

Agreement No.	VK1500
NTP Date	12/12/2012
Agreement Amount	SRC \$9,380,269.00
Selection Document	RFP-1500

**PROFESSIONAL SERVICES AGREEMENT
 FOR CAPITAL FACILITIES**

NEBRASKA DEPARTMENT OF ROADS
CONSULTANT FIRM NAME
 AFE NO. W-500?
 CONTROL NO. Control #
Project Description and Building Number

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

WITNESSETH

WHEREAS, State used a qualification based selection process to select the Consultant to render professional services for the above named project, and

WHEREAS, State’s project is generally identified as follows: **<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 consultant engineering services in the State of Nebraska, and

WHEREAS, Consultant is willing to provide services in accordance with the terms hereinafter provided, and

WHEREAS, the Parties understand that this Agreement will be posted to a publically accessible database of State agreements pursuant to the requirements Neb.Rev.Stat. § 84-602.02.

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

SECTION 1. CONTACT INFORMATION

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

1.1 Consultant Project Manager

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

USE/DELETE FOR SUBS

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1.2 Subconsultant Project Manager

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

END USE/DELETE FOR SUBS

1.3 State Project Coordinator

Name name
Phone Number xxx-xxx-xxxx

1.4 State Agreements Specialist

Name name
Phone Number xxx-xxx-xxxx

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

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

SECTION 4. DURATION OF THIS AGREEMENT

- 4.1 Effective Date – This Agreement is effective upon the earlier of the date (1) State issued the Notice to Proceed, or (2) the Parties executed this Agreement.
- 4.2 Renewal, Extension or Amendment – This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.
- 4.3 Identifying Date – For convenience, this Agreement's identifying date will be the date State signed the agreement.

>USE FOR LUMP SUM AGREEMENTS<

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

>USE FOR ALL OTHER AGREEMENTS<

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

SECTION 5. SCOPE OF SERVICES

- 5.1 Consultant shall provide <type of service i.e. Planning, Design and Construction Administration services> for project <project number>, <project location>, in <county name> County, Nebraska, **>USE FOR LOCATION MAP EXHIBIT<** at the location shown on Exhibit "<location map>", attached and incorporated herein by this reference. The Scope of Services and Checklist, Exhibit "<scope of services>", and AIA Document B201-Standard Form of Architect's Services, Exhibit "<AIA doc B201>", collectively described as the Scope of Services, are attached and incorporated herein by this reference. In case of conflict between this Agreement, Exhibit "A", or Exhibit "B", this Agreement shall govern followed in priority by Exhibit "A". 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 by State 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, subtraction, or alteration.
- 5.2 Any change in the Services will follow the process specified in the *Out of Scope Services and Consultant Work Orders* section in Exhibit "<fees & payments exhibit>", attached and incorporated herein by this reference.

SECTION 6. NOTICE TO PROCEED AND COMPLETION SCHEDULE

- 6.1 State will issue Consultant a written Notice-to-Proceed upon complete execution of this agreement. OR Consultant was issued a Notice-to-Proceed effective <NTP date>. Services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be paid by State.
- 6.2 Consultant shall complete the Services according to the schedule in attached Exhibit "<project schedule>" and shall complete all Services required under this Agreement in a satisfactory manner by <completion date>. Costs incurred by Consultant after the completion date, are not eligible for reimbursement unless Consultant has received a written extension of time from State.
- 6.3 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, upon request, constitute a basis for an extension of time.

SECTION 7. STAFFING PLAN (PE)

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

SECTION 8. STATE'S SOVEREIGN IMMUNITY

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

SECTION 9. NEW EMPLOYEE WORK ELIGIBILITY STATUS

- 9.1 Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Consultant 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

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Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

- 9.2 The undersigned duly authorized representative of Consultant, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

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

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

SECTION 10. FEES AND PAYMENTS

- 10.1 Consultant's fee proposal is attached as Exhibit "<fee proposal exhibit>" and incorporated herein by this reference.
- 10.2 The general provisions concerning payment under this agreement are attached as Exhibit "<fees & payments exhibit>".

>USE FOR COST + FIXED FEE FOR PROFIT PAYMENT METHOD<

- 10.3 For performance of the services as described in this agreement, Consultant will be paid a fixed-fee-for-profit of \$?? and up to a maximum amount of \$?? for actual costs in

accordance with Exhibit "<fees & payments exhibit>". The total agreement amount is \$??.

>USE FOR SPECIFIC RATES OF COMPENSATION PAYMENT METHOD<

10.3 For performance of the services as described in this agreement, Consultant will be compensated for actual work performed up to a **Maximum-Not-To-Exceed** amount of \$?? in accordance with Exhibit "<fees & payments exhibit>".

>USE FOR LUMP SUM PAYMENT METHOD<

10.3 For performance of the services as described in this agreement, Consultant will be compensated a **Lump Sum** fee of \$??, in accordance with Exhibit "<fees & payments exhibit>". This lump sum fee will constitute full payment for services necessary to complete the project as outlined. Consultant's compensation shall not exceed the maximum without prior written approval of State.

SECTION 11. CONSULTANTS PERFORMANCE

11.1 Standard of Performance

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

11.2 Quality of Service

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

11.3 Performance Evaluation

11.3.1 State retains the discretion to conduct an evaluation of Consultant's performance at any time. Consultant's performance may be subject to an evaluation in the following performance categories: (1) communication and cooperation; (2) quality; (3) recordkeeping; (4) timeliness; (5) scope and budget; (6) project

manager; and (7) technical performance. Consultant understands that if State determines that Consultant's performance is not meeting, has not met, or is at risk of not meeting the Standard of Performance set out herein, State may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If State chooses to conduct a Consultant Performance Evaluation, State will notify Consultant of the evaluation including necessary instructions and procedures for complying with the evaluation.

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

11.4 State's Remedies for Substandard Performance

Upon notice of substandard performance of Services revealed during or after the construction of the project, Consultant shall re-perform the Services at no cost to State. Further, Consultant shall reimburse State for any costs incurred by State for necessary remedial work. Consultant shall respond to State's notice of any errors, omissions, or negligence within twenty four (24) hours and give immediate attention to necessary corrections to minimize any delays to the project. This may involve visits by Consultant to the project site, if directed by State. If Consultant discovers errors, omissions, or negligence in its Services, Consultant shall notify State of the errors within three (3) business days. Failure of Consultant to notify State will constitute a breach of this Agreement.

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

If State requires Consultant to remedy any deficiencies in the Services, Consultant shall make such corrections at no additional cost to State. Any increase or decrease in the scope of the Services or any modification of the specifications will be made only by written agreement signed by the Parties. Consultant shall bear legal liability for all damages incurred by State caused by Consultant's errors, omissions, or negligent acts

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without liability or expense to State. The rights and remedies of State provided herein are in addition to any other remedies provided by law.

SECTION 12. CONSULTANT'S ACCOUNTABILITY FOR ITS SERVICES (State PE)

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

SECTION 13. DISPUTES

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

SECTION 14. SUSPENSION OR TERMINATION (PE)

14.1 Suspension or Termination

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

- a. A loss, elimination, decrease, or re-allocation of funds that, in the sole discretion of State, make it difficult, unlikely or impossible to have sufficient funding for the Services or the project;

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- b. State abandons the Services or the project for any reason;
- c. State's funding priorities have changed;
- d. State determines, in its sole discretion, that State's interests are best protected by suspension or termination of this Agreement;
- e. Consultant fails to meet the schedule, milestones, or deadlines established in this Agreement or agreed to in writing by the Parties;
- f. Consultant fails to provide acceptable replacement personnel or qualified new personnel as determined by State;
- g. Consultant has not made sufficient progress to assure that the Services are completed in accordance with the schedule in attached Exhibit "<project schedule>" or in a timely manner;
- h. Consultant fails to meet the standard of care applicable to the Services;
- i. Consultant fails to meet the performance requirements of this Agreement;
- j. Consultant's breach of a provision of this Agreement or failure to meet a condition of this Agreement;
- k. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity;
- l. Consultant fails to complete the project design in a form that is ready for letting a contract for construction according to the approved contract documents, including, but not limited to, project plans and specifications;
- m. (25) USE/DELETE(26). END (25)

14.2 Suspension

- a. Suspension for Convenience. If State suspends the work for convenience, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide State a detailed summary of the current status of the Services completed and an invoice of all costs incurred up to and including the date of suspension.
- b. Suspension for Cause. If State suspends Consultant's work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. State's notice of

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suspension will 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 will be suspended at the end of the day of suspension and will continue until all remedial action is completed to the satisfaction of State. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

14.3 Termination

If State terminates this Agreement, State shall give Consultant notice of the date of termination, which shall be no fewer than three (3) business days after notice is given. State's notice of termination shall provide Consultant with a description of the reason(s) for the termination. State's notice must specify when the Agreement will be terminated along with the requirements for completion of the work under the Agreement. Consultant's right to incur any additional costs shall cease at the end of the day of termination or as otherwise provided by State.

14.4 Compensation upon suspension or termination

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

SECTION 15. OWNERSHIP OF DOCUMENTS

- 15.1 All surveys, maps, studies, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other project documents prepared or obtained under the terms of this Agreement are the property of State, and Consultant shall deliver these documents to State at the conclusion of the project without restriction or limitation as to further use.
- 15.2 State acknowledges that such data may not be appropriate for use on an extension of the services covered by this Agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant

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to review the data and modify it if necessary for the intended purpose will be at State's sole risk and without legal exposure or liability to Consultant.

- 15.3 Further, Consultant shall keep time sheets and payroll documents in Consultant's' files for at least three years project closeout by State.

SECTION 16. CONFLICT OF INTEREST LAWS

Consultant shall review the Conflict of Interest provisions of State law and agrees to comply with all the Conflict of Interest provisions. By signing this agreement, Consultant certifies that Consultant is not aware of any financial or other interest Consultant has that may constitute a conflict of interest.

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

- 17.1 Certain information provided by State to Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between a State employee and Legal Counsel. This confidential and privileged information is vital and essential to Consultant in order that Consultant adequately design the project at hand on behalf of State.
- 17.2 Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for State for the project at hand only. Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. State agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information (Approved 11/4/11):

"CONFIDENTIAL INFORMATION: Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The State of Nebraska has not waived any privilege it may assert as provided by that law through the dissemination of this document

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and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”

- 17.3 Consultant agrees to obtain the written approval of State prior to the dissemination of any privileged or confidential information or documentation if it is unclear to Consultant whether such information or documentation is in fact privileged or confidential.
- 17.4 Consultant and State agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant will create liability on the part of Consultant to State from any damages that may occur as a result of the unauthorized dissemination. Consultant agrees to hold harmless, indemnify, and release State from any liability that may ensue on the part of State for any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant.

SECTION 18. FORBIDDING USE OF OUTSIDE AGENTS (Standard Provision)

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 19. GENERAL COMPLIANCE WITH LAWS

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

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

- 20.1 Consultant agrees to hold harmless State from all claims and liability due to the error, omission, or negligence of Consultant or those of Consultant's agents or employees in the performance of services under this Agreement. It is expected that in carrying out the work under this Agreement, Consultant will make various decisions and judgments and Consultant will determine what actions are required by Consultant and by others to

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properly complete the work. Nothing in this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to State in carrying out the work under this Agreement.

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

SECTION 21. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION

21.1 Coordinating Professional

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

21.2 Professional Registration

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

SECTION 22. SUCCESSORS AND ASSIGNS

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

SECTION 23. DRUG-FREE WORKPLACE POLICY

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

SECTION 24. FAIR EMPLOYMENT PRACTICES ACT

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

SECTION 25. DISABILITIES ACT

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

SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES

- 26.1 Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this agreement.
- 26.2 Consultant shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the award and performance of 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 27. TITLE VI NONDISCRIMINATION CLAUSES

27.1 Compliance with Regulations

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

27.2 Nondiscrimination

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

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27.3 Solicitations for Subagreements, Including Procurements of Materials and Equipment

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

27.4 Information and Reports

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

27.5 Sanctions for Noncompliance

In the event of Consultant's noncompliance with the nondiscrimination provisions of this agreement, State will impose such agreement sanctions as 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.

27.6 Incorporation of Provisions

Consultant shall include the provisions of subsections 27.1 through 27.5 of this Agreement in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. Consultant shall take such action with respect to any subagreement or procurement as State may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/ Subcontractor as a result of such direction, Consultant may request that State enter into such litigation to protect the interests of State and, in addition, Consultant may request that the United States enter into such litigation to protect the interests of the United States.

SECTION 28. SUBLETTING, ASSIGNMENT, OR TRANSFER

>USE FOR SUBCONSULTANT PROVIDED SERVICES<

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28.1 The Subconsultant will provide <description of subconsultant services> as identified in Exhibit “?”.

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

28.3 At State’s discretion, Consultant may enter into an agreement with any Subconsultants/Subcontractors for work covered under this agreement. All subconsultant/subcontractor agreements for work covered under this agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against State will accrue to any Subconsultant/Subcontractor by reason of this agreement.

28.4 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

>USE WHEN NO SUBCONSULTANTS<

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

28.2 At State’s discretion, Consultant may enter into an agreement with any Subconsultants/Subcontractors for work covered under this agreement. All subconsultant/subcontractor agreements for work covered under this agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against State will accrue to any Subconsultant/Subcontractor by reason of this agreement.

28.3 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

SECTION 29. CONSULTANT CERTIFICATIONS

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

29.1 Neb.Rev.Stat. § 81-1715(1). I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum, specific rates of compensation, or actual cost-plus-fixed-fee type professional service Agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in this Agreement are accurate, complete, and current as of the date of this agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which State determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

29.2 Neb.Rev.Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:

- a. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
- b. Has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- c. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

29.3 Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions. Section 29.3a below contains 10 instructions that consultant agrees to follow in making the certifications contained in 29.3b.

a. Instructions for Certification

- 1. By signing this agreement, Consultant is providing the certification set out below.
- 2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. Consultant shall submit

PROFESSIONAL SERVICES AGREEMENT

an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with State's determination whether to enter into this agreement. However, failure of Consultant to furnish a certification or an explanation will disqualify Consultant from participation in this agreement.

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

PROFESSIONAL SERVICES AGREEMENT

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

PROFESSIONAL SERVICES AGREEMENT

that this certification is to be furnished to State and is subject to applicable, state and federal laws, both criminal and civil.

SECTION 30. NEBRASKA DEPARTMENT OF ROADS CERTIFICATION

30.1 By signing this agreement, I do hereby certify that, to the best of my knowledge, Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

30.2 I acknowledge that this certification is subject to applicable state and federal laws, both criminal and civil.

SECTION 31. ENTIRE AGREEMENT

This Agreement, including all exhibits and incorporations specified herein, constitutes 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



AIA® Document B201™ – 2007

Standard Form of Architect's Services: Design and Construction Contract Administration

(Paragraphs deleted)

THE AGREEMENT

This Standard Form of Architect's Services is part of or modifies the accompanying Nebraska Department of Roads Capital Facilities Professional Services Agreement (hereinafter, the Agreement) ~~dated the First day of July in the year Two Thousand Thirteen.~~

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 SCOPE OF ARCHITECT'S BASIC SERVICES
- 3 ADDITIONAL SERVICES
- 4 OWNER'S RESPONSIBILITIES
- 5 COST OF THE WORK
- 6 COMPENSATION
- 7 ATTACHMENTS AND EXHIBITS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in Article (Paragraphs deleted)

1. State and Consultant may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, State and the Consultant shall appropriately adjust the schedule, the Consultant's services and the Consultant's compensation.

§ 1.2

(Paragraphs deleted)

This project shall encompass three separate phases over the course of several years and is dependent on program funding from the Legislature of the State of Nebraska. As such, phasing defined herein is subject to change and refinement based upon available funding and project planning by State. Phase one, Project Evaluation and Program Statement Development shall be completed no later than June 15 of the even calendar year following the execution date of this Agreement. Phase two, Construction Documentation and Bidding, shall be completed within a two-year period following funding approval of the Legislature of the State of Nebraska, beginning July 1 of the calendar year of funding approval OR the calendar year following, depending on project scheduling. Phase three, Construction Administration and Project Close-Out, shall begin at such time as to take full advantage of the construction season following completion of Phase two.

(Paragraphs deleted)

ARTICLE 2 SCOPE OF CONSULTANT'S BASIC SERVICES

§ 2.1 The Consultant's Basic Services consist of those described in Article 2 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in Exhibit A are Additional Services.

§ 2.1.1 The Consultant shall manage the Consultant's services, consult with the State, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the State.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Architect's scope of services only and must be used with an owner-architect agreement. It may be used with AIA Document B102™–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, to provide the Architect's sole scope of services, or with B102 in conjunction with other standard form services documents. It may also be used with G802™–2007, Amendment to the Professional Services Agreement, to create a modification to any owner-architect agreement.

§ 2.1.2 The Consultant shall coordinate its services with those services provided by State and State consultants. The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by State and State's consultants. The Consultant shall provide prompt written notice to the State if the Consultant becomes aware of any error, omission or inconsistency in such services or information.

(Paragraph deleted)

§ 2.1.4 The Consultant shall not be responsible for a State's directive or substitution made without the Consultant's approval.

§ 2.1.5 The Consultant shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Consultant shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 2.1.6 The Consultant shall assist State in connection with State's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 2.2 SCHEMATIC DESIGN PHASE SERVICES

§ 2.2.1 The Consultant shall review the program and other information furnished by State, and shall review laws, codes, and regulations applicable to the Consultant's services.

§ 2.2.2 The Consultant shall prepare a preliminary evaluation of State's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Consultant shall notify State of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 2.2.3 The Consultant shall present its preliminary evaluation to State and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Consultant shall reach an understanding with the Owner regarding the requirements of the Project.

§ 2.2.4 Based on the Project's requirements agreed upon with State, the Consultant shall prepare and present for State's approval preliminary designs illustrating the scale and relationship of the Project components.

§ 2.2.5 Based on State's approval of the preliminary design, the Consultant shall prepare Schematic Design Documents for State's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 2.2.5.1 The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with State's program, schedule and budget for the Cost of the Work.

§ 2.2.5.2 The Consultant shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with State's program, schedule and budget for the Cost of the Work.

§ 2.2.6 The Consultant shall submit to State an estimate of the Cost of the Work prepared in accordance with Section 5.3.

§ 2.2.7 The Consultant shall submit the Schematic Design Documents to State, and request State's approval.

(Paragraphs deleted)

§ 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 2.4.1 Based on State's approval of the Schematic Design Phase Documents, and on State's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Consultant shall prepare Construction Documents for State's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. State and Consultant acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Consultant shall review in accordance with Section 2.6.4.

§ 2.4.2 The Consultant shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 2.4.3 During the development of the Construction Documents, the Consultant shall assist State in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Consultant shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 2.4.4 The Consultant shall update the estimate for the Cost of the Work.

§ 2.4.5 The Consultant shall submit the Construction Documents to State, advise State of any adjustments to the estimate of the Cost of the Work, take any action required under Section 5.5, and request State's approval.

§ 2.5 BIDDING PHASE SERVICES

The Consultant shall assist State in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Consultant shall assist the Owner in (1) obtaining either competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid, if any.

§ 2.5.2 COMPETITIVE BIDDING

§ 2.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 2.5.2.2 The Consultant shall assist State in bidding the Project by

.1

(Paragraphs deleted)

organizing and conducting a pre-bid conference for prospective bidders, when deemed necessary

.2 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and

.3 attendance at bid opening, evaluation and responsiveness of the bids, identification of the apparent low bidder, and recommendation of award or other bid result action, in conjunction with State.

§ 2.5.2.3 The Consultant shall consider requests for substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs deleted)

§ 2.6 CONSTRUCTION PHASE SERVICES

§ 2.6.1 GENERAL

§ 2.6.1.1 The Consultant shall provide administration of the Contract between State and the Contractor as set forth below and in State provided General Conditions of the Contract for Construction. If State and Contractor modify the State provided General Conditions of the Contract for Construction, those modifications shall not affect the Consultant's services under this Agreement unless the Owner and the Consultant amend this Agreement.

§ 2.6.1.2 The Consultant shall advise and consult with State during the Construction Phase Services. The Consultant shall have authority to act on behalf of State only to the extent provided in this Agreement. The Consultant shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Consultant be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract

Documents. The Consultant shall be responsible for the Consultant's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

(Paragraph deleted)

§ 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise required, but not less than monthly, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits the Consultant shall keep State reasonably informed about the progress and quality of the portion of the Work completed, and report to State (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 2.6.2.2 The Consultant has the authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.2.3 The Consultant shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either State or Contractor. The Consultant's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness and as stipulated in the Nebraska Department of Roads Capital Facilities Professional Services Agreement, Section 10 and the General Condition of the Construction Contract.

§ 2.6.2.4 Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Consultant shall endeavor to secure faithful performance by both State and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

(Paragraph deleted)

§ 2.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 2.6.3.1 The Consultant shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Consultant's certification for payment shall constitute a representation to State, based on the Consultant's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Consultant.

§ 2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by State to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.3.3 The Consultant shall maintain a record of the Applications and Certificates for Payment.

§ 2.6.4 SUBMITTALS

§ 2.6.4.1 The Consultant shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Consultant's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Consultant's professional judgment to permit adequate review.

§ 2.6.4.2 In accordance with the Consultant-approved submittal schedule, the Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Consultant shall specify the appropriate performance and design criteria that such services must satisfy. The Consultant shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 2.6.4.4 The Consultant shall review and respond to requests for information about the Contract Documents. The Consultant shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Consultant's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Consultant shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 2.6.4.5 The Consultant shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Consultant may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Consultant shall prepare Change Orders and Construction Change Directives for State's approval and execution in accordance with the Contract Documents.

§ 2.6.5.2 The Consultant shall maintain records relative to changes in the Work.

§ 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to State, for State's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Consultant's inspections shall be conducted with State to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 2.6.6.3 When the Work is found to be substantially complete, the Consultant shall inform State about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 2.6.6.4 The Consultant shall forward to State the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases of bonds; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 2.6.6.5 Upon request of State, and prior to the expiration of one year from the date of Substantial Completion, the Consultant shall, without additional compensation, conduct a meeting with State to review the facility operations and performance.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 3.2 below or in an exhibit attached to this document and identified below)
§ 3.1.1 N/A	N/A	N/A

(Paragraphs deleted)

ARTICLE 4 STATE'S RESPONSIBILITIES

(Paragraphs deleted)

(Table deleted)

§ 4.1 State shall establish and periodically update the State's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 5.1; (2) State's other costs; and, (3) reasonable contingencies related to all of these costs. If State significantly increases or decreases State's budget for the Cost of the Work, State shall notify the Consultant. State and the Consultant shall thereafter agree to a corresponding change in the Project's scope and quality.

(Paragraphs deleted)

§ 4.4 State shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.5 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, State shall endeavor to communicate with the Contractor and the Consultant's consultants through the Consultant about matters arising out of or relating to the Contract Documents. State shall promptly notify the Consultant of any direct communications that may affect the Consultant's services.

§ 4.6 Before executing the Contract for Construction, State shall coordinate the Consultant's duties and responsibilities set forth in the Contract for Construction with the Consultant's services set forth in this Agreement. State shall provide the Consultant a copy of the executed agreement between State and Contractor, including the General Conditions of the Contract for Construction.

§ 4.7 State shall provide the Consultant access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Consultant access to the Work wherever it is in preparation or progress.

ARTICLE 5 COST OF THE WORK

§ 5.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to State to construct all elements of the Project designed or specified by the Consultant and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Consultant, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of State.

§ 5.2 State's budget for the Cost of the Work may be provided in Initial Information, and may be adjusted throughout the Project as required under Sections 4.1, 5.4 and 5.5. Evaluations of State's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Consultant, represent the Consultant's judgment as a design professional. It is recognized, however, that neither the Consultant nor State has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot

and does not warrant or represent that bids will not vary from State's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Consultant.

§ 5.3 In preparing estimates of the Cost of Work, the Consultant shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet State's budget for the Cost of the Work. The Consultant's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

§ 5.4 If the Bidding Phase has not commenced within the agreed to or scheduled time after the Consultant submits the Construction Documents to the Owner, through no fault of the Consultant, the Owner's budget for the Cost of the Work may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 5.5 If at any time the Consultant's estimate of the Cost of the Work exceeds State's budget for the Cost of the Work, the Consultant shall make appropriate recommendations to State to adjust the Project's size, quality or budget for the Cost of the Work, and State shall cooperate with the Consultant in making such adjustments.

§ 5.6 If State's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, State shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Nebraska Department of Roads Capital Facilities Professional Services Agreement;
- .4 in consultation with the Consultant, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 5.7 If State chooses to proceed under Section 5.6.4, the Consultant, without additional compensation, shall modify the Construction Documents as necessary to comply with State's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under 8.6 Out of Scope Services of the Nebraska Department of Roads Capital Facilities Professional Services Agreement. The Consultant's modification of the Construction Documents shall be the limit of the Consultant's responsibility under this Article 5.

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 7 ATTACHMENTS AND EXHIBITS

The following attachments and exhibits, if any, are incorporated herein by reference:

(List other documents, if any, including Exhibit A, Initial Information, and any exhibits relied on in Section 3.1.)