**PROFESSIONAL SERVICES AGREEMENT**

**LPA PROJECTS**

PRELIMINARY ENGINEERING SERVICES

<NAME OF LPA>

CONSULTANT FIRM NAME

PROJECT NO. Project #

CONTROL NO. Control #

PROJECT LOCATION Project Location – ex. BROWNSON EAST

**THIS AGREEMENT** is between the <Name of LPA> ("LPA") and <Consultant firm name> ("Consultant”), collectively referred to as the “Parties”.

**WITNESSETH**

**WHEREAS**, “State” means the Nebraska Department of Transportation in Lincoln, Nebraska, its Director, or authorized representative. The State will act as an agent of LPA and will represent the interests of the United States Department of Transportation in the development and construction of such LPA’s project when State is managing the project on behalf of the LPA, and

**WHEREAS**, “LPA” for this Agreement means <NAME OF LPA> who has jurisdictional responsibility over the transportation facility that will be the subject of this Agreement with Consultant. In this Agreement, LPA may also be used to refer to all Local Public Agencies, collectively. Local Public Agencies include, but are not necessarily limited to; Nebraska Cities, Villages, Counties, Political Subdivisions, Native American Tribes, and other entities or organizations found to be eligible sub recipients of federal funds for transportation projects, and

**WHEREAS**, State is authorized by state law to assist Nebraska Local Public Agencies, hereinafter referred to as LPA or LPAs, with obtaining and expending federal funds for local transportation projects, and

**WHEREAS**, State is presently assisting LPAs in the development of Federal-aid LPA transportation projects for local streets, roads and facilities, and

**WHEREAS,** LPA desires that this project be developed and constructed under the designation of Project No. <project # > and formally authorizes the signing of this Agreement by the Mayor or the County Board Chair, as evidenced by the Resolution of LPA dated \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, attached as Exhibit “resolution” and incorporated herein by this reference, and

**WHEREAS**, LPA used a qualification-based selection process to select Consultant to provide Preliminary Engineering services, hereinafter referred to as “Services”, 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**, LPA and Consultant wish to enter into this Agreement to specify the duties and obligations of the Parties for the Services described herein, and

**WHEREAS**, Consultant is willing to perform Services in accordance with the terms hereinafter provided, agrees to comply with all federal, state, and local laws and ordinances applicable to this Agreement, and agrees to comply with all applicable federal-aid transportation project related program requirements, so that Consultant’s costs under this Agreement will be eligible for federal reimbursement, and

**WHEREAS**, LPA and Consultant intend that these Services be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal‑Aid Projects; hereinafter referred to as “LPA Manual”. The LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address: <http://dot.nebraska.gov/media/6319/lpa-guidelines.pdf>, and

**WHEREAS,** Consultant should request from LPA or State the contact information for Consultant’s primary point of contact for this project, and

**WHEREAS,** the Parties understand that this Agreement will be posted to a publicly accessible database of State agreements pursuant to the requirements Neb. Rev. Stat. § 84-602.04.

**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 |
|  | Contractor/Vendor Number | xxxx |
|  | Address | Firm address |
|  | Project Manager’s Name | PM’s name |
|  | Project Manager’s Phone | xxx-xxx-xxxx |

USE/DELETE FOR SUBS

|  |  |
| --- | --- |
| 1.2 Subconsultant Project Manager |  |
|  | Firm Name | Sub name |
|  | Contractor/Vendor Number | xxxx |
|  | 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 LPA RC |  |
|  | Name | name |
|  | Phone Number | xxx-xxx-xxxx |
| 1.5 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. NOTICE TO PROCEED AND COMPLETION SCHEDULE**

4.1 LPA, or State on behalf of LPA, will issue Consultant a written Notice to Proceed upon 1) complete execution of this Agreement, 2) LPA’s determination, or State’s determination on LPA’s behalf, that federal funding approval has been obtained for the project and 3) State’s concurrence that the form of this Agreement is acceptable for federal funding eligibility. Invoiced charges for services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be eligible for reimbursement.

OR Consultant was issued a Notice to Proceed effective <NTP date>.

4.2 In the event that prior to the Effective Date of this Agreement, Consultant is issued a Notice to Proceed and Consultant began work, Consultant will be paid for such work in accordance with this Agreement and the Parties are bound by this Agreement as if the work had been completed after the Effective Date of the Agreement.

4.3 Consultant shall complete the Services <use this extra language when there is also a schedule in the attached SOS>according to the schedule in attached Exhibit “<project schedule>” and shall complete all Services <End> 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 LPA or State, on LPA’s behalf. Extensions of the time to complete the Services must not be construed as an extension to the duration of the agreement.

4.4 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 LPA or State, may, upon request, constitute a basis for an extension of time.

**SECTION 5. DURATION OF THE AGREEMENT (Matches Project Lifespan)**

5.1 *Effective Date* – This Agreement is effective when executed by the Parties.

5.2 *Expiration Date* -- This Agreement expires when State has (a) completed the project final audit and cost settlement or (b) waived the requirement of a financial audit.

<Use for work tied to the letting and construction of a project>

5.3 *Duration of the Agreement* – The Agreement duration is from the Effective Date to the Expiration Date. The Agreement duration is “specified” under Neb. Rev. Stat. § 73-506 to the period of time necessary for a Consultant to complete the applicable phase or phases of the development of this particular federal, state or locally funded construction project, including when applicable, the time during construction of the project. <End>

-or-

 <Use for “projects” that aren’t tied to a construction project. Projects that are difficult to determine the timeframe>

5.3 *Duration of the Agreement* – The Agreement duration is from the Effective Date to the Expiration Date. The Agreement duration is “specified” under Neb. Rev. Stat. § 73-506 to the period of time necessary for a Consultant to complete “<describe work such as xx Study, or xx Manuals>”. The time it will take Consultant to complete the work is uncertain by its nature depending on many factors including the scope and complexity of the proposed project work and the availability of funding. It is in the LPA’s, or State’s, and Consultant’s best interest to keep this Agreement in effect for the completion of all project work. <End>

5.4 *Identifying Date* – This Agreement may be identified by the date LPA signed the agreement.

5.5 *Termination or Suspension* – LPA, or State on LPA’s behalf, reserves the right to terminate or suspend this Agreement at any time for any of the reasons provided herein.

**SECTION 6. SCOPE OF SERVICES**

6.1 LPA and Consultant understand that the Services provided by Consultant must be completed in accordance with all federal-aid reimbursement requirements and conditions. Consultant shall provide <type of service> for project <project number>, <project location>, in <county name> County, Nebraska. The Scope of Services (“Services”) is outlined in Exhibit “<scope of services>”, attached and incorporated herein by this reference.

6.2 Exhibit “<scope of services>” is the result of the following process:

6.2.1 Consultant was provided with a document describing the detailed proposed Scope of Services for this project

6.2.2 Consultant made necessary and appropriate proposed additions, deletions, and revisions to the detailed Scope of Services document

6.2.3 Consultant participated in a review of the proposed Scope of Services, and the proposed revisions, and negotiated the final detailed Scope of Services and Fee Proposal document, as shown in Exhibit “<scope of services>” and Exhibit “<fee proposal”>, attached and incorporated herein by this reference.

6.3 LPA, or State on LPA’s behalf, reserves the unconditional right to add to, subtract from, or alter 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, subtraction, or alteration will become effective seven (7) days after mailing written notice of such addition, subtraction, or alteration.

6.4 Any change in the Services will follow the process specified in the *Out-of-Scope Services* section in Exhibit “<fees & payments>”, attached and incorporated herein by this reference.

**SECTION 7. STAFFING PLAN (PE)**

**>**USE WHEN STAFFING PLAN IS A STANDALONE EXHIBIT>

7.1 Consultant has provided LPA and State with a Staffing Plan or Staffing Plans, described in Exhibit “<staffing plan>”, attached and incorporated herein by this reference. The Staffing Plan identifies the employees of Consultant, and when applicable subconsultants, who are anticipated to provide Services under this Agreement. Consultant understands that LPA and State are relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Agreement. LPA and State consider the Principals, senior level staff, Project Managers, Team Leaders or other similar classifications, to be the key personnel for the Services provided. Consultant, and when applicable subconsultants, may make occasional temporary changes to the key personnel. However, any permanent change to Consultant’s or subconsultant’s key personnel will require prior written approval from LPA, or State on LPA’s behalf.

**>**USE WHEN STAFFING PLAN IS INCLUDED WITH THE FEE PROPOSAL WORKBOOK >

7.1 Consultant has provided LPA and State with a Staffing Plan or Staffing Plans, described in Exhibit “<fees & payments>”. The Staffing Plan identifies the employees of Consultant, and when applicable subconsultants, who are anticipated to provide Services under this Agreement. Consultant understands that LPA and State are relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Agreement. LPA and State consider the Principals, senior level staff, Project Managers, Team Leaders or other similar classifications, to be the key personnel for the Services provided. Consultant and, when applicable subconsultants, may make occasional temporary changes to the key personnel. However, any permanent change to Consultant’s or subconsultant’s key personnel will require prior written approval from LPA, or State on LPA’s behalf.

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 or subconsultant to provide acceptable replacement personnel or qualified new personnel to keep the Services on schedule will be cause for termination of this Agreement, with settlement to be made as set out on Exhibit “<fees & payments>”.

**SECTION 8.** *This section has intentionally been left blank.*

**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 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 Transportation’s website at <http://dot.nebraska.gov/media/2802/ndot289.pdf>.

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>” and incorporated herein by this reference.

10.2 The <remove if lump sum> maximum compensation amounts and general provisions concerning payment under this Agreement are attached as Exhibit “<fees & payments>”.

**SECTION 11. CONSULTANT’S PERFORMANCE (LPA PE)**

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 LPA, or State on LPA’s behalf, 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 LPA, or State on LPA’s behalf, 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, Cooperation, and Project Management; (2) Schedule; (3) Scope and Budget; and (4) Quality and Technical Performance. Consultant understands that if LPA, or State on LPA’s behalf, 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, LPA, or State on LPA’s behalf, may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If LPA, or State on LPA’s behalf, chooses to conduct a Consultant Performance Evaluation, LPA, or State on LPA’s behalf, 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. LPA’s or State’s remedies for substandard performance will apply even in the absence of a Consultant Performance Evaluation.

11.4 LPA’s or 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 LPA or State. Further, Consultant shall reimburse LPA or State for any costs incurred by LPA or State for necessary remedial work. Consultant shall respond to LPA’s or 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 LPA or State. If Consultant discovers errors, omissions, or negligence in its Services, Consultant shall notify LPA and State of the errors within three (3) business days. Failure of Consultant to notify LPA and State constitutes a breach of this Agreement.

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

If LPA or State requires Consultant to remedy any deficiencies in the Services, Consultant shall make such corrections at no additional cost to LPA or 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 LPA or State caused by Consultant’s errors, omissions, or negligent acts without liability or expense to LPA or State. The rights and remedies of LPA or State provided herein are in addition to any other remedies provided by law.

**SECTION 12. CONSULTANT’S ACCOUNTABILITY FOR ITS SERVICES** (LPA)

12.1 Consultant agrees that LPA and State will rely on the professional training, experience, performance and ability of Consultant. Consultant agrees that examination by LPA, State, or Federal Highway Administration of the United States Department of Transportation (FHWA), approval, acceptance, use of, or acquiescence in Consultant’s Services, will not be considered a full and comprehensive examination and will not be considered approval of Consultant’s Services that would relieve Consultant from liability or expense connected with Consultant's sole responsibility for the propriety and integrity of Consultant’s Services pursuant to this Agreement. Consultant agrees that LPA’s or 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 LPA or State or of payment, partial or final, will not constitute a waiver of any rights of LPA or 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 work will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE RESOLUTION.

**SECTION 14. SUSPENSION OR TERMINATION** (PE 2-25-16)

14.1 Suspension or Termination

LPA or State, on LPA’s behalf, has the absolute right to suspend the work or terminate this 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. Without limiting the rights set out in this section, the following is a non-exclusive list of the examples of the circumstances under which LPA or State may suspend or terminate this Agreement:

1. A loss, elimination, decrease, or re-allocation of funds that make it difficult, unlikely or impossible to have sufficient funding for the Services or the project
2. The Services or the project are abandoned for any reason
3. Funding priorities have changed
4. LPA’s or State's interests are best protected by suspension or termination of this Agreement
5. Consultant fails to meet the schedule, milestones, or deadlines established in this Agreement or agreed to in writing by the Parties
6. Consultant fails to provide acceptable replacement personnel or qualified new personnel
7. Consultant has not made sufficient progress to assure that the Services are completed in a timely manner
8. Consultant fails to meet the standard of care applicable to the Services
9. Consultant fails to meet the performance requirements of this Agreement
10. Consultant's breach of a provision of this Agreement or failure to meet a condition of this Agreement
11. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity
12. 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
13. <add any additional items otherwise delete>

14.2 *This section has intentionally been left blank.*

14.3 Suspension

1. Suspension for Convenience. If LPA or State, on LPA’s behalf, suspends the work for convenience, Consultant will be given 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 LPA and 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.
2. Suspension for Cause. If LPA or State, on LPA’s behalf, suspends the work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, Consultant will be given notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. The notice of suspension will provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, and a description of the actions that must be taken for LPA or 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 LPA and State. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

14.4 Termination

If LPA or State, on LPA’s behalf, terminates this Agreement, Consultant will be given notice of the date of termination, which will be no fewer than three (3) business days after notice is given. The notice of termination will provide Consultant with a description of the reason(s) for the termination. The 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 will cease at the end of the day of termination or as otherwise provided.

14.5 Compensation upon suspension or termination

If LPA or State, on LPA’s behalf, suspends the work or terminates the Agreement, Consultant must be compensated in accordance with the provisions set out in Exhibit “<fees & payments>”, provided however, that in the case of suspension or termination for cause or for Consultant's breach of this Agreement, LPA or State, on LPA’s behalf, 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, LPA or State, on LPA’s behalf, may make the compensation adjustments set out in Exhibit “<fees & payments>”.

**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 LPA. Consultant shall deliver these documents to LPA at the conclusion of the project for inclusion in LPA’s federal-aid file without restriction or limitation as to further use.

15.2 LPA 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 LPA’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 from the completion of final cost settlement by FHWA and project closeout by State.

**SECTION 16. CONFLICT OF INTEREST LAWS**

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

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

17.1 Certain information provided by LPA or State to Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §407. "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. §407. "Privileged document" means any document pertaining to any file or project maintained by LPA or State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an LPA or 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 LPA or 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 LPA or 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. LPA or 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 §407, 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* [or LPA] *has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”*

17.3 Consultant agrees to obtain the written approval of LPA and 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 LPA or 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 LPA or State for any damages that may occur as a result of the unauthorized dissemination. Consultant agrees to hold harmless, indemnify, and release LPA or State from any liability that may ensue on the part of LPA or 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, LPA or 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** (3-2-21)

20.1 Consultant agrees to hold harmless LPA and 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 work 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 properly complete the work. Nothing in this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to LPA or 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>”, attached and incorporated herein by this reference.  For any work to be performed by a subconsultant/subcontractor or other person/entity, at any tier, for Consultant, Consultant shall require that such subconsultant/subcontractor or other person/entity meet the insurance requirements outlined in Exhibit “<Insurance>”.

**SECTION 21. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION** (2-1-18)

21.1 Coordinating Professional:

To the extent of any design work applicable to the Services under this Agreement, the following Coordinating Professional language applies:

If LPA’s project involves more than one licensed professional engineer, LPA shall designate a Coordinating Professional (defined in Neb. Rev. Stat. § 81-3408) for this project as required by Neb. Rev. Stat. § 81-3437.02 of the Nebraska Engineers and Architects Regulation Act (Neb. Rev. Stat § 81-3104 et seq.). The Coordinating Professional will 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. Consultant agrees to cooperate with the designated Coordinating Professional to meet the requirements of state law. Consultant further agrees to contractually require its subconsultants to cooperate with the designated Coordinating Professional.

If Consultant’s engineer has been identified as the Coordinating Professional for this project, and, for whatever reason, the designated Coordinating Professional is no longer assigned to the project, Consultant shall provide LPA written notice of the name of the replacement within 10 business days.

21.2 Professional Registration:

To the extent the work requires engineering services, Consultant will 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.

**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, and comply with, an acceptable and current drug-free workplace policy on file with State. Consultant’s employees shall not use illegal drugs or consume alcohol during work hours and while performing Services for State under this Agreement.

**SECTION 24. FAIR EMPLOYMENT PRACTICES ACT**

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

**SECTION 25. DISABILITIES ACT**

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

**SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES**

26.1 Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this Agreement.

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

**SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES** *(2023 NDOT Title VI Implementation Plan)*

27.1 Appendix A - During the performance of this contract, the Contractor, Consultant, or when applicable LPA, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

27.1.1 Compliance with Regulations

The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

27.1.2 Nondiscrimination

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR 21.

27.1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of contractor’s obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

27.1.4 Information and Reports

The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contactor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

27.1.5 Sanctions for Noncompliance

In the event of contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

27.1.5.1 withholding payments to the contractor under the contract until the contractor complies; and/or

27.1.5.2 cancelling, terminating, or suspending a contract, in whole or in part.

27.1.6 Incorporation of Provisions

The contractor will include the provisions of paragraphs 27.1.1 through 27.1.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

27.2 Appendix E – During the performance of this contract, the Contractor, Consultant, or when applicable LPA, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

27.2.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

27.2.2 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

27.2.3 Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

27.2.4 Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

27.2.5 The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

27.2.6 Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

27.2.7 The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

27.2.8 Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

27.2.9 The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

27.2.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

27.2.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

27.2.12 Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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

**>USE FOR SUBCONSULTANT PROVIDED SERVICES<**

28.1 The Subconsultant will provide **<description of subconsultant services>**.

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

28.3 At LPA’s or State’s discretion, Consultant may enter into an agreement with any subconsultants/subcontractors (including allowing subconsultants/subcontractors at lower tiers) for work covered under this Agreement. All subconsultant/subcontractor agreements, at any tier, for work covered under this Agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against LPA or 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, on LPA’s behalf, is obtained.

28.2 At LPA’s or 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 LPA or 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 Agreement is a lump sum, actual cost-plus-fixed-fee, or specific rates of compensation type professional services agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in this Agreement are accurate, complete, and current as of the date of this Agreement. I agree that the original 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:

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
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).

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

# a. Instructions for Certification

1. By signing this Agreement, Consultant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with State's determination whether to enter into this Agreement. However, failure of Consultant to furnish a certification or an explanation will disqualify Consultant from participation in this Agreement.
3. The certification in this clause is a material representation of fact upon which reliance was placed when State determined to enter into this Agreement. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, State may terminate this Agreement for cause or default.
4. Consultant shall provide immediate written notice to State if at any time Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 – Debarment and suspension. Exec. Order No. 12,549, 51 Fed. Reg. 6370 (1986).
6. Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by State before entering into this Agreement.
7. Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 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:
		1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
		2. 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;
		3. 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
		4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
	2. Where Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this Agreement. I acknowledge that this certification is to be furnished to State and the FHWA in connection with this Agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.

**SECTION 30. LPA CERTIFICATION**

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

a. employ or retain, or agree to employ or retain, any firm or person, or

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

30.2 I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this Agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

**SECTION 31. SEVERABILITY**

The invalidity or unenforceability of any such clause, provision, section, or part shall not affect the validity or enforceability of the balance of the Agreement, which shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable clause, provision, section or part.

**SECTION 32. COMPLETENESS**

This Agreement is the complete and exclusive statement of the arrangement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the Parties hereto.

**SECTION 33. FEDERAL AID REQUIRED CLAUSES**

The contract clauses set out on Exhibit <2-cfr-200 clauses>, to the extent applicable, are attached and incorporated herein by this reference. Consultant shall attach and incorporate Exhibit <2-cfr-200 clauses> in any subconsultant agreements for work under this agreement.

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

**EXECUTED** by Consultant this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

 <CONSULTANT FIRM NAME>

 <Consultant Signatory Name>

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 <Consultant Signatory Title>

STATE OF NEBRASKA)

 )ss.

?? COUNTY )

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

 **EXECUTED** by the <LPA> this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

 <LPA>

 <LPA Signatory Name>

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 <LPA Signatory Title>

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Clerk

 STATE OF NEBRASKA

 DEPARTMENT OF TRANSPORTATION

Form of Agreement Approved for

Federal Funding Eligibility

NDOT Signatory Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NDOT Signatory Title Date