

Agreement No.	WK1500
NTP	DATE
Agreement Amount	MNTE \$XX.XX

**NEGOTIATIONS AND ACQUISITION SERVICES AGREEMENT  
 NEBRASKA DEPARTMENT OF TRANSPORTATION  
 RIGHT OF WAY DIVISION**

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 **USE WHEN IT'S AN LPA PROJECT, or State on LPA's behalf,END USE** is developing a transportation project under the designation of Project No. Project #, **<USE WHEN THERE IS A LOCATION MAP>** at the location shown on Exhibit "**<location map exhibit>**",**<END USE>** and

**WHEREAS**, State's project will involve the acquisition of property rights necessary to construct a highway, road, street, or other transportation facility, and

**WHEREAS**, State has completed and reviewed appraisal reports for the project and is now ready to begin the right of way negotiation and acquisition process, and

**WHEREAS**, Consultant will be required to attempt to acquire by contract the right of way needed for the project from each separate tract of land, and

**WHEREAS**, Consultant will negotiate with the owners and holders of interest in each tract of land to acquire all necessary property rights for the construction of the project, and

**WHEREAS**, Consultant will submit to State the signed contracts and deeds for those acquisitions, and, when necessary, turn files in to State for condemnation proceedings, and

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

**WHEREAS**, Consultant shall complete the Services using a licensed real estate broker.

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

# PROFESSIONAL SERVICES AGREEMENT

## **SECTION 1. CONTACT INFORMATION**

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

### 1.1 Consultant Project Manager

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

### 1.2 State Project Coordinator

Name	name
Phone Number	xxx-xxx-xxxx

### 1.3 State Agreements Specialist

Name	name
Phone Number	xxx-xxx-xxxx

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

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

## **SECTION 4. DURATION OF THIS AGREEMENT**

- 4.1 **Effective Date** – This Agreement is effective upon the full execution of this Agreement.
- 4.2 **Renewal, Extension or Amendment** –The Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.
- 4.3 **Identifying Date** – For convenience, the Agreement's identifying date will be the date the State signed the agreement.
- 4.4 **Duration** – State will treat the Agreement as completed or inactive upon the happening of either (1) the final completion of an audit review by the State or its authorized representative and the resolution of all issues identified in the audit report, or (2) the waiver of an audit review.
- 4.5 **Termination** – State reserves the right to terminate the agreement as provided herein.

## **SECTION 5. SCOPE OF SERVICES**

- 5.1 Consultant shall provide negotiation and acquisition services for project <project number>, <project location>, in <county name> County, Nebraska. The Scope of Services is outlined in Exhibit "<scope of services>" ("Services"), attached and incorporated herein by this reference. State reserves the unconditional right to add to,

## PROFESSIONAL SERVICES AGREEMENT

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.

### **SECTION 6. NOTICE TO PROCEED AND COMPLETION OF THE SERVICES**

Consultant shall proceed with the work upon Consultant's receipt of a notice to proceed from State. The Consultant will make its best efforts to complete the tasks as promptly as reasonably possible. Time is of the essence because the project cannot be let to contract until the right-of-way has been acquired.

**SECTION 7.** *This section has intentionally been left blank.*

### **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 shall be interpreted under the laws of the State of Nebraska and it is enforceable only to the extent that it does not violate the constitution and the laws of the State of Nebraska, (3) any action to enforce the provisions of this Agreement must be brought in the State of Nebraska, (4) the person signing this Agreement on behalf of State 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 hereby agrees to contractually require any Subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

## PROFESSIONAL SERVICES AGREEMENT

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 The Consultant's fee proposal is attached as Exhibit "<fee proposal exhibit>" and incorporated herein by this reference.
- 10.2 The general provisions concerning payment under this agreement are attached as Exhibit "<fees & payments exhibit>" and incorporated herein by this reference.
- 10.3 For performance of the services as described in this agreement, Consultant will be compensated for actual work performed up to a **Maximum-Not-To-Exceed** amount of \$?? in accordance with Exhibit "<fees & payments exhibit>".

**SECTION 11. CONSULTANTS PERFORMANCE**

11.1 Standard of Performance

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

11.2 Quality of Service

Consultant agrees that all Services hereunder shall be performed by qualified personnel consistent with good professional practice in the State of the art involved, and that performance of its personnel shall reflect their best professional knowledge, skill, and judgment. State's representatives will at all times have access 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

- a. State will have the discretion to conduct an evaluation of Consultant's performance at any time. Consultant's performance may be subject to an evaluation in the following performance categories: (1) communication and cooperation; (2) quality; (3) recordkeeping; (4) timeliness; (5) scope and budget; (6) project manager; and (7) technical performance. Consultant understands that if State determines that Consultant's performance is not meeting, has not met, or is at risk of not meeting the Standard of Performance set out herein, State may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If State chooses to conduct a Consultant Performance Evaluation, State will notify Consultant of the evaluation including necessary instructions and procedures for complying with the evaluation.
- b. 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 Services revealed during or after submission of the work, 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. 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, such corrections will be made at no additional cost to State. Any increase or decrease in the scope of the Services or any modification of the specifications will be made by State or Consultant only by written agreement signed by both parties. Consultant's legal liability for all damages incurred by State caused by error, omission, or negligent acts of Consultant will be borne by Consultant without liability or expense to State. The rights and remedies of State provided herein are in addition to any other remedies provided by law.

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

12.1 Consultant understands that State will rely on the professional training, experience, performance and ability of Consultant. 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 to be 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. State's declining to approve Consultant's services shall not be deemed an acceptance of defective Services or relieve Consultant of its obligations and liabilities with respect to such Services.

12.2 Consultant further understands that acceptance or approval of any of the Services of Consultant by State or of payment, partial or final, will not constitute a waiver of any

## PROFESSIONAL SERVICES AGREEMENT

rights of State to recover from Consultant damages caused by Consultant due to error, omission, or negligence of Consultant in its Services.

### **SECTION 13. DISPUTES**

Any dispute concerning a question of fact in connection with the services not disposed of by this agreement will be referred for determination to the Director-State Engineer or a duly authorized representative, whose decision in the matter will be final and conclusive on the Parties to this agreement, using the process set out on Exhibit "<T-EXH-12\_Dispute Resolution exhibit>", attached hereto and made a part of the agreement.

### **SECTION 14. SUSPENSION OR TERMINATION**

#### 14.1 Suspension or Termination

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

- a. A loss, elimination, decrease, or re-allocation of funds that, in the sole discretion of State, make it difficult, unlikely or impossible to have sufficient funding for the Services or the project;
- b. State abandons the Services or the project for any reason;
- c. State's funding priorities have changed;
- d. State determines, in its sole discretion, that State's interests are best protected by suspension or termination of this Agreement;
- e. *This section has intentionally been left blank;*
- f. Consultant has not made sufficient progress to assure that the Services are completed in a timely manner;
- g. Consultant fails to meet the standard of care applicable to the Services;
- h. Consultant fails to meet the performance requirements of this Agreement;
- i. Consultant's breach of a provision of this Agreement or failure to meet a condition of this Agreement;
- j. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity;
- k. Consultant fails to submit documents in a form consistent with this Agreement.

#### 14.2 Suspension

## PROFESSIONAL SERVICES AGREEMENT

- a. Suspension for Convenience. If State suspends the work for State's convenience, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide State a detailed summary of the current status of the Services completed and an invoice of all costs incurred up to and including the date of suspension.
- b. Suspension for Cause. If State suspends Consultant's work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, State will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. State's notice of suspension will provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, a description of the actions that must be taken for State to rescind the suspension. Consultant's right to incur any additional costs will be suspended at the end of the day of suspension and will continue until all remedial action is completed to the satisfaction of State. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

### 14.3 Termination

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

### 14.4 Compensation upon suspension or termination

If State suspends the work or terminates the Agreement, Consultant must be compensated in accordance with the provisions set out in Exhibit "<T-EXH-11C\_fees & payments exhibit>", provided however, that in the case of suspension or termination for cause or for Consultant's breach of this Agreement, State will have the power to suspend payments, pending Consultant's compliance with the provisions of this



## PROFESSIONAL SERVICES AGREEMENT

Agreement. In the event of termination of this Agreement for cause, State may make the compensation adjustments set out in Exhibit “<T-EXH-11C\_fees & payments exhibit>”.

### **SECTION 15. OWNERSHIP OF DOCUMENTS**

- 15.1 All surveys, maps, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other documents prepared or obtained under the terms of this Agreement are the property of State, and Consultant shall deliver them 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, Consultants’ time sheets and payroll documents must be kept in Consultants’ files for at least one (1) year from final payment by State.

### **SECTION 16. CONFLICT OF INTEREST LAWS**

By signing this agreement, Consultant certifies that Consultant is not aware of any financial or other interest Consultant has that would constitute a conflict of interest under state or federal law.

### **SECTION 17. CONFIDENTIALITY OF NEGOTIATIONS** (ROW)

Consultant shall maintain the confidentiality of Consultant’s relocation assistance of property for this project. Consultant shall not furnish any relocation assistance documents or the information contained therein to any other person or entity, except by written permission from the State or upon proper court order.

### **SECTION 18. FORBIDDING USE OF OUTSIDE AGENTS**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, State has the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**SECTION 19. GENERAL COMPLIANCE WITH LAWS**

Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work. 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. RELATIONSHIP BETWEEN THE PARTIES, INDEMNITY, AND INSURANCE**

- 20.1 **Legal Relationship.** Contractor is an independent Contractor. This Agreement does not create a partnership, joint venture, employment, or agency relationship between Contractor and State. Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. The Contractor's employees and other persons engaged in work or services required by the Contractor under the Agreement shall have no contractual relationship with the State; they shall not be considered employees of the State. Each Party is responsible for its own acts and omissions undertaken in the performance of this Agreement. Neither Party has the right or obligation to supervise or control the acts or omissions of the other Party in the performance of this Agreement. Further, Contractor agrees to keep the premises where its work is being completed under this Agreement in a reasonably safe condition for persons rightfully on the premises.
- 20.2 **Indemnity.** Contractor will indemnify, save and hold harmless the State and all of its departments, agents and employees of and from any and all claims, demands, actions or causes of action of whatsoever nature or character (including reasonable attorney's fees) arising out of or by reason of the execution or negligent performance of the work provided for herein by Contractor or its agents and anyone contracting under or for Contractor's obligations hereunder, and further agrees to defend at its own sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising out of or as a result of work performed by Contractor or its agent, or anyone contracting with Contractor for such work hereunder.
- 20.3 **Insurance.** Contractor shall not commence work until all insurance required under this Agreement has been obtained. Further, Contractor shall, in any subcontract it has with a subcontractor, require that such subcontractor meet the insurance requirements of this Agreement. Contractor will be solely responsible for confirming that the applicable insurance has been obtained by Contractor and by any subcontractor. State shall have the right, but not the duty, to request evidence of the insurance coverage of Contractor

# PROFESSIONAL SERVICES AGREEMENT

or of any lower tier subcontractor.

- a. Workers Compensation Insurance. The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the Contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated below:

## WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- b. Other Required Insurance. Contractor shall obtain, and keep in full force and effect throughout the duration of this Agreement, all insurance required by all applicable state, federal and local laws, rules and regulations.

**SECTION 21.** *This section has intentionally been left blank.*

## **SECTION 22. SUCCESSORS AND ASSIGNS**

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

## **SECTION 23. DRUG-FREE WORKPLACE POLICY**

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

## **SECTION 24. FAIR EMPLOYMENT PRACTICES ACT**

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

## **SECTION 25. DISABILITIES ACT**

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

**SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES (Federal aid only)**

- 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. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.
- 26.2 Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of 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. NONDISCRIMINATION**

27.1 Compliance with Regulations

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

27.2 Nondiscrimination

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

27.3 Solicitations for Subagreements, Including Procurements of Materials and Equipment

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

## PROFESSIONAL SERVICES AGREEMENT

### 27.4 Information and Reports

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

### 27.5 Sanctions for Noncompliance

In the event of Consultant's noncompliance with the nondiscrimination provisions of this agreement, State will impose such agreement sanctions as it or State and FHWA may determine are appropriate, including but not limited to withholding of payments to Consultant under this agreement until Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.

### 27.6 Incorporation of Provisions

Consultant shall include the provisions of paragraphs 27.1 through 27.5 of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto.

Consultant shall take such action with respect to any subagreement or procurement as State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/ Subcontractor as a result of such direction, Consultant may request that State enter into such litigation to protect the interests of State and, in addition, Consultant may request that the United States enter into such litigation to protect the interests of the United States.

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

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.

**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 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

## PROFESSIONAL SERVICES AGREEMENT

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 6. of these instructions, if Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, State may terminate this agreement for cause or default.
- b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions
1. By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
    - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or

## PROFESSIONAL SERVICES AGREEMENT

state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph a.(ii) above; and
- d) Have not within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this agreement. I acknowledge 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. ENTIRE AGREEMENT**

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.



PROFESSIONAL SERVICES 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 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**CONSULTANT FIRM NAME**  
**Consultant Signatory Name**

\_\_\_\_\_  
**Consultant Signatory Title**

STATE OF ?? )  
 )ss.  
 ?? COUNTY )

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

\_\_\_\_\_  
Notary Public

**EXECUTED** by the State this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

NEBRASKA DEPARTMENT OF  
TRANSPORTATION  
Brandon J. Schmidt, P.E.

\_\_\_\_\_  
Right of Way Division Manager

**1. PAYMENT METHOD**

Payments under this Agreement will be made based on a Specific Rates of Compensation (SRC) payment method up to a maximum not-to-exceed amount.

**2. TOTAL AGREEMENT AMOUNT**

For completion of services as outlined in this Agreement, Consultant will be paid for actual services performed up to the total agreement amount of \$xxx. Consultant's total compensation shall not exceed this maximum amount without prior written approval of State.

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

**4. PAYMENTS**

Payment for Services under this Agreement will be made based on the payment method identified in Section 1. PAYMENT METHOD, up to the maximum amount identified in Section 2. TOTAL AGREEMENT AMOUNT. Acceptable costs include labor costs (including overhead and profit), Subconsultant costs and other direct non-labor costs.

**A. Direct Labor Costs** are the individual's hours charged for the time they are working directly on the project multiplied by the individual's negotiated hourly billing rate.

1) Hourly Billing Rates: The negotiated hourly billing rates are identified in Exhibit "B" for each individual or job classification.

2) Time reports: The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects: such as project description, project number, pertinent work phase, dates of service, and the individual's name and position. There must be an adequate system of internal controls in place to ensure that time charges are correct and have the appropriate supervisory approval.

**B. *This section has intentionally been left blank.* USE FOR SUBS, Subconsultant Costs:** Subconsultant costs shall not exceed the costs shown on the attached Consultant's Fee Proposal for each Subconsultant unless agreed upon by the parties. These costs include the Subconsultant's wages and direct non-labor costs. END USE FOR SUBS

**C. Direct Non-Labor Costs:** These costs include all necessary, actual, and allowable costs related to the Consultant completing the Services, including but not limited to: meals, lodging, mileage, subject to the limitations specified below; communication costs; reproduction and printing costs; special equipment and materials required for the project; special insurance premiums if required solely for this Agreement; subconsultant costs and such other allowable items.

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

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

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

- 1) The reimbursement for mileage associated with the use of company owned vehicles shall be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:
  - a) The mileage rate that the Consultant reimbursed to the person who submitted the claim for POV use, or
  - b) The prevailing standard rate as established by the IRS.
- 2) Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable the Consultant shall give State the benefit of all discounts.
- 3) The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated on the website address for U.S. General Services Administration's (GSA) rates at <http://www.gsa.gov/portal/category/100120>.
  - a) For Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

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

Lunch:

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

Dinner:

- Employee leaves for overnight travel at or before 5:00 p.m, or
  - Employee returns from overnight travel or work location at or after 7:00 p.m., or
  - Employee is on overnight travel.
- b) Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.
- c) The total daily meal costs must not exceed the GSA rates set out above. Consultant shall give State the benefit of all meal or lodging discounts. Consultant may submit meal receipts or billings itemizing all direct non-labor costs claimed for work under this agreement, and all supporting reports or invoices. Consultant shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town.

## 5. INVOICES AND PROGRESS REPORTS

Consultant shall submit invoices to State's Negotiator Chief no more frequently than monthly. The invoices must present weighted direct labor, Subconsultant costs and actual direct non-labor costs. The invoices must identify each employee by name and classification, the hours worked, and the billing rate for each employee. Direct non-labor expenses must be itemized and provide a complete description of each item billed. For Subconsultant Services, the invoice must include the same supporting documentation. Each invoice must include a completed Cost Breakdown Form DR162 (available on the Department of Transportation's website at <http://dot.nebraska.gov/business-center/consultant/>) and must be substantiated by a progress report that includes/addresses, as a minimum, the following:

- A. A description of the Services completed for that period
- B. A description of the Services anticipated for the next pay period
- C. Percent of Services completed to date

**Consultant shall submit a weekly status report electronically, including all call reports.**

All invoice packages must be submitted electronically through State's invoice workflow system OnBase, for review, approval, and payment. The user guide for the OnBase system along with training videos can be found at <http://dot.nebraska.gov/business-center/consultant/onbase-help/>.

**6. PROGRESS PAYMENTS**

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

**7. SUSPENSION OF PAYMENTS**

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

**8. FINAL INVOICE AND PAYMENT**

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

**9. AGREEMENT CLOSE-OUT**

Upon submitting its final invoice, the Consultant must complete and submit to the State a Notification of Completion Form DR39. The form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/> and must be submitted electronically in accordance with the instructions on the form.

**10. INELIGIBLE COSTS**

State is not responsible for costs incurred prior to the Notice to Proceed date set out in SECTION 6. NOTICE TO PROCEED of this Agreement or as approved in writing by State.

**11. FEDERAL COST PRINCIPLES**

For performance of Services as specified in this Agreement, State will pay Consultant subject to the terms of this Agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulations [48 CFR 31 \(Contract Cost Principles and Procedures\)](#).

**12. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS**

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

**13.** *This section has intentionally been left blank.*

**14. TERMINATION COST ADJUSTMENT**

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

**15. AUDIT AND FINAL COST ADJUSTMENT**

Upon State's determination that Consultant has completed Services under this Agreement, State, or its authorized representative, may complete an audit review of the payments made under this Agreement. The Parties understand that the audit may require an adjustment of

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

**16. CONSULTANT COST RECORD RETENTION**

Consultant shall maintain **USE FOR SUBS**, and also require that its Subconsultants/Subcontractors maintain **END USE FOR SUBS** all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three (3) years from the date of project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, Consultant shall furnish copies.

## **DISPUTE RESOLUTION PROCEDURES – NON-BINDING**

These procedures are non-mandatory steps that Consultant may use to attempt to resolve disputes it has with NDOT arising from work covered under the original and subsequent agreements. When Consultant invokes these dispute resolution procedures, NDOT and Consultant agree to make a reasonable effort to resolve the dispute using these procedures.

These procedures are designed to assist all parties in identifying, managing, and attempting to resolve conflicts that may arise.

There are several guiding principles to be considered:

- Engage relevant representatives early, actively and continually in collaborative problem solving for work covered under the original and any supplemental agreements.
- Attempt to resolve disagreements at the earliest stage possible and at the appropriate organizational level.
- Seek resolution first by focusing on how to meet interests and needs in the context of existing laws and regulations in order to resolve the disputed issues.

The following are several potential benefits to be gained from these principles:

- Minimizes or avoids unnecessary delays in developing transportation projects.
- Encourages collaborative decision making and coordination among all parties.
- Attempts to resolve disputes early in the process.
- Builds trust and respect among all parties.

The relationship between the Consultant and NDOT staff should always be on the professional level. All parties to a contract should have a thorough understanding of the dispute resolution process. Each party should make every attempt to fully understand the dispute and express honest statements of fact prior to initiating dispute resolution processes.

### **STAGE ONE – INFORMAL ACTION**

The Consultant will first attempt to resolve any contract dispute by discussing the dispute directly with NDOT's Consultant Coordinator and when necessary, NDOT's Agreements Engineer.

### **STAGE TWO -- REVIEW BY NDOT'S DEPUTY'S REPRESENTATIVE**

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



**EXHIBIT "X"**  
DISPUTE RESOLUTION PROCEDURES  
PROFESSIONAL SERVICES CONTRACTS

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

**DISPUTE RESOLUTION PROCEDURES  
PROFESSIONAL SERVICES CONTRACTS**

- c. This process may only be used by the Consultant for an actual contract dispute between the State and Consultant. This process may not be used to determine a hypothetical question.
  - d. This process is non-binding, shall not be treated by State or Consultant as a contested case as that phrase is defined in Neb. Rev. Stat. Section 84-901 et seq., and is not intended to provide either party with an independent right of appeal.
  - e. Failure to follow this process shall not constitute a breach and shall not provide a separate basis for relief under this contract.
  - f. Consultant's decision to invoke this process shall not limit, in any way, Consultant's right to simultaneously pursue any legal remedy.
9. If Consultant does not agree with the findings and conclusions of the Deputy Director, Consultant may avail itself of any additional remedy, including the filing of a contract claim under Nebraska law.