to meet applicable professional standards, Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its reports, drawings, specifications, designs, and other items or services.

**9.2 Quality of Service.**

Consultant shall perform all Services (1) in a good, professional, workmanlike, and competent manner, (2) in conformity with all applicable professional standards and the requirements of this Agreement, and (3) in compliance with all applicable federal, state, and local laws, statutes, acts, ordinances, rules, regulations, codes, and licensing and industry standards. Consultant shall to use sound and professional principles and practices in accordance with normally accepted industry standards in the performance of the Services hereunder. Consultant agrees that all Services hereunder shall be performed by qualified personnel consistent with good professional practice in the State of the art involved, and that performance of its personnel shall reflect their best professional knowledge, skill, and judgment. If any deficient quality of service is discovered within one year after the Services are accepted by State, Consultant shall again perform the Services directly affected by such failure at Consultant's sole expense. Consultant shall not, either during or after the duration of the Agreement, disclose to any third party any confidential information relative to the Services or the business of State and/or any affiliates without the written consent of State. State's representatives shall at all times have access to the Services for purposes of inspecting same and determining that the Services are being performed in accordance with the terms of the Agreement.

**9.3 Performance Evaluation.**

State shall have 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) completeness of contract documents; (4) timeliness; (5) scope and budget;

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(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.

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 shall apply even in the absence of a Consultant Performance Evaluation.

### **9.4 State's Remedies for Substandard Performance.**

Upon notice of substandard performance of Services, Consultant shall, as a minimum, re-perform the Services at no cost to State and shall reimburse State for any additional costs that may be incurred by State as a result of reliance by State or any of its affiliates on such Services. If Consultant should fail 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 the Scope of Services or Project Schedule, State may correct such unsatisfactory Services itself or by the use of third parties and charge Consultant for the costs incurred. The rights and remedies of State provided herein are in addition to any other remedies provided by law.

If State requires Consultant to remedy any deficiencies in the Services, such corrections will be made 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 by State or Consultant only by written agreement signed by both parties. State's inspection or approval of Services performed under this Agreement or State's declining to approve shall not be deemed an acceptance of defective Services or relieve Consultant of its obligations and liabilities with respect to such Services.

## **SECTION 10. PROFESSIONAL PERFORMANCE**

Consultant understands that State will rely on the professional training, experience, performance and ability of Consultant. Examination by State or acceptance or 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 which would relieve Consultant from liability or expense that would be connected with Consultant's sole responsibility for the propriety and integrity of the professional Services to be accomplished by Consultant pursuant to this Agreement.

Consultant further understands 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 that are caused by Consultant due to error, omission, or negligence of Consultant in its Services. That further, if due to error, omission, or negligence of Consultant, the plans, specifications, and estimates are found to be in error or there are omissions therein revealed during or after the construction of the project and revision, reconsideration, or reworking of the plans is necessary, Consultant shall make such revisions without expense to the State.

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Consultant shall respond to State's notice of any errors, omissions, or negligence within three (3) days 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, it shall notify State of the errors within three (3) days. Failure of Consultant to notify State will constitute a breach of this Agreement. Consultant's legal liability for all damages incurred by the State caused by error, omission, or negligent acts of Consultant will be borne by Consultant without liability or expense to State.

### **SECTION 11. SUSPENSION OR TERMINATION (PE 1-14-14)**

#### **11.1 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 this project;
- b. State abandons the project for any reason;
- c. When Consultant has failed to meet project deadlines established in this Agreement or agreed to by the Parties, or has failed to advance completion of the Services to construction within the timeframe established by the State for completion of the project;
- d. Consultant's failure to meet the standard of care applicable to the project Services;
- e. Consultant's failure to meet the performance requirements of this Agreement;
- f. Consultant's breach of a provision of this Agreement;
- g. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity;
- h. Consultant's failure 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;
- i. Consultant's failure to require the Construction Contractor to construct the project according to the approved contract documents including, but not limited to project plans and specifications; or
- j. State determines, in its sole discretion, that the State's interests are best protected by termination of this Agreement.

#### **11.2 Suspension.**

- a. **Suspension for Convenience.** If State suspends the work for State's convenience, State shall give the Consultant notice of the date of suspension, which date will be no fewer than three (3) days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant shall not be compensated for any Services completed or costs incurred on the project 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 the Consultant's work for issues related to performance, responsiveness or quality that must be corrected by Consultant, State shall give the Consultant notice of the date of suspension, which date will be no fewer than three (3) days after notice is given. State's notice of suspension shall provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, a description of the actions that must be taken for State to rescind the suspension. Consultant's right to incur any additional costs shall be suspended at the end of the day of suspension and shall 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.

**11.3 Termination.**

If State terminates this Agreement, State shall give the Consultant notice of the day of termination, which shall be no fewer than three (3) 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 shall specify when the Agreement shall be terminated notice shall further specify 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.

**11.4 Compensation**

If State suspends the work or terminates the Agreement as specified, Consultant shall be compensated in accordance with the provisions of SECTION 8. FEES AND PAYMENTS of this Agreement, provided however, that in the case of suspension or termination 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 SECTION 8. FEES AND PAYMENTS.

**SECTION 12. OWNERSHIP OF DOCUMENTS**

All surveys, maps, reports, computations, charts, plans, specifications, electronic documents and files, shop drawings, diaries, field books, and other project documents prepared or obtained under the terms of this Agreement are the property of the State and the Consultant shall deliver them to the State at the conclusion of the project without restriction or limitation as to further use.

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 the State's sole risk and without legal exposure or liability to Consultant.

Further, Consultant's time sheets and payroll documents shall be kept in Consultants' files for at least three years from the completion of final cost settlement and project closeout by the State.

**SECTION 13. CONFLICT OF INTEREST LAWS (No Federal-aid 1-14-14)**

Consultant shall review the Conflict of Interest provisions of State law and agrees to comply with all the applicable Conflict of Interest provisions. By signing this Agreement,

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Consultant certifies that Consultant is not aware of any financial or other interest Consultant has that may constitute a conflict of interest.

### **SECTION 14. 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 the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

### **SECTION 15. GENERAL COMPLIANCE WITH LAWS (Cap. Fac. Only 1-14-14)**

The Consultant hereby agrees to comply with all federal, State, and local laws and ordinances applicable to the Services.

### **SECTION 16. DISPUTES**

#### **Dispute Resolution Procedures – Non-Binding Consultant Service Agreements**

- 16.1** These procedures are non-mandatory steps that Consultant may use to attempt to resolve disputes it has with State arising from Services covered under the original and subsequent agreements. When Consultant invokes these dispute resolution procedures, State and Consultant agree to make a reasonable effort to resolve the dispute using these procedures.
- 16.2** These procedures are designed to assist all parties in identifying, managing, and attempting to resolve conflicts that may arise.
- 16.3** There are several guiding principles to be considered:
- a. Engage relevant representatives early, actively and continually in collaborative problem solving for Services covered under the original and any supplemental agreements.
  - b. Attempt to resolve disagreements at the earliest stage possible and at the appropriate organizational level.
  - c. Seek resolution first by focusing on how to meet interests and needs in the context of existing laws and regulations in order to resolve the disputed issues.
- 16.4** The following are several potential benefits to be gained from these principles:
- a. Minimizes or avoids unnecessary delays in developing capital construction projects.
  - b. Encourages collaborative decision making and coordination among all parties.
  - c. Attempts to resolve disputes early in the process.
  - d. Builds trust and respect among all parties.
- 16.5** The relationship between the Consultant and State staff should always be on the professional level. All parties to an Agreement should have a thorough understanding of the dispute resolution process. Each party should make every attempt to fully understand the dispute and express honest statements of fact prior to initiating dispute resolution processes.
- 16.6** Prior to initiating dispute resolution processes, the following activities should occur:

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- a. **STAGE ONE – INFORMAL ACTION - Consultant will first attempt to resolve any Agreement dispute by discussing the dispute directly with State’s Consultant Coordinator and when necessary, State’s Agreements Engineer.**
- b. **STAGE TWO -- REVIEW BY STATE’S DEPUTY’S REPRESENTATIVE -**

Consultant may invoke this non-binding Stage Two procedure in an attempt to resolve a dispute it has with any State interpretation of the requirements of the Agreement, so long as the rules set forth herein are met or followed:

  1. The Stage Two process will be invoked by submitting to State’s Agreement Engineer, with a copy to State’s Consultant Coordinator, a written statement setting out his/her understanding of the:
    - a) Facts of the dispute,
    - b) Listing and discussion of all applicable contract provisions or law, and
    - c) Argument of the party in support of that party’s position.
  2. The Director-State Engineer will designate a State employee, who has not previously been involved in the dispute, to serve as his/her representative to consider the merits of the dispute. The State Agreements Engineer shall notify Consultant and State’s Consultant Coordinator of the name and contact information of the Director’s Designated Representative. The Director’s Representative shall not meet with either party’s representative or otherwise independently investigate the dispute while serving as the Director’s Representative.
  3. The State’s Consultant Coordinator will have seven (7) days after receiving the Consultant’s written statement, to submit a written response to the Director’s Representative, with a copy to Consultant, including his/her understanding of the:
    - a) Facts of the dispute,
    - b) Listing and discussion of all applicable contract provisions or law, and
    - c) Argument of the party in support of that party’s position.
  4. Consultant and State’s Consultant Coordinator will participate in a face-to-face meeting with the Director’s Representative, within seven (7) days of the receipt of State’s Consultant Coordinator’s written statements to discuss the submittals and to respond to the other party’s facts and arguments concerning the dispute.
  5. As soon as reasonably practical, Director’s Representative will provide a written recommendation setting out his/her:
    - a) Findings of fact,
    - b) Interpretation of the applicable contract and legal provisions, and
    - c) A proposed resolution of the dispute.
  6. The Deputy Director who supervises the Division charged with enforcing the Agreement shall review the findings and conclusions of the Director’s Representative and may accept or reject the conclusions in whole, or modify the recommendations of the Director’s Representative as deemed appropriate, and notify Consultant of the official State proposed resolution, if any, concerning this dispute.

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7. The following Statements apply to this non-binding dispute resolution process:
  - a) This process is non-mandatory. The process is in addition to, and does not replace any other legal or equitable remedy or defense Consultant or State may have.
  - b) Because this process is non-mandatory, this process is not intended to delay or impact in any way the calculation of any applicable statute of limitations related to any claim of Consultant under this Agreement.
  - c) This process may only be used by Consultant for an actual contract dispute between State and Consultant. This process may not be used to determine a hypothetical question.
  - d) This process is non-binding, shall not be treated by State or Consultant as a contested case as that phrase is defined in Neb. Rev. Stat. § 84-901 et seq., and is not intended to provide either party with an independent right of appeal.
  - e) Failure to follow this process shall not constitute a breach of this Agreement and shall not provide a separate basis for relief under this Agreement.
  - f) Consultant's decision to invoke this process shall not limit, in any way, Consultant's right to simultaneously pursue any legal remedy.
8. If Consultant does not agree with the findings and conclusions of the Deputy Director, Consultant may avail itself of any additional remedy, including the filing of a contract claim under Nebraska law.

### **SECTION 17. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE**

- 17.1** Consultant agrees to hold harmless State from all claims and liability due to the error, omission, or negligence of Consultant or those of Consultant's agents or employees in the performance of Services under this Agreement. Further, it is expected that in carrying out the Services 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 Services. Nothing in this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to State in carrying out the Services under this Agreement.
- 17.2** Finally, Consultant shall for the life of this Agreement, carry insurance as provided below. In any agreement Consultant has with a Subconsultant, Consultant shall require that the insurance requirements provided below be met by the Subconsultant.
- 17.3 CONSULTANT AGREES TO:**
- a. Make a detailed review of its existing insurance coverage;
  - b. Compare that coverage to the expected scope of the Services under this Agreement; and
  - c. Obtain the insurance coverage that it deems necessary to fully protect Consultant from loss associated with the Services. Also, Consultant shall have at a minimum the insurance described below:
    1. **GENERAL LIABILITY:**
      - a) Limits of at least:
        - i.) \$ 1,000,000 per Occurrence

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- ii.) \$ 2,000,000 General Aggregate
- iii.) \$ 2,000,000 Completed Operations Aggregate (if applicable)
- iv.) \$ 1,000,000 Personal/Advertising Injury
- b) Consultant shall be responsible for the payment of any deductibles.
- c) Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- d) General Aggregate to apply on a Per Project Basis.
- e) The State of Nebraska, Department of Roads, shall be named as Additional Insured on a primary and non-contributory basis including completed operations (the completed work/product) for three (3) years after the work/product is complete.
- f) Consultant agrees to waive its rights of recovery against the State. Waiver of Subrogation in favor of the State shall be added to, or included in, the policy.
- g) Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting statements.
- h) If work is being done near a railroad track, the 50' railroad right of way exclusion must be deleted.
- i) In the event that this Agreement provides for Consultant to construct, reconstruct or produce a completed product, products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be further maintained for a minimum period of five (5) years after final acceptance and payment.
- j) Policy shall not contain total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended, please refer to the following Subsection B. POLLUTION COVERAGE).

### 2. **POLLUTION COVERAGE**

In the event that the standard pollution exclusion as provided by CG0001 has been amended, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of \$1.0 million per occurrence or claim and \$1.0 million aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three (3) years after project completion. Any applicable deductible is the responsibility of the Consultant.

### 3. **AUTOMOBILE LIABILITY**

- a) Limits of at least: \$ 1,000,000 CSL Per Accident
  - i. Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

### 4. **WORKER'S COMPENSATION**

- a) Limits: Statutory coverage for the State where the project is located.
  - i.) Employer's Liability limits:
    - \$100,000 Each Accident
    - \$100,000 Disease – Per Person
    - \$500,000 Disease – Policy Limit

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ii.) Consultant agrees to waive its rights of recovery against the State.

Waiver of Subrogation in favor of the State of Nebraska, Department of Roads shall be added to, or included in, the policy

**5. PROFESSIONAL LIABILITY**

- a) Limits of at least: \$ 1,000,000 Per Claim and Annual Aggregate
- b) Coverage shall be provided for three (3) years after work/project completion.

**6. ELECTRONIC DATA AND VALUABLE PAPERS**

- a) Limits of at least:
  - i.) \$100,000 Electronic Data Processing Data and Media
  - ii.) \$25,000 Valuable Papers

**7. UMBRELLA/EXCESS**

- a) Limits of at least: \$1,000,000 Per Occurrence and Annual Aggregate
  - i.) Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
  - ii.) The State of Nebraska, Department of Roads, shall be an "Additional Insured".
  - iii.) Consultant agrees to waive its rights of recovery against the State. Waiver of subrogation in favor of the State of Nebraska, Department of Roads shall be provided.

**8. ADDITIONAL REQUIREMENTS**

- a) Any insurance policy shall be written by a reputable insurance company acceptable to the State or with a current Best's Insurance Guide Rating of A – and Class VII or better, and authorized to do business in Nebraska.
- b) Evidence of such insurance coverage in effect shall be provided to State in the form of an Accord certificate of insurance executed by a licensed representative of the participating insurer(s).
- c) For so long as insurance coverage is required under this Agreement, Consultant shall have a duty to notify State when Consultant knows, or has reason to believe, that any insurance coverage required under this Agreement will lapse, or may be canceled or terminated. Consultant must forward any pertinent notice of cancelation or termination to State, at the address listed below by mail (return receipt requested), hand-delivery or facsimile transmission within two (2) business days of receipt by Consultant of any such notice from an insurance carrier. Notice shall be sent to:

Nebraska Department of Roads  
Construction Division – Insurance Section  
1500 Highway 2, P. O. Box 94759  
Lincoln, NE 68509-4759  
Facsimile No. 402-479-4854

- d) Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this Agreement.
- e) The Limits of Coverage's set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed

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to be a limitation of the liability on the part of the Consultant or any of its Subconsultants/tier Subconsultants. The carrying of insurance described shall in no way be interpreted as relieving the Consultant, Subconsultant, or tier sub consultant of any responsibility of liability under the Agreement.

- f) If there is a discrepancy of required minimum coverage between this Agreement and any other insurance specification for this project, the greater limit or coverage requirement shall prevail.

### **SECTION 18. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION**

#### **18.1 Coordinating Professional:**

As required by Neb. Rev. Stat. § 81-3437, Consultant shall identify and notify State of the Coordinating Professional for each respective project. 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 respective project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline.

“Coordinating Professional” shall have the meaning set out in § 81-3408 of the Nebraska Engineers and Architects Regulations Act (Neb. Rev. Stat. § 81-3401 et. seq.). 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, Nebraska Administrative Code (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 State’s Coordinating Professional to meet the requirements of State law. Consultant further agrees to require its Subconsultants to cooperate with State’s Coordinating Professional.

#### **18.2 Professional Registration.**

To the extent the project requires engineering services, Consultant shall affix and sign the seal of a registered professional engineer 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.

### **SECTION 19. DRUG-FREE WORKPLACE POLICY**

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

### **SECTION 20. 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 21. 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 22. DISADVANTAGED BUSINESS ENTERPRISES**

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

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sub-agreements financed in whole or in part with federal funds under this Agreement.

Consequently, the disadvantaged business requirements of 49 CFR 26.

Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of State contracts. Failure of Consultant to carry out the requirements set forth above will constitute a breach of this Agreement and may result in termination of this Agreement by State or such remedy as State deems appropriate.

### **SECTION 23. NONDISCRIMINATION**

#### **23.1 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).

#### **23.2 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, 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.

#### **23.3 Solicitations for sub-agreements, 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 sub-agreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.

#### **23.4 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 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, the Consultant shall certify to State and set forth what efforts it has made to obtain the information.

#### **23.5 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 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.

#### **23.6 Incorporation of Provisions:**

Consultant shall include the provisions of Sub-sections 1 through 5 of this section in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto.

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Consultant shall take such action with respect to any sub-agreement or procurement as State 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 24. SUBLETTING, ASSIGNMENT, OR TRANSFER**

(19) USE/DELETE The Subconsultant will provide (20). END OF (19)

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. To the extent that the Parties agree to an assignment of rights and duties of this Agreement, this Agreement is binding on successors and assigns of either party.

(21) USE/DELETE Consultant shall enter into an agreement with its Subconsultants for Services covered under this Agreement. All Subconsultant agreements for Services covered under this Agreement must contain similar provisions to those in this Agreement. No right-of-action against State will accrue to any Subconsultant by reason of this Agreement. END OF (21)

Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform sub-agreements as specified in the SECTION 22. DISADVANTAGED BUSINESS ENTERPRISES. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

### **SECTION 25. CONSULTANT CERTIFICATIONS (Cap. Fac. Only 1-14-14)**

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

- 25.1 Neb. Rev. Stat. § 81-1715(1).** I certify compliance with the provisions of § 81-1715 and, to the extent that this Agreement is a lump sum, actual cost not-to-exceed, or actual cost-plus-fixed-fee type professional services 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 Agreement price and any supplements thereto shall be adjusted to exclude any significant sums by which State determines the Agreement price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 25.2 Neb. Rev. Stat. §§ 81-1717 and 1718.** I hereby certify compliance with the provisions of §§ 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 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

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- 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).

### **25.3 Certification Regarding Debarment, Suspension, and Other Responsibility**

**Matters-Primary Covered Transactions.** Subsection 3.A. below contains 10 instructions that Consultant agrees to follow in making the certifications contained in subsection 3.B. below.

#### **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.
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

## PROFESSIONAL SERVICES AGREEMENT FOR CAPITAL FACILITIES

debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 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 Subsection (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 agreement 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 Sub-section (1)b. 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 the 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 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 26. NEBRASKA DEPARTMENT OF ROADS CERTIFICATION**

The undersigned State's representative, by signing this Agreement, hereby certifies that to the best of representative's knowledge, Consultant or its representative has not been

PROFESSIONAL SERVICES AGREEMENT FOR CAPITAL FACILITIES

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.

The State’s representative acknowledges that this certification is subject to applicable state and federal laws, both criminal and civil.

**SECTION 27. ENTIRE AGREEMENT**

This instrument, including all exhibits and incorporations specified herein, 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.

**USE FOR ELECTRONIC SIGNATURES**

**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**