Attachment B

Federal Funding Appendix

This contract is funded in whole or in part by federal funding, therefore the following provisions apply. These provisions take precedent over State terms and conditions if they are in conflict.

I. Minority Businesses

The Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including the following affirmative steps. These requirements do not impose an obligation on Contractor to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation on the Contractor to carry out and document the six affirmative steps identified below. These requirements do not preclude the Contractor to undertake additional steps to involve small and minority businesses and women's business enterprises.

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. This does not authorize breaking down a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. “project splitting”);

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

6. If subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this subparagraph.

II. Domestic Material Compliance Requirements

The Contractor/Vendor certifies that its bid is in compliance with 23 U.S.C. § 313 (Buy America - FHWA), IIJA, Pub. L. 117-58, §§ 70914-70917 (the Build America, Buy America Act (BABA) including 2 C.F.R. Part 184), 23 C.F.R. 635.410 (Buy America Act), and other related Made in America Laws, guidance, and policies as applicable and as updated and amended, which provide that Federal funds may not be obligated unless all iron, steel, manufactured products and construction materials used in federally funded projects are produced in the United States, unless FHWA has issued a waiver for the product. Contractor/Vendor further certifies that Contractor/Vendor will remain compliant with the applicable Domestic Material Compliance Certifications throughout the duration of the contract, including renewals and extensions.

If applicable, the bidder must complete and submit the attached "Domestic Material Compliance Certification" with all relevant Buy America and Build America, Buy America laws, regulations, guidance and policies with the Contractor's/Vendor's bid or offer. The Department reserves the right to reject a bid as non-responsive if the bid does not include a completed certification of compliance and if the bid should have included the certification.

III. Recovered Materials

[This section is applicable for any contract where the purchase price of an item exceeds $10,000 or where the value of the quantity acquired during the preceding fiscal year exceeded $10,000]

Pursuant to 2 CFR 200.323, the Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

IV. Contract Violations

[This section is applicable only if the contract exceeds the State Simplified Acquisition Threshold, which is $49,999]

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach. OR In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

V. Termination for Cause

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.

2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3. The State may terminate the contract immediately for the following reasons:

- **a.** if directed to do so by statute;
- **b.** Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- **c.** a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
- **d.** fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
- **e.** an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
- **f.** a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
- **g.** Contractor intentionally discloses confidential information;
- **h.** Contractor has or announces it will discontinue support of the deliverable; and,
- **i.** In the event funding is no longer available.

VI. Equal Opportunity Employment

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this solicitation.

VII. Rights to Inventions

If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FHWA is ultimately notified.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FHWA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FHWA.

VIII. Clean Air Act.

[This section is applicable only for contracts in excess of $150,000]

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act 42 U.S.C. 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.

IX. Debarment, Suspension or Exclusion of Purchaser

The Contractor certifies that it, and any of its subcontractors, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. The State reserves the right to terminate this contract if a Contractor or its subcontractor is being considered for, presently being, or becoming debarred, suspended, ineligible or excluded from contracting with any state or federal entity.

X. Anti-Lobbying

[This section is applicable only for contracts in excess of $100,000]

Contractor certifies, to the best of its belief, that it did not utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process. The Contractor certifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)] Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Contractor/Vendor certifies it will comply with all of the terms of this Federal Funding Appendix.

_____

Organization

_____

Signature

_____

Printed Name

_____

Title

_____

Date