

MASTER AGREEMENT – CONSULTANT PROVIDED PE  
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MASTER AGREEMENT  
ON-CALL PROFESSIONAL SERVICES, CONSULTANT  
STATE PROJECTS

(1)

(2)

NEBRASKA DEPARTMENT OF ROADS  
ON-CALL PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into by and between the Nebraska Department of Roads, hereinafter referred to as the "State", and (2), hereinafter referred to as the "Consultant," and collectively referred to as the "Parties".

WITNESSETH

WHEREAS, the State used a qualification based selection process to select the Consultant to be one of several on-call consultants for a (3) year time period, to provide (1) (hereinafter referred to as Services) on State projects, and

WHEREAS, the 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, the State will, upon execution of this Master Agreement, place Consultant's name on the list of qualified on-call consultants from which the State may select a consultant to perform Services for a project, and

WHEREAS, this contract will result in a minimum of \$(4) in fees to Consultant for Services provided under Task Order(s); the actual dollar amount of fees paid will depend on the need, funding availability and other circumstances, and

WHEREAS, when Consultant is selected to provide Services under this Master Agreement, a task order agreement (hereinafter referred to as "Task Order") between the State and Consultant will be prepared, and

WHEREAS, prior to the expiration of this Master Agreement, the State, in its discretion, may extend this Master Agreement (5) years, and

WHEREAS, Consultant is willing to perform 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 Master Agreement the following terms are used, they shall have the following meaning:

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"CONSULTANT" means the firm of (2) and any employees thereof, whose business and mailing address is (6), and

(7) USE/DELETE "SUBCONSULTANT/SUBCONTRACTOR" means the firm of (8) and any employees thereof, whose business and mailing address is (9), and END OF (7)

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

"FHWA" means the Federal Highway Administration, United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives, and

"DOT" means the United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives, and

To "ABANDON" the Master Agreement means that the State has determined that conditions or intentions as originally existed have changed and that the Master Agreement as contemplated herein is to be renounced and deserted for as long in the future as can be foreseen, and

To "SUSPEND" the Master Agreement means that the State has determined that the conditions or intentions as originally existed have changed, and that the Master Agreement as contemplated herein should be stopped on a temporary basis. This cessation will prevail until the State determines to abandon or terminate the Master Agreement or to reinstate it under the conditions as defined in this Master Agreement, and

To "TERMINATE" or the "TERMINATION" of this Master Agreement is the cessation or quitting of this Master Agreement based upon action or failure of action on the part of the Consultant as defined herein and as determined by the State, and

A "TASK ORDER" is a separate agreement between the State and the Consultant for services on a specific project.

SECTION 2. SELECTION PROCESS

When the need for consultant services arise, the State will select a Consultant from the on-call consultant list using a set of criteria. The criteria would include such items as: equity, specialized expertise, technical competence in the type of work required, past performance, capacity to accomplish the work, location of the project and knowledge of area.

SECTION 3. PROJECT TASK ORDER

The terms and conditions of this Master Agreement shall apply to each project for which the Consultant is selected by the State to provide Services. A "Task Order" shall be used to

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initiate individual projects for the consultant to provide Services for the State. Each properly executed Task Order will result in an agreement between the State and Consultant including provisions substantially similar to this Master Agreement, with any necessary amendments or additions thereto, and describing and establishing the fee for the specific project to be completed. Task Orders may only be issued until the expiration of the term of this Master Agreement. If the term of any Task Order extends beyond the term specified in this Master Agreement, this Master Agreement shall remain in full force and effect but only as to such Task Order.

SECTION 4. TERM OF THE AGREEMENT

This Master Agreement becomes effective on the date it is signed by the State and will end on (10). The State reserves the right to extend this agreement for an additional (5) years beyond the end of the original term. The State will exercise its right to extend the term of the agreement by notifying Consultant in writing of such extension on or about one month prior to the end of the term of this Master Agreement.

SECTION 5. SCOPE OF SERVICES

The purpose of this Master Agreement is to contract with Consultant to complete (1) services under Task Orders issued by the State. The General Scope of Services for this Master Agreement are set out on Exhibit “(11)”, attached hereto and made a part of this agreement. Each Task Order will also include an attachment entitled “Task Order Scope of Services”. For each Task Order, the Consultant will agree to complete the services set out in both the “General Scope of Services” and the “Task Order Scope of Services”. The “Task Order Scope of Services” will govern over any contrary language in the “General Scope of Services” of this Master Agreement.

It is expected that the Task Orders will include, but not be limited to, the following or similar scope of services language:

The Consultant shall complete the services set out in both the General Scope of Services from the Master Agreement and the Task Order Scope of Services for (1), attached hereto and hereby made a part of this Task Order as an Exhibit. The Exhibit is the result of the following process:

- (1) State provided Consultant with a document describing the detailed proposed Scope of Services for this project

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- (2) Consultant made necessary and appropriate proposed additions, deletions, and revisions to the 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.

Consultant and State have agreed that the submitted scope and fee proposal sets out the services reasonably necessary and the costs reasonably estimated for Consultant Services to provide for (1). The Consultant agrees to provide the services listed on the Exhibit.

Upon receiving a written notice to proceed from the State, the Consultant shall complete the services required under this Task Order as set out in the Exhibit "Task Order Scope of Services," and in accordance with the terms of the Master Agreement, all of which are hereby made a part of this Task Order by this reference. The "Task Order Scope of Services" will govern over any contrary language in the "General Scope of Services" of the Master Agreement.

The State has the absolute right to add or subtract from the Scope of Services at any time and such action on its part will in no event be deemed a breach of this agreement. The addition or subtraction will become effective seven days after mailing written notice of such addition or subtraction.

SECTION 6. STAFFING PLAN (PE)

The Task Order will include a section related to changes to personnel of Consultant who will be responsible for the work under a Task Order. It is expected that the Task Orders will include, but not be limited to, the following or similar language:

The Consultant has provided the State with a staffing plan that identifies the employees of the Consultant who will be part of the primary team for this project. The primary team members will be agreed upon and identified in each Task Order. The primary team is expected to be directly responsible for providing the Services under this agreement. This document shall specify the role that will be assigned to each member of the primary team. During design, the Consultant may make occasional temporary changes to the primary team. However, any permanent change to the primary team will require prior written approval from the State.

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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 the Consultant to provide acceptable replacement personnel or qualified new personnel to keep the services on schedule will be cause for termination of this Task Order and the Master Agreement, with settlement to be made as provided in the SUSPENSION, ABANDONMENT, OR TERMINATION section of the applicable Task Order or Master Agreement.

SECTION 7. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The 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. The 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.

The undersigned duly authorized representative of the 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.

If the Consultant is an individual or sole proprietorship, the following applies:

1. The 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).
2. If the Consultant indicates on such Attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services

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documentation required to verify the Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb.Rev.Stat. §4-108.

SECTION 8. NOTICE TO PROCEED AND COMPLETION

Each Task Order will include a section setting out the requirements concerning Notice to Proceed and Completion. Any work or services performed by Consultant on a Task Order prior to the date specified in the Notice to Proceed will not be eligible for reimbursement.

Any work or services performed by Consultant after the completion date will not be eligible for reimbursement unless the Consultant has received a written extension of time from the State. The completion date will not be extended because of any avoidable delay attributed to the Consultant, but delays not attributable to the Consultant, such as delays attributable to the State may constitute a basis for an extension of time.

SECTION 9. FEES AND PAYMENTS

The minimum total dollar amount of fees to be paid under this contract is \$(4). The maximum total dollar amount of fees to be paid per term is \$(12). Typical Task Orders that will be awarded under this agreement will range from \$(13) to \$(14).

For each Task Order, the State will specify which of the following payment methods will be used: Cost Plus Fixed Fee, Lump Sum, or Maximum Not To Exceed.

Each Task Order will include a section setting out the requirements concerning Fees and Payments. It is expected that the Task Orders will include, but not be limited to, the following or similar "Fees and Payments" language:

- A. **Federal Cost Principles.** For performance of Services under the terms of this Task Order, the Consultant will be paid as authorized for each specific Task Order, 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).
- B. **Subconsultant Over-runs and Under-runs.** The Consultant shall require any subconsultant to notify Consultant if at any time the subconsultant determines that its costs will exceed its negotiated fee estimate. The Consultant shall not allow any subconsultant to exceed its negotiated fee estimate without prior written approval of the State. The Consultant understands that the amount of any subconsultant cost

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under-run will be subtracted from the total compensation to be paid to Consultant under this agreement, unless prior written approval is obtained from the State and, when applicable, FHWA.

C. **Out of Scope Services and Consultant Work Orders.** The 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 the State decides that these services require an adjustment in costs, the Consultant shall: (a) describe the proposed services, (b) provide an explanation why Consultant believes that the proposed services are not within the original scope of services and additional work effort is therefore required, and (c) estimate the cost to complete the services.

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

- That the additional work is beyond the scope of services initially negotiated with Consultant; and
- That the proposed services are within the scope of the Request for Proposal under which Consultant was selected and contract entered into; and
- That it is in the best interest of the State that the services be performed under this agreement.

Once the need for a modification has been established, a supplemental agreement will be prepared.

If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the State shall use the process set out below:

- The Consultant Work Order (CWO) – DR Form 251 shall be used to describe and provide necessary justification for the additional the scope of services, effort, the deliverables, modification of schedule, and to document the cost of additional services. The CWO form is available on the Department of Roads website at <http://www.nebraskatransportation.org/rfp/>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin.

This Task Order will be supplemented after one or more CWOs have been authorized and approved for funding.

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- D. **Ineligible Costs.** The State is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date set out in the NOTICE TO PROCEED AND COMPLETION section of this agreement or as provided in a written time extension notification.
- E. **Payment.** Payment for work under this agreement will be made based on actual costs plus a fixed fee for profit. Actual costs include direct labor costs, direct non-labor costs, and overhead costs.
- 1) Direct Labor Costs are the earnings that individuals receive for the time they are working directly on the project.
    - a) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's straight time hourly rate for the pay period in which the work was performed. For salaried employees, the hourly earnings rate shall be their actual hourly rate as recorded in the Consultant's accounting books of record.
    - b) Time records: The hours charged to the project must be supported by adequate time distribution records. The records must clearly indicate the distribution of hours to all activities on a daily basis for the entire pay period, and there must be a system in place to ensure that time charged to each activity is accurate.
  - 2) Direct Non-Labor Costs: These costs include all necessary, actual, and allowable costs related to completing the work under the agreement, including but not limited to: meals, lodging, mileage, subject to the limitations outlined 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.

A non-labor cost charged as a direct cost cannot be included in the Consultant's overhead rate. If for reasons of practicality, the consultant is treating a direct non-labor cost category, in its entirety, as an overhead cost, then costs from that category are not eligible to be billed to this project as a direct expense.

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

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

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

- a) 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:
- (1) The mileage rate which the consultant reimbursed to the person who submitted the claim for POV use, or
  - (2) The prevailing standard rate as established by the IRS.
- b) Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable, the Consultant shall give the State the benefit of all discounts.
- c) The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated in the current website address for U.S. General Services Administration's (GSA) rates which is indicated below:

<http://www.gsa.gov/portal/category/100120>

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

Breakfast:

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

Lunch:

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

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Dinner:

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

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

The 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.

- 3) Overhead Costs include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with 48 CFR 31. Overhead costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable overhead rate. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in this agreement.

F. **Fee for Profit** The fee for profit is computed upon the direct labor and overhead costs. The Fee for Profit is not allowable upon direct non-labor costs. For monthly or progress invoices, the Fee for Profit is calculated by multiplying the sum of the direct labor and overhead costs billed by the negotiated Fee for Profit Rate. If all of the work under this agreement is not completed for any reason, Fee for Profit will be adjusted based on the State's determination of the actual percentage of work completed.

G. **Invoices and Progress Reports.** The Consultant shall submit invoices to the State no more frequently than at monthly intervals. The invoices must present actual direct labor, actual overhead, actual direct non-labor costs, as well as the fee for profit based upon the actual direct labor and overhead costs billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed.

Each monthly invoice must include a completed "Cost Breakdown Form" (see State's webpage at [www.transportation.nebraska.gov/rfp](http://www.transportation.nebraska.gov/rfp)) and must be substantiated by a progress report which is to include/address, as a minimum:

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1. A description of the work completed for that period
2. A description of the work anticipated for the next pay period
3. Information needed from the State
4. Percent of work completed to date

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

H. **Progress Payments.** Payments will not be made unless the monthly progress reports provide adequate substantiation for the work and the State determines that the work has been properly completed. The State will make a reasonable effort to pay the Consultant within 30 days of receipt of the Consultant invoices.

I. **Final Invoice and Payment.** Upon completion of the work under this agreement, the Consultant shall submit their final invoice. The Consultant shall review the overhead costs billed to-date to determine if the overhead rates used on the progress billings match the actual allowable rate applicable to the time period that the labor was incurred. If cost adjustments are necessary, they should be reflected on the final invoice. If a particular year's actual overhead has not yet been computed or approved by the State, the most recent years accepted rate should be applied.

Upon determination by the State that the work was adequately substantiated and completed in accordance with this agreement, payment will be made in the amount of the approved final invoice. The acceptance by the Consultant of the final payment will constitute and operate as a release to the State for all claims and liability to the 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.

J. **Agreement Close-Out.** After the Consultant submits their 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 according to the instructions on the form. DR Form 39 is available on the Department of Roads website at <http://www.nebraskatransportation.org/rfp/>.

K. **Audit and Final Cost Adjustment.** Upon acceptance by the State, the 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

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the payments made under this agreement. The Consultant agrees to reimburse the State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

- L. **Consultant Cost Record Retention.** The Consultant shall maintain, and also require that its Subconsultants/Subcontractors 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 final cost settlement by FHWA and project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the Consultant shall furnish copies.

SECTION 10. PROFESSIONAL PERFORMANCE (State PE Master Agreement 12-19-11)

It is expected that the Task Orders will include, but not be limited to, the following or similar language:

The Consultant understands that the State will rely on the professional training, experience, performance and ability of the Consultant. Examination by the State or FHWA, or acceptance or use of, or acquiescence in the Consultant's services, will not be considered to be a full and comprehensive examination and will not be considered approval of the Consultant's services which would relieve the Consultant from liability or expense that would be connected with the Consultant's sole responsibility for the propriety and integrity of the professional services to be accomplished by the Consultant pursuant to this agreement. The Consultant further understands that acceptance or approval of any of the services of the Consultant by the State, or of payment, partial or final, will not constitute a waiver of any rights of the State to recover from the Consultant, damages that are caused by the Consultant due to error, omission, or negligence of the Consultant in its services. That further, if due to error, omission, or negligence of the 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, the Consultant shall make such revisions without expense to the State. The Consultant shall respond to the State's notice of any errors, omissions, or negligence within 24 hours and give immediate attention to necessary corrections to minimize any delays to the project. This may

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involve visits by the Consultant to the project site, if directed by the State. If the Consultant discovers errors, omissions, or negligence in its work, it shall notify the State of the errors within 24 hours. Failure of the Consultant to notify the State will constitute a breach of this agreement. The Consultant's legal liability for all damages incurred by the State caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the State.

SECTION 11. SUSPENSION, ABANDONMENT OR TERMINATION (2/8/12)

Master Agreement:

The State has the absolute right to suspend, abandon, or terminate the Master Agreement at any time and such action on its part will in no event be deemed a breach of the Master Agreement. The State will give the Consultant seven days written notice of such suspension, abandonment, or termination.

If the State suspends, abandons, or terminates the Master Agreement, the Consultant will be removed from the list of selected consultants for work under this contract. In the event the Master Agreement is terminated for cause, State is not required to provide the Consultant with the minimum amount of fees under this Master Agreement.

Task Order Agreement:

It is expected that the Task Orders will include, but not be limited to, the following or similar language:

- The State has the absolute right to suspend or abandon the work, or terminate the Task Order at any time and such action on its part will in no event be deemed a breach of this Task Order. The State will give the Consultant seven days written notice of such change of plan, suspension, abandonment, or termination. Any necessary change in Scope of Services shall follow the Consultant Work Order Process outlined in the FEES AND PAYMENTS section above.
- If the State suspends or abandons the work, or terminates the Task Order as presently outlined, the Consultant shall be compensated in accordance with the provisions of 48 CFR 31, provided however, that in the case of suspension, abandonment, or termination for breach of this Task Order, the State will have the power to suspend payments, pending the Consultant's compliance with the provisions of this Task Order. For an abandonment or termination of this Task Order, payment to Consultant will be prorated based on the percentage of work

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completed by the Consultant prior to abandonment or termination compared to the total amount of work contemplated by this Task Order.

SECTION 12. OWNERSHIP OF DOCUMENTS (Master) (11/17/11)

All surveys, maps, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other project documents prepared or obtained for any Task Order are the property of the State. The Consultant shall deliver these documents to the State at the conclusion of the project without restriction or limitation as to further use.

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

SECTION 13. CONFLICT OF INTEREST LAWS

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

SECTION 14. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

For any Task Order under this Master Agreement, the Consultant shall review materials provided to determine whether the following provision applies. Certain information provided by the State to the 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 the State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any

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document containing attorney-client communications between the State employee and Legal Counsel. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately design the project at hand on behalf of the State.

The 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 the State for the project at hand only. The Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. The 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.”

The Consultant agrees to obtain the written approval of the State prior to the dissemination of any privileged or confidential information or documentation if it is unclear to the Consultant whether such information or documentation is in fact privileged or confidential.

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

SECTION 15. FORBIDDING USE OF OUTSIDE AGENTS

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the 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

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violation of this warranty, the 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 16. GENERAL COMPLIANCE WITH LAWS

The 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.

SECTION 17. DISPUTES

For each Task Order between the State and the Consultant, any dispute concerning a question of fact in connection with the services not disposed of by this Master 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 “(15)”, attached hereto and made a part of this Master Agreement.

SECTION 18. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE (PE Master Agreement 1-24-12)

The Consultant agrees to save harmless the State from all claims and liability due to the error, omission, or negligence of the Consultant or those of the Consultant's agents or employees in the performance of services under this Master Agreement. The Consultant agrees to save harmless the State from all claims and liability due to the error, omission or negligence of the Consultant or those of the Consultant's agents or employees in the performance of services under each Task Order. Further, it is expected that in carrying out the work under these agreements, 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 these agreements shall be interpreted to relieve Consultant from any liability it would otherwise have to State in carrying out the work under these agreements.

Finally, the Consultant shall for the life of this Master Agreement, and for the life of any Task Order, carry insurance as outlined in Exhibit “(16)” and attached hereto, and hereby made a part of this agreement. In any contract Consultant has with a subconsultant, Consultant shall require that the insurance requirements outlined in Exhibit “(16)” must be met by the subconsultant.

**SECTION 19. COORDINATION PROFESSIONAL AND PROFESSIONAL REGISTRATION**

**Coordinating Professional**

It is expected that the LPA's Task Orders will include, but not be limited to, the following or similar language:

As required by Neb.Rev.Stat. § 81-3437, the State has designated its Roadway Design Engineer as the Coordinating Professional for this 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 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 Regulation 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)(g), 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.

**Professional Registration:** To the extent the work requires engineering services, the 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 any Task Orders as required by the Nebraska Engineers and Architects Regulations Act, Neb.Rev.Stat §81-3401 et. seq.

**SECTION 20. SUCCESSORS AND ASSIGNS**

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

**SECTION 21. DRUG-FREE WORKPLACE POLICY**

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

SECTION 22. FAIR EMPLOYMENT PRACTICES ACT

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. 48-1101 through 48-1126, which is hereby made a part of and included in this agreement by reference.

SECTION 23. DISABILITIES ACT

The Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

SECTION 24. DISADVANTAGED BUSINESS ENTERPRISES

The 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. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.

The Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of the 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 the State or such remedy as the State deems appropriate.

SECTION 25. NONDISCRIMINATION

- A. Compliance with Regulations: During the performance of this agreement, the 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), which are hereby made a part of and included in this agreement by reference.
- B. Nondiscrimination: The Consultant, with regard to the work 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. The 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.

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- C. Solicitations for Subagreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subagreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.
- D. Information and Reports: The 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 the 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, the Consultant shall certify to the State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.
- F. Incorporation of Provisions: The Consultant shall include the provisions of paragraphs A through E of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subagreement or procurement as the 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, the Consultant may request that the State enter into such litigation to protect the interests of the State and, in addition, the Consultant may request that the State and United States enter into such litigation to protect the interests of the State and United States.

SECTION 26. SUBLETTING, ASSIGNMENT, OR TRANSFER

(17) USE/DELETE The Subconsultant/Subcontractor will provide (18). END OF (17)

Any other subletting, assignment, or transfer of any professional services to be performed by the Consultant is hereby prohibited unless prior written consent of the State is obtained.

(17) USE/DELETE The Consultant shall enter into an agreement with its Subconsultants/Subcontractors for work covered under this agreement. All Subconsultant/Subcontractor agreements for work covered under this agreement must contain similar provisions to those in this agreement. No right-of-action against the State will accrue to any Subconsultant/Subcontractor by reason of this agreement. END OF (17)

As outlined in the DISADVANTAGED BUSINESS ENTERPRISES section of this agreement, the 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 work must include documentation of efforts to employ a disadvantaged business enterprise.

SECTION 27. CONSULTANT CERTIFICATIONS (State Agreements)

The undersigned duly authorized representative of the 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:

- A. 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 professional service contract, 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 the State determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- B. 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:
1. 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
  2. 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

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3. 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).

**C. Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions.** Section C1 below contains 10 instructions that consultant agrees to follow in making the certifications contained in C2.

**1. Instructions for Certification**

- a. By signing this agreement, the Consultant is providing the certification set out below.
- b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The 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 the State's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the State determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the State may terminate this agreement for cause or default.
- d. The Consultant shall provide immediate written notice to the State if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. 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.
- f. The 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 the State before entering into this agreement.
- g. The Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. The 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.

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- i. 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 the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - j. Except for transactions authorized under paragraph f of these instructions, if the 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, the State may terminate this agreement for cause or default.
- 2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**
- a. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
    - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - ii. 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;
    - iii. 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
    - iv. 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.
  - b. 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 the 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 28. NEBRASKA DEPARTMENT OF ROADS CERTIFICATION**

By signing this agreement, I do hereby certify that, to the best of my knowledge, the 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

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- (b) pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

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 29. ENTIRE AGREEMENT (For Master Agreements)

This Master Agreement, and when applicable the Task Order, embodies the entire agreement of the Parties. Except for the terms of a Task Order between Consultant and the State, 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.

