 **PROFESSIONAL SERVICES AGREEMENT**

**STATE PROJECTS**

CONSTRUCTION ENGINEERING SERVICES

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

NEBRASKA DEPARTMENT OF TRANSPORTATION

CONSULTANT FIRM NAME

PROJECT NO. Project #

CONTROL NO. Control #

Project Location – ex. Brownson East Crossovers

**THIS AGREEMENT** is between the Nebraska Department of Transportation ("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 provide Construction Engineering services (“Services”) for the above-named project, and

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

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

**WHEREAS**, Consultant is required to use State provided construction recordkeeping system (Trans•Port SiteManager), for the Services provided under this Agreement, 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 (Central) | |  |
|  | Name | name |
|  | Phone Number | xxx-xxx-xxxx |

|  |  |  |
| --- | --- | --- |
| 1.4 State Representative (District) | |  |
|  | Name | name |
|  | Phone Number | xxx-xxx-xxxx |

|  |  |  |
| --- | --- | --- |
| 1.4 State Agreements Specialist | |  |
|  | Name | name |
|  | Phone Number | xxx-xxx-xxxx |

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

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

**SECTION 4. NOTICE TO PROCEED AND COMPLETION**

4.1 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>. Invoiced charges for services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be paid by State.

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 The completion of the construction of this project is estimated to be <date>, and is subject to change. Consultant shall complete all Services under this Agreement within 60 calendar days from the construction completion date stated on the DR Form 91 “Notification of Contract Completion”. State’s Construction Division Project Coordinator must approve any exception to this deadline. If justification is approved, a written time extension will be granted. Any costs incurred by Consultant after the completion deadline will not be eligible for reimbursement.

**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.

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

5.4 *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 work for this particular federal, state or locally funded construction project, including when applicable, the time during construction of the project.

5.5 *Termination or Suspension* -- State 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 Consultant agrees that the Scope of Services for this work will be in two parts. Part one of the Scope of Services is contained within the “Basic Scope of Services” set out below. Part two of the Scope of Services is set out on the document attached as Exhibit “<scope of services>”, and incorporated herein by this reference. The attached Scope of Services will govern over any contrary language in the Basic Scope of Service set out below.

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

6.2.1 Consultant was provided 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 documents, which are attached as Exhibit “<scope of services>” and Exhibit “<fee proposal>, which is incorporated herein by this reference.

6.3 Exhibits “<scope of services>” and “<fee proposal> sets out the Services reasonably necessary, and costs reasonably estimated, for Consultant Services to adequately observe, monitor, inspect, measure, manage, document and report so that State’s project is constructed by the contractor in compliance with the Construction Contract Documents (definition below), and the Manuals (definition below), State and Federal law, rule or regulation and policy. Consultant agrees to provide the services listed on Exhibit “<scope of services>”, for Project <project #>, Control No. <control #>, in <county> County, Nebraska.

6.4 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.

***Basic Scope of Services*:**

6.5 Consultant services generally include, but are not limited to: Construction engineering; project management; pre-construction staking; traffic control plans; conducting the preconstruction conference; preparing daily work reports; construction staking and inspection, and materials sampling and testing during project construction; monitoring environmental commitments; preparing as-built plans; progress computations; final computations; preparing contractor change orders and work orders; and all project communications.

6.6 Additionally, Consultant shall review, have a working knowledge of, and conform to the project plans, special provisions, standard specifications (the Standard Specifications for Highway Construction of NDOT (Current Edition)), change orders and all other project related contract documents for the construction of State’s project. The project plans, special provisions, standard specifications, and other contract documents are hereby incorporated by reference into this Agreement, as if they were fully set forth herein, and collectively, may be referred to as the Construction Contract Documents. Consultant shall be qualified to assume the duties of “Inspector”, (also referred to in the NDOT Construction Manual as “Construction Technician”); “Project Manager;” and also “Engineer” (unless the context of use of the term “Engineer” would otherwise require), as those terms are defined and duties set out in the Standard Specifications for Highway Construction (2007 Edition). Consultant shall assume that it is responsible for all duties of the “Engineer” unless notified otherwise by State.

6.7 Additionally, Consultant shall review and have a working knowledge of the following authoritative guides and manuals related to highway construction and materials:

1. NDOT Construction Manual - Current Edition
2. Materials Sampling Guide (NDOT)
3. Standard Methods of Tests (NDOT)
4. *Intentionally left blank*
5. The Manual on Uniform Traffic Control Devices
6. AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing
7. The ASTM Standards
8. NDOT Final Review Manual

6.8 These documents are hereby incorporated herein by reference as if fully set forth, and these documents, collectively, may be referred to as the Manuals. Unless required otherwise by the Construction Contract Documents, Consultant shall be responsible for timely completion of all applicable checklists, tests, samples, duties, requirements and provisions of the Manuals. The Manuals will be used to determine what, when, how, the sequence, and other details of the work that Consultant must provide, whenever Consultant’s duties in these respects are not clearly set out in the Construction Contract Documents. Consultant shall employ a sufficient number of qualified employees on the project to adequately observe, monitor, inspect, measure, manage, document, report and carry out the other duties of this Agreement, so that the project is constructed by the contractor in compliance with the Construction Contract Documents, the Manuals, State and Federal law, rule or regulation and policy. Consultant shall fulfill all contract duties of inspection, project management and construction engineering for the project in a timely manner and shall communicate regularly about the progress of the construction with State.

6.9 Consultant is required to use Trans•Port SiteManager as the construction record-keeping system for Services under this Agreement.

6.10 Consultant shall be present at the project site when appropriate for each applicable phase of construction to inspect, observe, monitor, measure, manage, document and report on the progress of the work or as State agrees.

6.11 The Parties agree that Consultant is not responsible for the Contractor’s means and methods of construction. To the extent the Construction Contract Documents and the Manuals specify sequencing of work, equipment requirements, or other construction methods, Consultant shall keep the State’s Project Manager informed about the progress and quality of the portion of the work and shall advise the State’s Project Manager about observed or measured deficiencies in the work.

6.12 Additional Requirements:

6.12.1 Consultant will advise State when it appears any Disadvantaged Business Enterprise (DBE) working on the project is in need of assistance.

6.12.2 Consultant will make every effort to assist the Contractor or any Subcontractor in interpreting Project Plans, Special Provisions, Standard Specifications, other Construction Contract Documents, or the Manuals.

6.12.3 Consultant will be present at the project site or available locally beginning on the date specified in the State’s notice to proceed to the contractor, unless project work has not begun at the site; or, with at least 24 hours’ notice, at any prior date when contract work begins or when materials are delivered to the project that need to be tested, sampled or inspected to verify conformance to the requirements of the Construction Contract Documents.

6.12.4 Consultant will promptly review and approve or reject all construction work on the project, with the right, but not the duty, for State and FHWA to review for compliance or funding eligibility.

6.12.5 All reports of field tests performed by Consultant will be submitted weekly to State Project Manager. Consultant will take prompt and appropriate action to reject or cause Contractor to remedy the work or materials that do not strictly conform to the contract documents. Additionally, Consultant shall promptly notify State of work that does not strictly conform to the contract documents.

6.12.6 Consultant will comply with all Federal, State and local laws, rules or regulations, policies or procedures, and ordinances applicable to the work contemplated in this Agreement.

6.12.7 Project time delays attributed solely to the Contractor will constitute a basis for a request for an equivalent extension of time for Consultant. The Parties understand that reimbursement of extra compensation must be approved in advance as described in Exhibit “<fees and payments>”, attached and incorporated herein by this reference.

6.12.8 Consultant will complete the sampling and testing type, method and frequency according to the current State of Nebraska Manuals, including the Materials Sampling Guide and the State Standard Methods of Tests (<https://dot.nebraska.gov/business-center/materials/sampling-guide/>), and the Construction Contract Documents. For sampling or testing issues or situations that are not covered in the Construction Contract Documents or the Manuals, Consultant shall notify State, provide its advice and request that State decide what testing type, method or frequency should be applied for this project. Any test methods or procedures that are proposed to be used and are not covered by State procedures must receive prior concurrence for use from State and FHWA.

**SECTION 7. STAFFING PLAN**

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

7.1 Consultant has provided 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 State is relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Agreement. State considers 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 State.

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

7.1 Consultant has provided State with a Staffing Plan or Staffing Plans, described in Exhibit “<fees & payments>”. The Staffing Plan identifies the employees of Consultant and subconsultant who are anticipated to provide Services under this Agreement. Consultant understands that State is relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Agreement. State considers 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 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 to keep the services on schedule, will be cause for termination of this Agreement, with settlement to be made as provided in Exhibit “<fees & payments>”.

**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 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:

1. 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>.
2. 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.
3. 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>”.

10.2 The general provisions concerning payment under this Agreement are attached as Exhibit “<fees & payments>”.

**SECTION 11. CONSULTANT’S PERFORMANCE** (CE)

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, Cooperation, and Project Management; (2) Schedule; (3) Scope and Budget; and (4) Quality and Technical Performance. Consultant understands that if State determines that Consultant's performance is not meeting, has not met, or is at risk of not meeting the Standard of Performance set out herein, State may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If State chooses to conduct a Consultant Performance Evaluation, State will notify Consultant of the evaluation including necessary instructions and procedures for complying with the evaluation.

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

11.4 State's Remedies for Substandard Performance

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

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

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

**SECTION 12. CONSULTANT’S ACCOUNTABILITY FOR ITS SERVICES**

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

12.2 Consultant agrees that acceptance or approval of any of the services of Consultant by State or of payment, partial or final, will not constitute a waiver of any rights of State to recover from Consultant damages caused by Consultant due to error, omission, or negligence of Consultant in its services.

**SECTION 13. DISPUTES**

The process set out on Exhibit “<dispute resolution >”, attached hereto and made a part of this Agreement, may be used by the Parties to resolve disputes under this Agreement. However, 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 of the Nebraska Department of Transportation or a duly authorized representative, whose decision in the matter will be final and conclusive on the Parties to this Agreement.

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

14.1 Suspension or Termination

State has the absolute and exclusive 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 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 State may suspended or terminated this Agreement:

1. 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;
2. State abandons the Services or the project for any reason;
3. State’s funding priorities have changed;
4. State determines, in its sole discretion, that 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 as determined by State;
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 Suspension

1. Suspension for Convenience. If State suspends Consultant’s 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.
2. Suspension for Cause. If State suspends Consultant's work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. State's notice of suspension will provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, and a description of the actions that must be taken for State to rescind the suspension. Consultant's right to incur any additional costs will be suspended at the end of the day of suspension and will continue until all remedial action is completed to the satisfaction of State. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

14.3 Termination

If State terminates this Agreement, State shall give Consultant notice of the date of termination, which shall be no fewer than three (3) business days after notice is given. State's notice of termination will 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 will cease at the end of the day of termination or as otherwise provided by State.

14.4 Compensation upon suspension or termination

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

**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 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 from the completion of final cost settlement by FHWA and project closeout by State.

**SECTION 16. CONFLICT OF INTEREST LAWS**

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

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

17.1 Certain information provided by State to Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §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 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 §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 has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”

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

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

State has designated its Roadway Design Engineer as the Coordinating Professional (defined in § 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 State’s Coordinating Professional to meet the requirements of state law. Consultant further agrees to contractually require its subconsultants to cooperate with the State’s Coordinating Professional.

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 State or such remedy as State deems 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 or Consultant, 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 or Consultant, 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 is obtained.

28.3 At 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 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 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. NEBRASKA DEPARTMENT OF TRANSPORTATION 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. AGREEMENT SIGNING PROCESS**

The Parties agree to execute agreements, including this agreement, by electronic means, when requested by State. Consultant has provided State with the name and valid password protected email address of Consultant’s employee(s) who is(are) currently authorized by Consultant, and by law, to execute agreements with State. Consultant has and will make its best efforts to safeguard the email account passwords and DocuSign PIN codes. Consultant shall promptly notify State when a designated employee is no longer authorized to sign agreements on behalf of Consultant, and shall notify State of the new employee authorized to sign on Consultant’s behalf. Consultant shall promptly notify State of any delay or defect in the electronic signing process, including (a) in receiving, reviewing, or transmitting the agreement to State, (b) difficulty signing the agreement, or (c) discovery of an unauthorized signature. Consultant agrees to be responsible for its own negligence or actions related to the electronic signing process used by Consultant for agreements with State.

**SECTION 32. 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 33. 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 34. 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 the Consultant on:

CONSULTANT FIRM NAME

Consultant Signatory Name

Consultant Signatory Title

**EXECUTED** by the State on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NEBRASKA DEPARTMENT OF

TRANSPORTATION

NDOT Signatory Name

NDOT Signatory Title