

NEBRASKA DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD Division 100 General Requirements and Covenants

FOR THE

Project Number:

Control Number:

Project Location:

ISSUED:

Request for Industry Feedback

SECTION 101 -- GENERAL INFORMATION, DEFINITIONS, AND TERMS

101.01 -- Abbreviations and Definitions

1. Whenever in the Specifications capitalized terms or terms are used, they shall have the meanings given in Exhibit 1 (*Initialisms and Abbreviations*) of the Design-Build Agreement.
2. Common engineering and construction abbreviations for measurements and activities are:

A	Ampere
a	Acre
cd	Candela
cm	Centimeter
Conc.	Concrete
m ³	Cubic Meter
ea	Each
ft	Foot/Feet
ft ² or SF	Square Feet
ft ³ or CF	Cubic Feet
FC	Foot-Candle
ft-lb	Foot-Pound
gal, G or g	Gallon
gpm or GPM	Gallons Per Minute
gps	Gallons Per Second
h	Hour
Hz	Hertz
in	Inch
J	Joule
kg	Kilogram
kip	1000 Pounds
km/h	Kilometers per hour
kN	Kilonewton
kPa	Kilopascal
lb	Pound
LF	Linear Foot
L	Liter
L/h	Liters per Hour
L/min.	Liters per Minute
L/s	Liters per Second
lm	Lumen
LS	Lump Sum
Lx	Lux
MGal	1000 Gallon

Mg	Megagram
MHz	Megahertz
MPa	Megapascal
M	Meter
µm	Micrometer
mil	1/1000 Inch
Mi or M	Mile
MPH	Miles Per Hour
N	Newton
Pa	Pascal
PVC	Polyvinyl Chloride
psi	Pounds Per Square Inch
s	Second
m2	Square Meter
Sta	Station
StaM	Station (Metric)
T	Ton
V	Volt
W	Watt
yd2 or SY	Square Yards

101.03 – Definitions

Access Connection	Any roadway facility by means of which vehicles can enter or leave an arterial highway. This includes intersections at grade, private driveways, and ramps or separate lanes connecting with cross streets or frontage roads.
Arterial Highway	A highway primarily for through traffic, usually on a continuous route.
Auxiliary Lane	The portion of the roadway adjoining the traveled way for parking, speed change, or for other purposes supplementary to through traffic movement.
Backslope	The surface of a cut that slopes downward toward the roadway.
Balance Factor	A ratio used to equate the amount of excavation to the amount of fill. Excavation generally will exceed the amount of fill because soil shrinkage occurs during handling and compacting.
Borrow Site	The source of approved material required for the construction of embankments, or other portions of earthwork requirements.
Bridge	A structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings

	for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.
Bridge Length	The overall length along the centerline of the bridge from end to end of the bridge floor.
Calendar Day	Every day shown on the calendar, including weekends and holidays, beginning and ending at midnight, except days excluded by disaster declaration.
Channel	A natural or artificial waterway.
Commission	The Nebraska State Highway Commission.
Contractor	The individual or legal entity contracting with the Department to perform the work.
Control of Access	<p>The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.</p> <p>Full Control of Access: The authority to control access is exercised to give preference to through traffic by providing access connections with selected roads only and by prohibiting crossings at grade or direct private driveway connections.</p> <p>Partial Control of Access: The authority to control access is exercised to give preference to through traffic to a degree that, in addition to the access connections with selected public roads, there may be some crossings at grade and some private driveway connections.</p>
County	The County in which the work is to be done, represented by its Board of Commissioners or Supervisors. Reference to any County officer shall be taken to mean such officer of the County as now defined.
Culvert	Any structure not classified as a bridge providing an opening under a roadway.
Current Controlling Operation	The operation that must be performed on the current day to prevent delay in the final completion of the work.
DBE (Disadvantaged Business Enterprise)	<p>A Disadvantaged Business Enterprise (DBE) is a for-profit small business concern:</p> <p>a. that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and</p> <p>b. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.</p>
Department	The Nebraska Department of Transportation.
Detour	A temporary official route using existing roads to divert traffic around a roadway project. Detours are

	maintained and marked by the State or other proper authority
Divided Highway	A highway with separated roadways for opposite directions of travel.
Earthwork Measured in Embankment	The calculated compacted volume of embankment where balance factors do not apply.
Easement (Right-of-Way)	A right acquired by public authority to use property for highway purposes.
Embankment	A raised soil structure.
Employee	A person working on a Department project for the Contractor.
Engineer	The Department's authorized representative.
Equipment	All machinery and supplies necessary for the construction, performance, and completion of the Contract.
Existing Pavement	Existing Pavement is the pavement that exists before work starts.
Expressway	A divided arterial highway for through traffic with full or partial control of access and which may have grade separations at intersections.
Federal Agencies and Officers	Agencies, officers, and successors of the United States Government.
Foreslope	The surface sloping downward and away from the shoulder line.
Freeway	An expressway with full control of access.
Frontage Street or Road	A local roadway adjacent to a highway for service to abutting property.
Grade Separation	A crossing of highways at different elevations.
Highway	A road designated as part of the State Highway System.
Holidays	Nebraska legal holidays occur on January 1, the third Monday in January and February, the last Friday in April, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday and the following Friday in November, and December 25. If the date falls on Sunday, the following Monday shall be the holiday. If the date falls on Saturday, the preceding Friday shall be the holiday. All dates are subject to possible revision by State Statute or by proclamation of the Governor.
Inspector	The Engineer's authorized representative assigned to make detailed inspections of the work performed and materials furnished by the Contractor.
Laboratory	The testing laboratory of the Department or any other testing laboratory which may be designated by the Engineer.
Local Public Agency (LPA)	A Local Public Agency (LPA) may be a Nebraska city, village, county, township, political subdivision, public corporation, Native American Tribe, Natural Resources District, school district, or other organization with authority to construct, operate and maintain a transportation project.

Major Item of Work	An item whose total original contract cost exceeds 10% of its original group total amount. Items in “Group 10 – General” do not qualify as Major Items of Work.
Materials	Any substance specified for use in the construction of the project. All materials shall be new unless otherwise stated in the contract.
Median	The portion of a divided highway separating traveled ways.
Median Lane	A Speed change lane within the median to accommodate left-turning vehicles
Mitigation Site	Those areas that will replace waterways or other environmentally sensitive locations, including wetlands, impacted in highway construction.
NDOT Work Day	“NDOT Work Day” is any week day (Monday thru Friday) excluding holidays when the Department is open for normal (not emergency) business.
Notice to Proceed	A written notice to the Contractor establishing the date the Contractor shall begin the contracted work.
Pavement Structure	The combination of sub-base, base course, foundation course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.
Plans	The project drawings, profiles, typical cross sections, general cross sections, standard plans, special plans, summary of soil and materials survey information, aerial photo maps, earthwork computations, design data, and supplemental sheets or drawings, or exact reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be done, and which are to be considered as a part of the contract supplementary to the Standard Specifications.
Point of Delivery	A place, determined by the contract or the Engineer, where materials will be received or placed.
Political Subdivision	Any local governments created by the state to help fulfill their obligations. Political subdivisions include, but are not limited to: counties, cities, towns, villages, and special districts such as school districts, water districts, park districts, and airport districts.
Profile Grade	The trace of a vertical plane intersecting the top of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of the trace depending on the context.
Project	The construction performed under the contract.
Project Manager	The Department’s authorized on-site representative acting within the scope of the particular duties assigned to him/her. The Project Manager shall be responsible for maintaining records of the work performed and monitoring the manner of performance and progress of the work. The Project Manager is responsible for the preparation of the progress and final estimates utilized to compensate the Contractor for the performance of the work.

Quality Assurance	All planned and systematic actions the Department takes to determine that a product or service will satisfy specified quality requirements.
Quality Control	All Contractor/supplier operational techniques and activities that are performed or conducted to fulfill the Contract requirements.
Ramp	A connecting roadway between two intersecting highways at an interchange.
Right-of-Way	Real property used for transportation purposes.
Road	A public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road may be designated as a highway, a street, or a county road.
Roadbed	That portion of a roadway upon which the base course, surface course, shoulders, and medians are constructed. Divided highways are considered to have two roadbeds.
Roadside	The area within the right-of-way, excluding the traveled way, auxiliary lanes, and the shoulders.
Roadside Development	Improvements placed or constructed for the preservation or enhancement of landscape features, rehabilitation and prevention of erosion and increasing the effectiveness and enhancing the appearance of the highway.
Roadway	The portion of a highway for vehicular use, including shoulders.
Roadway Width	The clear width measured at right angles to the centerline and measured between the bottom inside face of the curbs, rails, or shoulder breaks.
Rules and Regulations	The document identified as Title 409, Chapter 1, Sections 001 through 005 (inclusive) of the Nebraska Revised Statutes.
Setback Line	A line outside of the right-of-way, established by public authority, on the highway side of which the erection of buildings or other permanent improvements is controlled.
Shoofly	A Contractor-built, marked, and maintained route around a specific construction site. When an entrance and/or exit ramp must be built to provide access to a "DETOUR," the ramps will be considered to be shooflies. Maintenance excludes snow removal.
Shoulders	The portion of the roadway contiguous with the traveled way for accommodation of vehicles stopped for emergencies and for lateral support of the pavement structure.
Soil	Those materials listed in the Bureau of Reclamation and Corps of Engineers Unified Soil Classification System.
Special Provisions	Additions, deletions, or revisions to the Nebraska Standard Specifications for Highway Construction or (when applicable) Supplemental Specifications to the Standard Specifications for Highway Construction.
Specifications	The general term comprising all the directions, provisions, and requirements contained in the Nebraska Standard Specifications for Highway Construction,

	together with such as may be added or adopted as Supplemental Specifications To The Standard Specifications for Highway Construction or Special Provisions, all of which are necessary for the proper performance of the Contract.
Speed Change Lane	An auxiliary lane, including tapered areas, primarily for the acceleration or deceleration of vehicles entering or leaving the through traffic lanes.
State	The State of Nebraska acting through its authorized representatives.
Station	The point on the ground which is part of the line defining the profile of the survey. Distance between full stations is 100 feet (100 m). The beginning point of a survey is station 0, unless otherwise designated.
Street	A public way for the purpose of vehicular travel in a city or village and shall include the entire area within the right-of-way.
Subcontractor	Any individual, firm, or corporation to whom the Contractor or Subcontractor, with the written consent of the Department, sublets any part of the contract.
Subgrade	The upper portion of the roadbed, upon which the pavement structure and shoulders are constructed. Usually, the subgrade depth is 6- inches (150 mm).
Substructure	1. The part of the structure below: a. The simple and continuous span bearings. b. The bottom of the girder or bottom slab soffit. c. Construction joints at the top of vertical abutment members or rigid frame piers. 2. Substructures include endwalls, wingwalls, barriers, railings attached to the wingwalls, and cantilever barriers and railings.
Superintendent	The Contractor's authorized representative in responsible charge of the work.
Superstructure	The entire structure above the substructure.
Supplemental Specifications	Specifications adopted subsequent to the current edition of the Nebraska Standard Specifications for Highway Construction. Supplemental Specifications shall prevail over those published in the Nebraska Standard Specifications for Highway Construction whenever in conflict therewith.
Surety	The corporate body registered and/or licensed to do business in Nebraska bound with and for the bidder for the acceptable performance of the contract, the completion of the work, and for the payment of all just claims arising therefrom.
Traffic Lane	The portion of a traveled way for the movement of a single line of vehicles.
Traveled Way	The portion of the roadway for the movement of vehicles, exclusive of shoulders.
Weight	1. A Weight is a measure of force in the English (Metric) system and the units are pounds (Newtons). Mass is measured in slugs or pounds (grams). Most scales used in the highway construction industry measure an object's gravitational force at the scale location. However, the unit of measurement on most scales is grams and these readings are generally not

	<p>corrected for the existing gravitational force to allow conversion of the measured force to the object's true mass.</p> <p>2. Certified scale measurements are considered by the Department to be acceptable measures of an object's mass.</p>
Wetlands	Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
Work	Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project by the Contractor and the carrying out of all duties and obligations imposed by the Contract.
Working Day	<p>1. A working day is any day, Monday through Friday, when the Contractor is not prevented by weather, soil conditions, or other conditions beyond his/her control from working on the current controlling operation for more than 50% of the hours in his/her normal schedule with more than 80% of his/her normal working force.</p> <p>2. If any work requiring engineering or inspection by the Department is performed on a Sunday, New Years Day, Memorial Day, Independence Day, (including Monday, July 3 or Friday, July 5), Labor Day, Thanksgiving Day, the day after Thanksgiving Day, or Christmas Day, then that day will be considered a working day.</p> <p>3. Except as noted in paragraph 2 above, Saturdays, Sundays, Nebraska holidays, Monday, July 3 or Friday, July 5, will not be counted as working days.</p>
Working Drawings	Shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam cribbing and shoring plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data, (i.e.: Manufacturer's Recommendations) including a schedule of submittal dates for working drawings where specified, which the Contractor must submit to the Engineer.

101.04 -- Changes to Division 200 through 1000

1. The following applies to Division 200 through 1000 inclusive of the 2017 Standard Specifications for Highway Construction in effect as of the Agreement execution date and any NDOT Special Provisions, Project Requirements or which otherwise might be required during the design and construction of the Project:
 - a. All references to "Division 100" Specifications shall mean this document.
 - b. There will be no measurement for payment except for Unit Priced items specifically shown in the Agreement Documents. All Work will be paid on the basis specified in the Agreement.

- c. When a reference to “Engineer” relates to design responsibilities or other technical issues, “Engineer” shall mean the Design-Builder's Design Manager. When a reference to “Engineer” relates to administrative issues, “Engineer” shall mean The Department. It shall be in the Department’s sole discretion to determine when the context refers to technical or administrative responsibilities

SECTION 102 -- PROPOSAL REQUIREMENTS AND CONDITIONS AND AWARDING OF CONTRACTS ON STATE HIGHWAY WORK

102.01 [RESERVED]

102.02 [RESERVED]

102.03 – Drug-Free Workplace

The State of Nebraska requires all Design-Builder on all construction, maintenance, or improvement contracts let by the Department file and maintain a written Drug-Free Workplace Policy with the Department. The Design-Builder certifies that the it is operating under a written Drug-Free Workplace Policy on file with the Department.

102.04 -- Examination of Plans, Specifications, Special Provisions and Site of Work

1. Design-Builder agrees that it has examined the Agreement Documents and the Site of the Work and has fully informed itself from personal examination of the same regarding the quantities, character, location and other conditions affecting the Work to be performed including the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over or under the Site.
2. The proposed Agreement Price include all costs arising from existing conditions shown, or specified in the Agreement Documents, and/or readily observable from a Site inspection during the procurement period available under this Agreement, and/or generally recognized as inherent in the nature of the Work. The Proposer shall take no advantage of any apparent error or omission in the Agreement Documents.
3. The Design-Builder shall be responsible to determine the nature, extent, and locations of subsurface explorations needed to obtain data and support subsequent analysis, design, and construction. The Design-Builder shall also be responsible for determining the adequacy of any subsurface exploration data provided by the Department to support its analyses, design, and construction and to supplement such data provided by the Department as the Design-Builder deems necessary.

- 102.07 -- [RESERVED]
- 102.08 -- [RESERVED]
- 102.09 -- [RESERVED]
- 102.10 -- [RESERVED]
- 102.11 -- [RESERVED]
- 102.12 -- [RESERVED]
- 102.13 -- [RESERVED]
- 102.14 -- [RESERVED]
- 102.15 -- [RESERVED]
- 102.16 -- [RESERVED]
- 102.17 -- [RESERVED]

SECTION 103 -- AWARD AND EXECUTION OF THE CONTRACT

103.01 -- [RESERVED]

103.02 -Affirmative Action

The Department, in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and U.S. Department of Transportation regulations at 49 CFR Part 21, hereby notifies the selected Design-Builder that the Department will affirmatively ensure nondiscrimination in performance of the Agreement.

SECTION 104 -- SCOPE OF WORK

104.01 -- [RESERVED]

104.02 -- [RESERVED]

104.03 -- Value Engineering Construction Proposals

1. Value Engineering Construction Proposals are not permitted on the Project.

104.04 -- Maintenance of Detours, Shooflies, and Temporary Accesses

1. Access to Adjacent Properties.

The Design-Builder shall, to the extent practicable, maintain safe and continuous access for private dwellings, commercial properties, businesses, and public facilities from the nearest open public roadway. The Design-Builder shall accommodate local traffic with origins or destinations within the Site and ensure that access to all affected properties and facilities is preserved throughout construction. Temporary access routes, shooflies, or other means of access shown in the Agreement Documents, or as directed by the Department, shall be constructed, maintained, and restored by the Design-Builder.

2. Road Closures and Local Access.

- a. The Design-Builder shall not close any roadway, approach, or access point without prior written approval from the Department.

- b. Even when a roadway is approved for closure, the Design-Builder shall maintain limited access for authorized local traffic, emergency services, and other users as directed by the Department.
3. Department-Provided Detours.
When the Agreement Documents show a Department-provided detour, such detour will be routed, signed, and maintained by the Department, county, or city, unless otherwise specified. The Design-Builder shall coordinate all closures and detour activations with the Department in accordance with the approved Maintenance of Traffic Technical Provision.
4. Design-Builder-Provided Shooflies and Temporary Access.
 - a. When the Agreement Documents require the Design-Builder to construct shooflies or temporary access routes, the Design-Builder shall be fully responsible for their construction, operation, inspection, and maintenance for the duration of their use.
 - b. Unless otherwise stated in the Design-Build Agreement, all costs for constructing, maintaining, repairing, operating, and ultimately removing or restoring these temporary facilities shall be included in the Design-Builder's Price Proposal and are not subject to separate payment.
 - c. The Design-Builder shall maintain all temporary access routes in the "as-built" or required condition throughout their period of service, including surfacing, drainage, signing, and safety features necessary to support public use.
 - d. If the Design-Builder fails to maintain required shooflies or temporary accesses, and the Department performs necessary maintenance to protect public safety or preserve access, the Department may deduct the associated costs from payments otherwise due to the Design-Builder.

104.05 -- Removal and Disposal of Unforeseen Structures and Obstructions

1. The Design-Builder shall remove any obstructions or structures that conflict with the Work.
2. Unless expressly required otherwise in the Agreement Documents, structures shall not be removed until replacement structures are operational.

104.06 -- Rights In and Use of Materials

1. The Department may authorize the Design-Builder to reuse excavated soils that are determined to be suitable for incorporation into other portions of the Work. When such authorization is given, the Design-Builder shall excavate, handle, test, and place the soils in accordance with the Agreement Documents.
No separate charge or material cost will be assessed to the Design-Builder for the reuse of authorized excavated soils.
2. If the Design-Builder removes soils to complete other elements of the Work, this soil shall be replaced with acceptable soils without compensation. Unless authorized by the Department, the Design-Builder shall not excavate or remove any soils from within the ROW limits that are not within the excavation limits established in the field.
3. Unless otherwise provided, material from any existing structure may be used temporarily in the erection of the new structure. Salvage material shall not be cut without the approval of the Department. Extreme care shall be taken to avoid damage to the salvage material.

104.07 -- Final Cleaning Up

1. As part of completion of the Punch List Work and before Final Acceptance, the Design-Builder shall remove all rubbish or litter, excess materials, falsework, temporary structures, and equipment from

the Site, borrow sites, and all State property occupied in connection with the Work. All parts of the Work shall be left in a neat and presentable condition. Additionally, the Project shall be restored in accordance with environmental documents, Governmental Approvals, agency commitments, and the Agreement Documents.

2. Final cleanup by the Design-Builder shall be at no additional cost to the Department.

104.08 -- Removal of Hazardous Materials and Contaminated Soil

1. Should the Design-Builder encounter Hazardous Materials or contaminated soils, the Department shall be immediately notified. The Design-Builder shall immediately suspend operations in the area involved until such time that the Department provides the Design-Builder with direction and permission to proceed. Design-Builder shall take actions to prevent the Hazardous Materials or contaminated soils, from spreading into an uncontaminated area and dispose of Hazardous Materials or Contaminated Soils, conforming to the requirements and regulations of the responsible state or federal agencies. If the Department requires the Design-Builder to dispose of Hazardous Materials or Contaminated Soils, and the Agreement does not provide for this work, the work is a Department Directed Change as specified in the Agreement. If the responsible state or federal agency requires special procedures for the disposal, the Parties will coordinate to identify a qualified person to dispose of the substance.
2. The Design-Builder shall complete the remedial Work, when directed by the Department, or if a special contractor is required to complete the remedial Work under applicable Law, to contract with such Person to complete the remedial Work.

SECTION 105 -- CONTROL OF WORK

105.01 -- Authority of the Department

1. The Department will decide all questions regarding:
 - a. Acceptability of Design Documents;
 - b. The quality and acceptability of materials furnished;
 - c. The Work performed;
 - d. The manner of performance and progress of the Work;
 - e. Interpretation of the Agreement;
 - f. Fulfillment of the Agreement by the Design-Builder; and
 - g. Administration of Monthly Progress Payments

105.02 -- Plans and Working Drawings

1. The Design-Builder shall prepare, furnish, and maintain all design documents, including plans, specifications, and Working Drawings (shop drawings), necessary to complete the Work. Department will perform limited review for general conformance with Agreement requirements but shall not be responsible for the adequacy, accuracy, or completeness of any design prepared by the Design-Builder
2.
 - a. The Design-Builder shall provide electronic Working Drawings in a Portable Document Format (PDF). The PDFs shall be sized to print on an 11x17 inch sheet of paper and have a minimum resolution of 300 dpi. Each sheet of the Working Drawings shall have a space provided for an electronic stamp that measures 2.5 inches x 3.5 inches when printed.
 - b. Electronic Working Drawing files shall be named with the following file naming format:
Control Number_Brief Description_Date.pdf

For example: 12345_FloorDrains_05Feb2015

12345_FloorDrainCoverLetter_05Feb2015

- c. The Project number, control number, and Project location as it appears on the Design Plans shall be shown on the front sheet of each Working Drawing file. Structure numbers shall be included, if applicable.
3. No electronic Working Drawings shall be submitted to the Department unless they have been checked by the Design-Builder. The electronic submittal shall be accompanied by a Design-Builder's letter of approval in a PDF format. This letter shall also be named with the format shown in the example above. The letter of approval shall clearly indicate that the Design-Builder is responsible for any errors on the Working Drawings.
4.
 - a. Electronic submittals shall be submitted by email to the following address:
NDOT.ShopDrawings@nebraska.gov
 - b. Attachments shall be limited to 25 MB of data per email. Larger files shall be separated and sent in multiple emails.
 - c. Electronic Working Drawings will only be accepted from the Design-Builder.
 - d. Any reference to hard copy Working Drawings in the Agreement shall be considered void.

105.03 -- Conformity with Plans and Allowable Deviations

1. All Work performed and all materials furnished shall be in conformity with the lines, grades, typical sections, dimensions, material requirements, and tolerances shown in the Agreement Documents or indicated in the Design-Build Specifications.
2.
 - a. The Department has the sole authority to totally reject Nonconforming Work or to accept them at a reduced cost.
 - b. If the Nonconforming Work is allowed to remain in place at a reduced cost, the Department will provide written notice to the Design-Builder of the monetary deduction that will be imposed.
 - c. If the Nonconforming Work is rejected, the Design-Builder shall remove and replace or otherwise correct the Work at no additional cost to the Department.
 - d. The Department reserves the right to waive the cost reduction on Nonconforming Work if the deduction is less than the Department's cost for assessing the deduction.

105.04 -- RESERVED

105.05 -- Cooperation of Design-Builder

1. The Design-Builder shall keep one complete set (electronic versions are acceptable) of the Design Plans and Design-Build Specifications on the Site at all times.
2. The Design-Builder shall cooperate with the Department, inspectors, and other contractors in every way possible.
3.
 - a. The Design-Builder shall designate a Construction Manager who will be on the Site at all times when Work is being performed. The designated Construction Manager may be an employee of an Approved Subcontractor.
 - b. The designated Construction Manager shall be:

- (1) Capable of reading and thoroughly understanding the Design Plans and Design-Build Specifications.
- (2) Experienced in the type of Work being performed.
- (3) Authorized to act as the Design-Builder's agent.
- (4) Authorized to receive instructions from the Department or an authorized representative.
- (5) Authorized to execute the orders or directions of the Department without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required.

105.06 -- Cooperation with Utilities

1. The Department will notify all known Utility Owners, pipeline owners, railroads, or other parties affected by the Work and endeavor to have all necessary adjustments of the public or private utility fixtures, pipelines, and other facilities within or adjacent to the limits of construction made as soon as practicable.
2. Water lines, gas lines, wire lines, service connections, water and gas valve boxes, light standards, cableways, signals, and all other Utilities within the limits of the Project are to be moved by the Utility Owners at no expense to the Design-Builder, except as otherwise provided for in the Agreement.

105.07 -- Cooperation Between the Design-Builder and Other Contractors

1. The Department reserves the right at any time to contract for and perform other additional Work on or near the Work covered by the Agreement. Design-Builder acknowledges these rights and agrees to comply with its obligations regarding Related Projects.
2.
 - a. Design-Builder shall coordinate the Work with the Department, its separate contractors, and any other contractors or consultants working on or adjacent to the Site. In the event more than one contractor is performing work within the limits of the Project, each of the Design-Builders shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors.
3. Design-Builder shall schedule and sequence its Work, provide sufficient notice of closures or significant operations, and otherwise cooperate to avoid conflict with or hindering the performance of such other work. Design-Builder shall also coordinate with owners of adjoining property and their contractors as required in the Agreement Documents. In case of a dispute, the Department shall intervene; and its decision shall be final and binding on all Parties
4. The Design-Builder hereby assumes all liability, financial or otherwise, in connection with the Agreement and shall protect and hold harmless the Department from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the Project. The Design-Builder shall assume all responsibility for Work not completed or accepted because of the presence and operations of the other contractors working within the Project limits or otherwise performing work affecting the Project.
5. The Design-Builder shall, as far as possible, arrange the Work and place or dispose of the materials being used so as not to interfere with the operations of other contractors within the limits of the same project.
6. The Design-Builder shall coordinate the Work with the other contractors.

105.08 -- Authority and Duty of the Inspector

Department inspectors are authorized to inspect all Work performed and all materials furnished for the Project. Such inspection may extend to the preparation, fabrication, or manufacture of the materials. The Inspector has the authority to reject Work or materials until any issues can be decided, including the right to suspend Work. The Inspector is not authorized to alter or waive the provisions of the Agreement or act as a supervisor for the Design-Builder.

105.09 -- Inspection

1.
 - a. All materials and each part or detail of the Work shall be subject to inspection by the Department. The Design-Builder or fabricator shall allow and provide safe, free, and immediate access to all parts of the Work and furnish whatever assistance and information may be required to make a complete and detailed inspection.
 - b. Inspection of the Work does not constitute Acceptance of the Work.
2.
 - a. The Department shall identify Hold Points in the Technical Provisions for certain construction activities which require inspection by the Department. At each Hold Point, the Design-Builder shall provide the information required to proceed beyond the Hold Point for review and comment, or Approval, as required. No Work relating to a Hold Point shall proceed beyond that Hold Point until Approved by the Department. The Design-Builder shall not be entitled to payment for Work that progresses past a Hold Point without Department Approval, even if the Work is subsequently Approved by the Department.
3. The Department may elect to reduce or eliminate inspection on some phases of the Work. However, Work done or materials used with or without inspection by the Department may be ordered removed and replaced without compensation if the Work does not meet Agreement requirements.

105.10 -- [RESERVED]

105.11 -- Restriction on Moving and Use of Heavy Equipment

1. The movement of heavy equipment to and from the Site and over the pavement structure and structures which are a part of the Work shall be done in compliance with the Laws governing the operation of vehicles on the highways of the State. A special permit will not relieve the Design-Builder of liability for damage which may result from the moving of equipment.
2. In the case of earthwork and shouldering to be done in connection with pavement widening and resurfacing, no tractor-drawn earth moving equipment shall be operated or driven on or across the pavement except as authorized by the Department.
3. In the performance of the Work, earth moving equipment equipped with flotation or pneumatic tires may be operated over concrete pavement, concrete base courses, and bituminous or asphaltic concrete surfaces which are a part of the project, provided the load on any single axle does not exceed 34,000 pounds (15,500 kg). This will not relieve the Design-Builder of liability for damage which may result.
4. Trucks shall comply with all Federal, State, and local Laws governing vehicular operation.
5. No crane, excavator, or dragline shall be operated with any part of the machine resting directly upon a pavement, bituminous or asphaltic concrete surface, base course, or structure without the written permission of the Department.
6. Under no conditions shall machines equipped with metal lugs or similar projections on the treads be operated on the surface of a concrete pavement, asphaltic concrete surface, base course or structure.

7. Crawler type equipment shall be operated in a manner that will avoid damage to paved and base course surfacing and shall not move on or off a concrete pavement, asphaltic concrete surface, base course or structure except at places where the compacted earth adjacent to the slab is at least 2 inches higher than the surface of the pavement or base course or where a substantial timber approach has been built at the edge of the slab to prevent damaging the edge of the slab or surface course. Any damage shall be repaired as directed by the Department at no expense to the Department.
8. Equipment mounted on either crawler tracks or pneumatic tires shall cross bridges at such speed and at such a location with reference to the centerline of the bridge as the Department directs.
9. Construction equipment mounted on pneumatic tires and whose axle loading and spacing do not conform to the statutory limitations or posted capacity of the bridges will not be allowed to cross bridges unless the Design-Builder obtains written permission from the Department.
10. Construction equipment mounted on crawler tracks with a gross weight of more than 23 tons (21 Mg) will not be allowed to cross any bridge without specific written permission from the Department.
11. Construction equipment mounted on crawler tracks with a gross weight of more than 15 tons (13.6 Mg) will not be allowed to cross any bridge having timber stringers or a timber floor without specific written permission from the Department granted for that particular bridge.

Hauling vehicles will be allowed to move on new concrete pavement or concrete base courses under the following provisions:

- a. The concrete shall have reached its design strength.
 - b. When moving equipment on or across concrete or asphalt pavement, the Design-Builder shall provide at least a 12-inch-thick ramp of compacted earth or other suitable material which will support the vehicle and prevent damage to the pavement.
 - c. The distance from the edge of the pavement to the edge of any wheel of the vehicle shall be not less than 2 feet except as the vehicle enters or exits the new pavement.
13. The Design-Builder shall be responsible for all damages done by the equipment.

105.12 -- Use of Land

1. When using land outside of the highway Right-of-Way for any purpose, the Design-Builder must have consent of the owners. The Design-Builder shall be solely responsible for negotiating the terms for use and access.

105.13 – Partial Acceptance

If the Design-Builder completes a portion of the Work, the Design-Builder may request the Department to inspect that portion. If the Design-Builder finds that the portion of the work has been completed as specified in the Agreement, the Department may accept that portion of the Work as being completed. If the portion of the Work is accepted, the Department may relieve the Design-Builder of the responsibility of maintaining that portion of the work as specified in [Maintenance }. The Department may reject the request made by Design-Builder if the Department determines that the portion of the project should not be subject to partial acceptance

105.14 - Substantial Completion

1. Substantial Completion
 - a. Request for Substantial Completion. When the Design-Builder believes the Work is sufficiently complete for the Department's beneficial use or occupancy, the Design-Builder may submit a written request for Substantial Completion to the Department. The request must include: (a) the date Design-Builder proposes Substantial Completion; (b) reasonable access and operating instructions needed for the Department's use; (c) a list of incomplete items and nonconforming work

reasonably known to Design-Builder (the “Punch List”); (d) evidence of required inspections and approvals for that Portion (or a list of those pending); and (e) any temporary facilities or conditions required for safe use.

- b. Substantial Completion may be granted upon the Department’s determination that all of the following conditions have been satisfied:
 - i. The Work is substantially complete and safe for public use, and all major Agreement requirements affecting operability have been met;
 - ii. All required inspections, tests, and certifications necessary for public use have been successfully completed;
 - iii. A Punch List of remaining Work, limited to minor, corrective, or non-critical items, has been established and Approved by the Department;
 - iv. All required permits, approvals, and Third-Party authorizations necessary for public use have been obtained;
 - v. All required record documentation necessary for operation has been submitted in a form acceptable to the Department; and
 - vi. Any other conditions identified by the Department.
- c. Effective of Substantial Completion. Upon issuance of Substantial Completion:
 - i. The Department may open the Project to traffic or public use;
 - ii. Responsibility for routine operation by the Department may commence, except as otherwise provided in the Agreement; and
 - iii. Warranty periods, if any, shall commence only if expressly stated in the Agreement and shall not commence by default upon Substantial Completion.
- d. Retained Responsibilities of the Design-Builder. Notwithstanding Substantial Completion, the Design-Builder shall:
 - i. Remain fully responsible for the Work until Final Acceptance, including correction of all Punch List items and all Nonconforming Work;
 - ii. Bear the risk of loss or damage to the Work, except to the extent caused by Department operations after public use;
 - iii. Maintain insurance, bonding, and all other contractual obligations in full force; and
 - iv. Continue to be responsible for safety, traffic control (if applicable), and protection of the Work until Final Acceptance, except as otherwise expressly transferred by the Department in writing.
- e. No Waiver. Substantial Completion shall not:
 - i. Constitute Final Acceptance of the Work or any portion thereof;
 - ii. Relieve the Design-Builder of responsibility for defective or Nonconforming Work;
 - iii. Relieve the Design-Builder of completing any additional Work identified by the Department after Substantial Completion;

- iv. Waive any rights or remedies of the Department under the Agreement, at law, or in equity; or
 - v. Release the Design-Builder or its sureties from any contractual obligations.
2. When the Department receives a Request for Substantial Completion, the Department will perform an inspection. If the inspection indicates that the Work is not substantially completed to the Department's satisfaction, the Department will respond within ten (10) Business Days advising the Design-Builder as requirements necessary to be corrected as a condition to Substantial Completion and as to any Nonconformances which may be corrected as Punch List items. Upon completion and correction of the Work, the Design-Builder shall renotify the Department that the Work is deemed to have achieved Substantial Completion. The process set forth in this Section 105.14 (1) will proceed until the Work is deemed to have achieved Substantial Completion by the Department.

105.15-- Completion and Final Acceptance

1. As a pre-requisite to achievement of Final Acceptance of the Project, the Design-Builder shall provide written notification to the Department that the Work is complete. When the Department receives written notice, the Department will perform an inspection. If the Department determines that the Work is complete, the Department will issue a Certificate of Final Acceptance.
2. If the Department determines that the Work is not complete, the Department will respond within thirty (30) Calendar Days with instructions for completion and correction. When the Department determines the Work is complete, the Department will issue a Certificate of Final Acceptance. To achieve Final Acceptance, the following shall have occurred or be specifically waived by the Department:
 - a. all Work has been performed in accordance with the requirements of the Agreement, and specifically all requirements for Substantial Completion of the Work have been and remain satisfied;
 - b. the Project is ready to be opened for its intended use, all points of entry and exit are in their final configuration, and no further Work will require any lane or shoulder closure or temporary traffic controls;
 - c. all Punch List items for the Work has been completed to the Approval of the Department;
 - d. all Design-Builder and Subcontractor personnel, supplies, equipment, waste materials, rubbish, and temporary facilities not incorporated into the Work have been removed from the Site, the Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of the Department, and the Site is in good working order and condition;
 - e. the Department has received a complete set of As-Builts in form and substance required by the Agreement Documents, all Third Parties with jurisdiction requiring any form of certification of design, engineering, or construction with respect to the Project have been provided such certifications, and all warranties, manuals, and other deliverables required as a condition to Final Acceptance have been provided to the Department;
 - f. all Submittals and other State and Federal Requirements have been satisfied, including satisfaction of unemployment requirements and submission of all material testing results;
 - g. all Design-Builder obligations under the Agreement Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the Department) have been satisfied in full or waived in writing by the Department;
 - h. there are no overdue amounts owing to any Subcontractor or Supplier that remain unpaid, and the Design-Builder has resolved all, and there are no outstanding claims; actual, pending, or

- threatened claims against the Agreement Bond; Liens on any materials, supplies, or equipment; or stop notices relating to the Project, including claims by Utility Owners;
- i. the Design-Builder has no reason to believe that any other Person has a valid claim against the Design-Builder, the Department, or the Project which has not been communicated in writing by the Design-Builder to the Department and acknowledged by the Department as of the date of the certificate;
 - j. the Design-Builder has paid in full all amounts due and owing to the Department pursuant to the Agreement;
 - k. there exist no uncured breaches that with the giving of notice or passage of time, or both, could become Design-Builder Defaults; and
 - l. all guarantees, warranties, and the Bonds are in full force and effect.
3. Opening of portions of the Project to the public prior to Final Acceptance does not constitute acceptance of the Work or a waiver of any provisions of the Agreement.

105.16-- Inspection

1. Authority and Duties of Department Oversight
 - a. The Department staff shall be authorized to inspect all Work done and material furnished, including all or any part of the Work and the preparation, fabrication, or manufacture of the material to be used. Inspection shall include the Design-Builder's compliance with applicable safety requirements set forth in [Safety Technical Provision]. Department inspectors are not authorized to either alter or waive requirements of the Agreement Documents, nor are they authorized to issue instructions contrary to the Design Plans and Project Specifications without written approval of the Department's Project Manager. Oversight is for the sole benefit of the Department and does not:
 - (1) Relieve the Design-Builder of responsibility for providing adequate Quality Control measures;
 - (2) Relieve the Design-Builder of responsibility for damage to or loss of the material/Work before Final Acceptance;
 - (3) Obligate the Department to determine that Substantial Completion or Final Acceptance have occurred; or
 - (4) Affect the continuing rights of the Department hereunder.
2. Department Inspection of Work.
 - a. All material and each part or detail of the Work may be subject to inspection by the Department for quality assurance. The Department shall be allowed full access to the Work and shall be furnished with necessary information and assistance by the Design-Builder to make a complete and detailed Inspection.
 - b. When a Third Party is to pay a portion of the cost of the Work covered by this Agreement, its representative(s) shall have the right to inspect the Work. Such inspection shall not make such unit of government, political subdivision, or railroad a party to this Agreement in any manner of form, and shall in no way interfere with the rights of either party hereunder.

105.17 -- Design-Builder Warranties and Guarantees

1. Non-Material Warranties. Design-Builder warrants:
 - a. That all design Work performed pursuant to the Agreement Documents, including that done by its Subcontractors and manufacturers, shall conform to all professional engineering principles generally accepted as standards of the industry;

- b. That all non-design Work shall be free of defects and that the Project shall be fit for use for the intended function;
 - c. That all materials and equipment furnished under the Agreement Documents shall be of good quality and new when installed.
 - d. That the engineering services shall be performed or approved by an engineer licensed by the State of Nebraska.
2. Material Warranties. The Design-Builder warrants that the materials used in the Work shall comply with all warranties as described in the NDOT Material Specifications.
 3. Subcontractor Warranties
 - a. Design-Builder shall ensure that all Subcontractors provide warranties, for at minimum, the same length of time as the Design-Builder's own warranties—for the design, materials, workmanship, equipment, tools, and supplies provided by Subcontractor.
 - b. Subcontractor warranties shall extend to the Department and to any third party who receives the Work or supplied items

SECTION 106 -- CONTROL OF MATERIAL

106.01 -- Sources of Supply of Materials

1. Unless otherwise provided, materials used in the Work shall be new and conform to the requirements of these Design-Build Specifications.
2. In order to expedite the inspection and testing of materials, the Design-Builder shall advise the Department at least two weeks before delivery of materials.
3. Subject to the approval of all regulatory agencies and the Department, the Design-Builder will be allowed to drill wells within the ROW limits for the purpose of securing water for the Work. The Design-Builder shall comply with Nebraska State Title 178, Chapters 10 and 12. The water well driller/Design-Builder must be Nebraska licensed. No charge will be made for any water removed from these wells. When a well is no longer needed, it shall be abandoned in accordance with applicable laws and regulations (see Nebraska State Title 178, Chapter 12).

106.02 -- Samples, Tests, and Cited Standards

1. All materials are subject to inspection and testing by the Department before incorporation in the Work. However, the Department may waive any of the requirements regarding determination of quality for small quantities of materials and small or noncritical structures. Any Work using untested and unacceptable materials without written permission of the Department shall be performed at the Design-Builder's risk.
2. All materials being used are subject to inspection, tests, and rejection at any time.
3. Sampling and testing shall be done by the Department, its agents, or the Design-Builder as specified.
4. Upon request, copies of all test results will be furnished to the Design-Builder. The results may be posted on the Department's website at the discretion of the Department in lieu of furnishing the results.
5. The frequencies and methods of sampling and testing materials, including those required for a definite purpose and not covered by the Agreement, will be sampled and tested according to the Department's *Materials Sampling Guide* and *Standard Methods of Tests*, unless otherwise specified. The testing of materials not covered by the Department's *Standard Methods of Tests* will be tested according to the standard test methods of AASHTO and ASTM. All testing and sampling will be performed in

accordance with the latest documents or publications in effect at the time upon Construction NTP execution. If there is a difference in the test methods, the order of precedence will be as follows:

Precedent Order

- Department's Standard Method of Tests
- AASHTO
- ASTM

6. The following provisions will apply when the Department uses the specifications or methods from the sources named below:
 - a.
 - (1) ASTM - American Society for Testing and Materials. The ASTM designation number refers to the Society's latest adopted or tentative standard as published in its entirety in the bound volume. The standard or tentative standard in effect upon Construction NTP execution will apply in each case.
 - (2) Copies of any separate ASTM specifications or test methods may be obtained from American Society for Testing and Materials.
 - b.
 - (1) AASHTO - American Association of State Highway and Transportation Officials. An AASHTO designation number refers to the organization's currently published *Standard Specifications for Transportation Materials and Methods of Sampling and Testing* or any adopted revisions.
 - (2) All standards or revisions in effect upon Construction NTP execution will apply.
 - (3) Copies of *Standard Specifications for Transportation Materials and Methods of Sampling and Testing* may be obtained from American Association of State Highway and Transportation Officials

106.03 -- Plant Inspection

1. The Department may choose to inspect materials at the source. In this event, the following conditions shall be met:
 - a. The Design-Builder and the producer or manufacturer of any materials shall assist and cooperate with the Department's inspections.
 - b. The Department shall have unrestricted rights to enter areas of the plant involved in the manufacture or production of the materials being furnished to the Department.
 - c. When requested by the Department, the Design-Builder shall arrange for an approved building, or room in an approved building, for use by the inspector. This building or room shall be:
 - (1) Located conveniently near the plant.
 - (2) Independent of any building or room used by the material producer.
 - (3) In conformance with the requirements of Specification Section 901.
 - d. Adequate safety measures shall be provided and maintained.
2. The Department may retest and reject previously tested and conditionally accepted materials.

106.04 -- Delivery, Storage, and Handling of Materials

1. General Handling and Storage.

The Design-Builder shall handle, store, and protect all materials to preserve their quality and

suitability for incorporation into the Work. Aggregates and other construction materials shall be handled to prevent contamination, degradation, or segregation.

2. **Transportation of Materials.**

Vehicles, railcars, barges, or other means used to transport materials shall be clean, free of contaminants, in proper working condition, and capable of preventing material loss during transport.

3. **Storage Requirements and Inspection.**

a. The Department may direct the Design-Builder to store certain materials above ground, covered, or otherwise protected in weather-resistant structures or enclosures.

b. All stored materials remain subject to initial or additional inspection by the Department prior to incorporation into the Work. The Design-Builder shall locate stored materials to facilitate Department access for inspection.

c. The Design-Builder shall provide all space required for storage, staging, and placement of plant and equipment at no additional cost to the Department. Storage of materials or equipment within the right-of-way is permitted only at locations approved by the Department, and the Design-Builder shall restore any damaged turf, vegetation, or improvements resulting from such activities.

Cost Responsibility.

All costs associated with handling, transporting, storing, and placing materials shall be included in the Design-Builder's Price Proposal and are not eligible for separate payment unless specifically authorized by the Agreement Documents.

106.05 -- Unacceptable Materials

1. All materials not conforming to the requirements of the Agreement shall be considered unacceptable unless specifically Approved by the Department.
2. Materials not meeting the requirements of the Agreement will be rejected and shall be immediately removed from the Project unless the defects are corrected and approved by the Department. If the Design-Builder fails to comply promptly with any order of the Department made under the provisions of this Subsection, the Department has the authority to remove and replace defective material and to recover the cost of removal and replacement from the Design-Builder or the Surety.

106.06 -- State-Furnished Materials

1. When the Agreement provides that certain materials required to complete the Work be furnished by the State, they will be made available to the Design-Builder at the locations specified in the Agreement. The Design-Builder shall be responsible for loading all material.
2. When the Department furnishes materials, the Design-Builder shall sign the DR Form 146, "Stock Requisition", acknowledging receipt.
3.
 - a. The Design-Builder shall be responsible for all receipted materials.
 - b. The Design-Builder shall be responsible for all losses or damages occurring to State furnished materials while the materials are in the Design-Builder's possession. Any demurrage or storage charges shall also be the responsibility of the Design-Builder. The cost of damages, demurrage, or storage shall be recovered from the Design-Builder or the Surety. Lost or damaged material shall be replaced in kind by the Design-Builder at no additional cost to the Department.

SECTION 107 -- LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 -- Laws to be Observed

1.
 - a. The Design-Builder shall provide all safeguards, safety devices, protective equipment, and trained personnel, and take any other actions necessary to protect the life and health of employees on the Project.
 - b.
 - (1) Department personnel will not perform any surveying, inspection, or testing in an affected area until the Design-Builder has erected all safety devices required by Federal, State, or local ordinances or Laws.
 - (2) The Design-Builder's failure to erect and maintain safety devices will be cause for considering placement of safety devices as the current controlling operation.
 - c. Delays incurred due to the Design-Builder's failure to provide and maintain the required safety devices will not be considered a Relief Event.
2. The Design-Builder shall perform all excavation in accordance with the requirements in the One-Call Notification System Act.
3. Environmental Quality Compliance:
 - a. Migratory Birds
 - (1) The Department will, to the extent practicable, coordinate with the Design-Builder such that clearing and grubbing can occur outside of the primary nesting season in Nebraska which has been determined to generally occur between April 1 and September 1. Work on structures, such as but not limited to bridges and culverts, should occur outside the primary swallow nesting season, April 15 to September 30, unless approved methods of avoiding nesting have been taken on the bridge and/or culvert structures. The nesting dates above are a guide only, nesting can occur outside of those dates. Work outside of those dates is not exempt from compliance with the Migratory Bird Treaty Act. The Design-Builder shall, to the extent possible, schedule Work on structures, such as but not limited to bridges and culverts, and clearing and grubbing activities to occur outside the primary nesting season in Nebraska. However, if circumstances dictate that Project construction or demolition must be done when nesting migratory birds may be present, a survey of the number of active nests and species of birds shall be conducted by qualified personnel representing the Design-Builder, and assisted by the Department, NDOT Environmental Section staff, or the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) - Wildlife Services Office. If the survey finds that nests will be impacted by the Construction Services, the Design-Builder shall not be entitled to a Relief Event pursuant to Specification Section 108.03.
 - (2) The following guidance is provided for compliance with the Migratory Bird Treaty Act for the Project:
 - (i) Prior to beginning Construction Work, the Design-Builder shall submit a plan to the Department regarding how he/she intends to accomplish bridge demolition or clearing and grubbing of the Project to avoid conflict with nesting migratory birds.
 - (ii) Prior to beginning Construction Work, the Design-Builder must submit a temporary erosion control plan tailored to fit the plan for clearing and grubbing.
 - (iii) If Construction Work results in unavoidable conflict with nesting migratory bird's eggs or young, which will result in "taking" nests and their contents, the Design-Builder should

notify the Department. The Department shall notify the Environmental Section of Planning and Project Development by telephone at 402-479-4766.

- (iv) The NDOT Environmental Section will then determine if assistance in conducting the survey will be provided by the NDOT Environmental Section (if available) or from the USDA APHIS - Wildlife Services Office and arrange for assistance with the survey of nest numbers, bird species, etc. Results of the survey shall be maintained by the Department until Project completion.
- (v) If an active nest is found during the survey, the Design-Builder should do everything possible to restructure his activities and leave the nest undisturbed until the young fledge. Fledging could occur within a week, or up to a month, after the survey depending on the species of bird and whether the nest contained eggs or young. Also depending on the species of bird and their sensitivity to disturbance, a buffer of up to thirty feet surrounding the tree with the active nest could be required.
- (vi) If Construction Work cannot be rescheduled to allow the birds to fledge, and it is determined as an unavoidable "take" circumstance, the Design-Builder shall stop all Work within thirty feet of the active nest and coordinate with the Department to determine how to proceed. The Department will then coordinate with the US Fish and Wildlife Service and the FHWA (for projects using Federal-aid) to determine the appropriate way to address the active nest. No Work shall occur within thirty feet of the active nest until US Fish and Wildlife Service coordination is complete and the requirements of the Migratory Bird Treaty Act are satisfied.
- (vii) It is the Design-Builder's responsibility to schedule his Work to accommodate the process of conducting a survey(s) and submitting the necessary documentation if avoidance is not practicable. The Design-Builder shall be responsible for using any legal and practical method to prevent the nesting of birds in order to prevent the need for any survey and prevent the need for additional surveys.
 - a. Delays incurred as a result of the Design-Builder's failure to comply with Environmental Quality Regulations will not be considered a Relief Event pursuant to Specification Section 108.03. Any cost resulting from the delay shall be borne by the Design-Builder.
 - b. The Design-Builder shall perform washout of concrete mixers, delivery trucks, and other delivery systems in designated areas only.

107.02 -- Permits, Licenses, and Taxes

1. The Design-Builder shall procure all Governmental Approvals as described in the [Environmental Technical Provision], pay all charges, fees, and taxes, and give all notices necessary and incidental to the lawful prosecution of the Work.
2.
 - a. Reference is made to the *Nebraska Revenue Act of 1967*, and amendments thereto, which imposed a "Sales and Use Tax". The following information to obtain tax exemption on purchased materials is provided for use in submitting Submittals.
 - b. The Design-Builder will be issued a "Purchasing Agent Appointment" signed by the Department and an "Exempt Sale Certificate". The "Exempt Sale Certificate" should be reproduced, completed, and furnished to vendors by the Design-Builder or Subcontractor when making purchases as a purchasing agent of the Department.
 - c. The "Exempt Sale Certificate" is to be used by the Design-Builder (or Subcontractor) when purchasing tangible personal property to be actually incorporated into the completed Project. It does not apply to either of the following:

- (1) The purchase of materials to be used or consumed but not incorporated into the Work, including but not limited to, form lumber, scaffolding, etc.
 - (2) The purchase or rental of machines, equipment, or tools owned or leased by the Design-Builder and used in performing the Work.
3. All construction equipment located in Nebraska on the 1st day of January is subject to Nebraska property taxes for that year. The Design-Builder shall notify the appropriate county officials to insure equipment is assessed.
4. Design-Builder Site Use Approval:
 - a.
 - (1) When a Design-Builder intends to obtain borrow and/or dispose of excess excavation at a site (or sites) not shown or otherwise designated in the Agreement the Design-Builder shall submit a completed NDOT Form 119 “*Design-Builder Site Use Request Identification and Evaluation*” to ndot.mssrequest@nebraska.gov for processing and approval.
 - (2) When a Design-Builder intends to: (i) dispose of construction debris, (ii) stockpile materials, equipment or other tangible property for the Project, and/or (iii) install and operate a mobile asphaltic concrete plant, mobile Portland cement concrete plant or other mobile production plant at a site (or sites) not shown or otherwise designated in the Agreement the Design-Builder shall submit a completed NDOT Form 56 “*Plant Site/Stockpile Site Request Identification and Evaluation*” to ndot.mssrequest@nebraska.gov for processing and Approval.
 - (3) The NDOT Form 56 and NDOT Form 119 (hereafter referred to as “the Design-Builder Site Request form(s)”) can be found on the NDOT website. Each Design-Builder Site Request form shall represent only one site and shall be Project specific.
 - (4) The timeframe required to obtain site approvals varies and is dependent upon whether the project has a Corps Section 404 notifying-permit and upon the complexities of each site listed in each request.
 - b. The Design-Builder shall contact the Nebraska Department of Environment and Energy (NDEQ) to determine if it is necessary for the Design-Builder to obtain a NPDES permit. The Design-Builder shall also be responsible for obtaining any and all other permits required.
 - c. The Design-Builder shall not begin Work at any borrow, waste, debris, stockpile, or plant site until receiving written approval for the submitted Design-Builder Site Request form(s) from NDOT, before obtaining a NPDES permit (if required), or any other permits required.
 - d. No extension of time will be granted due to any delays in securing approval of a borrow, waste, debris, stockpile, or plant site unless a review of the time frames concludes that there were conditions beyond the Design-Builder’s control.
5. The Design-Builder shall understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site. For reference, the general permit is posted on the Department's website. Additionally, the Design-Builder, agrees and understands that he/she:
 - a. becomes a co-permittee, along with the owner(s), to the Nebraska Department of Environmental Quality NPDES General Permit for Storm Water Discharges from Sites on this Project;
 - b. is legally bound to comply with the Clean Water Act to ensure compliance with the terms and conditions of the Storm Water Pollution Prevention Plan developed under the NPDES permit and the terms of the NPDES permit; and
 - c. will hold the owners harmless for damages or fines arising as a result of noncompliance with the terms of the storm water permits and authorizations associated with the Work on this Project.

6. In compliance with the Federal Water Pollution Control Act, authorization to discharge storm water from this project has been granted under General NPDES Permit for Storm Water Discharges from Construction Sites. Design-Builders are advised that, under the Construction Storm Water General Permit, plant sites, camp sites, storage sites, and borrow or waste sites not shown on the Design Plans may be subject to separate NPDES permit authorization requirements for stormwater discharges from those locations. Design-Builders shall be responsible for verifying the need for NPDES permit coverage with the applicable permitting authority (Nebraska Department of Environment and Energy (NDEE) for most locations, or the United State Environmental Protection Agency (USEPA) within Indian reservation boundaries).
7. When required for these locations, the filing of a "Notice of Intent" shall be made by the Design-Builder directly to the applicable permitting authority.
8. Additionally, asphalt (SIC Code 2951) or concrete (SIC Code 3273) batch plants that are owned by a private contractor and are operated on a contract-for-service basis to perform Work for the Design-Builder completing the project may be subject to NPDES General Permit for Storm Water Discharges from Industrial Activity. While the plant may be required for completion of the Project, it is not under the control of the Department; and the filing of a "Notice of Intent" shall be made by the Design-Builder directly to the permitting authority. The NDEE may be contacted at 402-471-4220 for additional information. The USEPA may be contacted at 913-551-7003 for additional information.

107.03 -- Patented Devices, Materials, and Processes

1. Whenever the Design-Builder is required or desires to use any design, device, material, or process covered by letters, patent, or copyright, the Design-Builder shall obtain the right for this use by legal agreement with the patentee or owner. A copy of this agreement shall be provided to the Department.
2. However, whether or not such an agreement is made or provided, the Design-Builder and the surety in all cases shall indemnify and save harmless the Department from any and all claims for infringement by reason of the use of any such patented design, device, material, process, trademark, or copyright in connection with the Work agreed to be performed under the Agreement.
3. The Design-Builder and the Surety shall also indemnify the Department for any costs, expenses, and damages which it may be obligated to pay by reason of any such infringement at any time during the prosecution of or after the completion of the Work.

107.04 -- Pavement Opening Permits

1. The Department may authorize the Design-Builder to allow Third Parties bearing valid permits to make openings in the highway. Permits will provide that all repair Work will be paid for by the permit holder.
2. The Department may order the Design-Builder to make repairs to openings made by Third Parties. Any repairs ordered by the Department will be considered a Department-Directed Change and be subject to Specification Sections 108.03 and 108.04.

107.05 -- Federal Participation

1. All Federally funded Work will be administered by the Department, subject to the inspection and approval of officials of the Federal government. These inspections do not make the Federal government a party to this Agreement and will in no way interfere with the rights of either party hereunder.
2. Federal Projects of Division Interest (PoDI) are designated in the Agreement. These projects are subject to routine inspections by the Federal Government. The Federal Government may be involved in the approval of changes to the Agreement.

107.06 -- Sanitary Provisions

1. The Design-Builder shall provide and maintain in a neat, sanitary condition accommodations for the use of the employees as may be necessary to comply with the requirements of Federal, State, and local Boards of Health regulations.

107.07 -- Public Convenience and Safety

1. The Design-Builder shall insure the orderly movement of traffic through or around the Work at all times. The Design-Builder may not close any road unless required by the Design Plans. Temporary traffic control devices and layouts shall conform to the Agreement, and the MUTCD.
2.
 - a. No materials of any kind shall be stored in the median or within thirty feet of the edge of the traveled way, except that they may be placed in the median or on the foreslopes if they are used or removed the same day. In no case shall material be allowed to remain overnight within the thirty feet zone specified above.
 - b. Equipment not actively engaged in Construction Work shall not be parked within twenty feet of the edge of the traveled way, or in the median, except during unavoidable temporary suspensions of the Work. No equipment shall be parked within thirty feet of the edge of the traveled way, or in the median, overnight, on holidays, or on weekends.
 - c. In those cases where the road is closed to public traffic, no material or equipment may be stored within the limits set forth above unless the storage site is physically inaccessible to vehicles.
3.
 - a.
 - (1) All slow moving construction vehicles and equipment which operate on the highway at speeds 15 mph lower than the posted legal minimum speed or lower than 35 mph if a minimum speed is not posted then all construction equipment working within the traffic lanes or shoulders of a highway under "traffic maintained" conditions shall be equipped with rotating or flashing yellow beacons or strobe type beacons which comply with the *Nebraska Rules of the Road*.
 - (2) Rotating or flashing type beacons shall be operated on all such equipment which is parked on or within the traffic lanes or shoulders of the highway under "traffic maintained" conditions.
 - (3) Trucks and pickups traveling in the normal flow of traffic shall operate the beacons only when close to the Work.

Rotating or flashing yellow beacons shall be provided with a minimum 50 candlepower bulb and shall be sealed so as to be dust and water tight. Strobe type beacons shall have yellow colored domes. All beacons shall be maintained in good operating condition and shall be mounted level on the equipment to provide for 360 degree visibility, day or night, for a minimum distance of 800 feet. The use of magnetically mounted beacons will be permissible if they meet requirements for visibility and level mounting as set forth above. Slow moving vehicles as defined by the *Nebraska Rules of the Road* shall have a "slow moving emblem." This is in addition to other lighting devices required by Law.
4.
 - a. The Design-Builder shall furnish flaggers to direct traffic whenever construction equipment or vehicles operate on, across, or directly adjacent to the roadway being used by the traveling public. Additionally, the Department may require flagging at any time to enhance the public's safety and insure the orderly movement of traffic through or around the Work.

- b. Except in the cases of incidental flagging, flagging shall be performed by flaggers trained and certified according to the Department's flagger certification program described in Specification Section 422. Incidental flagging shall be defined as flagging required in emergency situations or in situations not expected to last for more than 15 minutes. In those cases where traffic is repeatedly stopped or otherwise controlled for time totaling more than 15 minutes, even though the individual activity is of less than 15 minutes duration, the requirement for a certified flagger is not waived.
 - c. When certified flagging is necessary, the Department will pay for flagging at a negotiated price if there is no price established in the Agreement Price
- 5.
- a. When the road under construction is being used by the traveling public, special attention shall be paid to keep both the subgrade and newly laid surfacing in such condition that the public can travel over the same in relative comfort and safety.
 - b. The Department may direct that surfacing be opened to traffic if shoulders are not completed within the time limits for the completion of shoulders as provided in Specification Section 304.03. When surfacing is opened to traffic under such conditions, the Design-Builder will not be relieved of any responsibility on any portion of the Work so opened to traffic until Notice of Substantial Completion has been given, except as provided in Subsection 107.14.
- 6.
- a. The Design-Builder shall conduct all operations to minimize any drop-offs (abrupt changes in roadway elevation) exposed to traffic.
 - b.
 - (1) Unless otherwise specified in the Agreement, drop-offs greater than 2 inches tall at the shoulder edge that are adjacent to the traveled way shall be protected by a wedge of compacted stable material capable of carrying traffic (the wedge being 1 vertical to 3 horizontal or flatter). An edgeline warning stripe shall also be placed on the traffic side of the drop-off.
 - (2) The Department shall authorize other methods, such as concrete barriers or Type II Barricades, to protect drop-offs when conditions do not allow a wedge of compacted, stable material.
 - (3) Unless otherwise ordered by the Department, drop-offs up to 2 inches may remain exposed with appropriate warning signs alerting motorist to the condition.
 - c. Open trenches which span all or part of the traveled way and/or auxiliary lanes shall be no wider than 18 inches and must have a steel-plate cover placed and anchored over them. The plate shall have sufficient strength so as to only allow a maximum vertical deflection of 1/2 inch. A wedge of suitable material shall create a smooth transition between the pavement and the steel plate. Warning signs shall be used to alert motorists to the presence of the steel plates.
7. When so provided in the Agreement, surfacing and base courses shall be constructed with one or more lanes of the roadway open and maintained for traffic. The Design-Builder shall regulate traffic flow in accordance with the Department's direction.
8. When the road is accessible to vehicles, even if closed to the traveling public, the Design-Builder shall use traffic control devices such as Type II barricades, or object markers to locate and mark hazards within the project limits.
9. When the Project is open to public vehicular traffic and the plans call for a culvert extension with excavation less than 15 feet from the edge of the traveled lane, two double-sided Type III barricades

shall be installed on the shoulder, one on each side of the excavation. Also, one double-sided Type III barricade with a Type A light shall be installed on the shoulder 100 feet in advance of the excavation.

10. If a hazard exists and barricades, warning signs, or other devices are in place, then even when the Agreement is complete, these warning devices may not be removed until the Department has replaced the devices.

107.08 -- Use of Explosives

When the use of explosives is necessary for the prosecution of the Work, the Design-Builder shall use the utmost care not to endanger life or property. All explosives shall be stored and used in compliance with Federal, State, and local Laws and ordinances; and all storage places shall be clearly marked "DANGER-EXPLOSIVES". All permits shall be obtained by the Design-Builder. The Design-Builder shall be liable for property damage, injury, or death resulting from the use of explosives.

2. The Design-Builder shall notify each property owner and Utility Owner having structures or facilities within 1,600 feet areas where explosives may be needed. The notice shall be given sufficiently in advance to enable the owners to protect their property.

107.09 -- Preservation and Restoration of Property, Trees, Monuments, etc.

1. The Design-Builder shall preserve, protect, and prevent damage to all public and private property. This includes any underground or overhead Utilities, structures, and facilities, whether shown in the Agreement or not.
2. The Design-Builder shall protect from disturbance or damage all land monuments and property markers until the Department has witnessed or otherwise referenced their location and shall not remove them until directed.
3. The Design-Builder shall not cut, injure, remove, or destroy any trees or shrubs unless directed by the Department.
4. When or where any direct or indirect damage or injury is done to public or private property because of any act, omission, neglect, or misconduct related to the execution or nonexecution of the Work, the Design-Builder shall restore or replace the property to a condition similar or equal to that existing before such damage or injury was done. The restoration or replacement shall be done at no additional cost to the Department.

107.10 -- Archaeological and Paleontological Discoveries

If the Design-Builder encounters fossils, meteorites, Native American artifacts, or other items of archaeological, historical, or geological significance, such items shall become the property of the State. The Design-Builder shall immediately:

- (1) cease operations in the affected area,
- (2) secure and protect the discovery site, and
- (3) notify the Department in writing.

Work in the affected area shall not resume until the Department authorizes continuation.

If the discovery results in a material and direct impact to the Work, the Design-Builder may request a Change Order in accordance with the Agreement and must comply with all notice, documentation, and scheduling procedures in Section 108.03 (*Request for Adjustment in Agreement Time or Price*).

107.11 -- Hazardous Materials Discoveries

If the Design-Builder encounters Hazardous Materials within the Project Site, the Design-Builder shall immediately:

- (1) cease operations in the affected area,
- (2) secure and protect the discovery site, and
- (3) notify the Department in writing.

Work in the affected area shall not resume until the Department authorizes continuation.

If the discovery results in a material and direct impact to the Work, the Design-Builder may request a Change Order in accordance with the Agreement and must comply with all notice, documentation, and scheduling procedures in Section 108.03 (Request for Adjustment in Agreement Time or Price).

107.12 -- Invasive Species Control

The Design-Builder shall implement measures to prevent the introduction or spread of invasive plant or animal species. Prior to mobilization to the Project site, the Design-Builder shall clean equipment at its storage facility or other approved location.

The Design-Builder shall inspect equipment before leaving the Project site and remove attached soil, seeds, vegetative matter, or animals.

If Department-directed invasive species control measures exceed the baseline requirements of the Agreement Documents and materially affect the Work, the Design-Builder may submit a request for a Change Order in accordance with the Agreement, subject to the notice and schedule-management procedures of Section 108.03 (Request for Adjustment in Agreement Time or Price).

107.13 -- Right-of-Way

1. The Department will provide all land and easements for the Right-of-Way shown in the Agreement Documents.

107.14 -- Responsibility for Damage, Injury, or Other Claims

1. The Design-Builder shall indemnify and save harmless the Department and all of its representatives from any and all actions, fines or claims brought because of injuries or damages to persons or property caused by the actions or omissions of the Design-Builder or the Design-Builder's employees or agents.
2. The Design-Builder shall be responsible for all damage or injury to any property during the prosecution of the Work, resulting from any act, omission, neglect, or misconduct, in the manner or method of executing said Work satisfactorily, or due to the nonexecution of said Work or at any time due to defective Work or materials and said responsibility shall continue until Final Acceptance.
3. Prior to beginning any Work, the Design-Builder is required to meet with all involved local Governmental Entities and advise them of any intentions to use their local roads. The Design-Builder shall be responsible for resolving claims concerning damage to local roads caused by his/her operation.

107.15 -- Insurance

1. Design-Builder shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of the contract including any time extensions or renewals until Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it or its Subcontractors as herein set forth, written by companies authorized by the State of Nebraska to issue

insurance and that have an A.M. Best Company rating of (A-) or better or approved by the Department.

2. The Department may, at its sole discretion, release the Design-Builder from the requirement to provide certain specified types of insurance if the Department determines that the Work related to that specific type of insurance (i.e., Railroad Protective Liability, Marine Protection & Indemnity) has been satisfactorily completed, therefore obviating the utility of the required insurance.

3. Insurance During NTP 1

- a. From issuance of NTP 1 through the issuance of NTP 2, the Design-Builder shall maintain insurance appropriate for professional activities, including:
 - (1) Professional Liability / Errors and Omissions Insurance
 - (2) Workers' Compensation and Employer's Liability Insurance
 - (3) Commercial General Liability Insurance (only if on-site activities are performed)
 - (4) Any other coverage required by applicable law or the Agreement Documents
- b. This insurance shall be in the minimum amount shown below. Should the Design-Builder change carriers during the term of this contract, the design-build firm shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.
- c. General Liability:
 - (1) Limits of at least:
 - (i) \$ 1,000,000 per Occurrence
 - (ii) \$ 2,000,000 General Aggregate
 - (iii) \$ 2,000,000 Completed Operations Aggregate
 - (iv) \$ 1,000,000 Personal and Advertising Injury
 - (2) Design-Builder shall be responsible for the payment of any deductibles.
 - (3) Coverage shall be provided by a standard form Commercial General Liability Policy (CG0001 or equivalent) covering bodily injury, property damage including loss of use, and personal injury.
 - (4) The General Aggregate shall apply on a Per Project Basis.
 - (5) The State of Nebraska, Department of Transportation, shall be named as an Additional Insured on a primary and non-contributory basis including completed operations for three (3) years after Final Acceptance.
 - (6) Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation shall be added to the policy.
 - (7) Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.
 - (8) If work is being performed near a railroad track, the 50' railroad ROW exclusion must be deleted.
 - (9) Products and completed operations coverage in the amount provided above shall be maintained for the duration of the Work, and shall be further maintained for a minimum period of three years after Final Acceptance.
 - (10) Coverage shall be included for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below surface of ground (XCU coverage).
 - (11) Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations as per standard CG0001

Pollution Exclusion or equivalent. If the standard pollution exclusion as provided by CG0001 has been amended, coverage must be substituted with a separate Pollution Liability policy of \$1.0 million per occurrence and \$2.0 million aggregate. If coverage is provided by a “claims made” form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Design-Builder.

d. Automobile Liability:

(1) Limits of at least:

(i) \$ 1,000,000 CSL per Accident

(2) Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

(3) If Work is being performed near a railroad track, the 50-foot railroad right-of-way exclusion must be deleted.

(4) Design-Builder agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation, shall be added to the policy.

(5) Automobile liability coverage shall be obtained from an insurance carrier who is licensed in Nebraska and any other State in which the project is located.

e. Workers’ Compensation:

Limit: Statutory coverage for Nebraska and for any other State in which the project is located.

(1) Employer’s Liability limits:

(i) \$500,000 Each Accident

(ii) \$500,000 Disease – Per Person

(iii) \$500,000 Disease – Policy Limit

2) Design-Builder agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation shall be added to the policy.

(3) Workers’ compensation coverage shall be obtained from an insurance carrier who is licensed in Nebraska and any other State in which the project is located.

(4) Where applicable, the Longshore and Harbor Workers Compensation Act endorsement shall be attached to the policy.

f. Umbrella/Excess:

(1) Limits of at least:

(i) \$1,000,000 per Occurrence

(2) Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Automobile Liability.

(3) The State of Nebraska, Department of Transportation shall be an “Additional Insured”.

(4) Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation shall be provided.

g. Pollution Liability:

(1) When Hazardous Wastes or contaminated or polluted materials must be handled and/or moved, the Design-Builder shall obtain Pollution Liability Coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.

(2) If, during the course of construction, Hazardous Wastes, contaminated or polluted material are discovered on the Project, the Design-Builder shall immediately cease any operation that may

disturb these materials, and shall immediately notify the Department of all facts related to the discovery of these materials.

(3) Unforeseen work related to the discovery of hazardous, contaminated or polluted materials on the project, and the extra cost, if any, of pollution liability coverage will be handled a Department-Directed Change Order.

f. Professional Liability

(1) Coverages of at least for three years after the project is completed: \$1,000,000 Per Claim and \$1,000,000 Annual Aggregate.

g. Additional Requirements:

(1) The Design-Builder shall provide and carry any additional insurance required by the Special Provisions.

(2) Except as otherwise provided herein, all insurance shall be kept in full force and effect until after the State releases the Design-Builder from all obligations under the Agreement.

(3)

(i) If any of the work is sublet, equivalent insurance shall be provided by or on behalf of the Subcontractor or Subcontractors (at any tier) to cover all operations.

(ii) Approved trucking Subcontractors (at any tier) who are being utilized only for the purpose of hauling materials shall be exempt from the requirements of Paragraphs 1.c., 1.f. and 1.g. of this subsection.

(iii)

(a) When the Design-Builder or Subcontractor chooses to employ a trucker by carrying the driver on his or her payroll and entering into a lease agreement for the truck, the owner-operator of the truck shall be required to comply with the Automobile Liability provisions of Paragraph 1.d. of this Subsection.

(b) Furthermore, it shall be the duty of the Design-Builder to ensure that the owner-operator of the truck has such insurance in effect. The Design-Builder shall maintain evidence that any truckers so utilized (at any tier) are insured to the minimum limits specified and be able to furnish documentation of the same on demand.

(c) Failure to ensure that insurance coverage exists and failure to maintain evidence thereof shall be considered a Breach of the Agreement.

(4) Any insurance policy shall be written by an insurance company with a Best's Insurance Guide Rating of A – VII or better.

(5) Prior to execution of the Agreement, Design-Builder shall provide the State of Nebraska, Department of Transportation evidence of such insurance coverage in effect in the form of an ACORD© (or equivalent) certificate of insurance executed by a licensed representative of the participating insurer(s). Certificates of insurance shall show the Nebraska Department of Transportation as the certificate holders.

(6) Failure of the Department or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this Agreement.

(7) The limits of coverage set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the Design-Builder or any of its Subcontractors/tier Subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the Design-Builder, Subcontractor, or tier Subcontractors of any responsibility or liability under the Agreement.

(8) If there is a discrepancy of coverage between this subsection and any other insurance specification for this Project, the greater limit or coverage requirement shall prevail

4. Insurance During NTP 2

- a. Upon issuance of NTP 2 and throughout all construction activities, the Design-Builder shall maintain insurance appropriate for construction operations at the coverage levels listed above, including:
 - (1) Commercial General Liability Insurance
 - (2) Automobile Liability Insurance
 - (3) Builder's Risk Insurance (if required by the Agreement)
 - (4) Workers' Compensation and Employer's Liability Insurance
 - (5) Umbrella or Excess Liability Insurance, if required
 - (6) Any other insurance specified in the Agreement Documents

5. Certificates of Insurance / Notice.

- a. Design-Builder shall provide Certificates of Insurance in a form satisfactory to the Department. Certificates shall be forwarded to the Department within two (2) Business Days of receipt, by mail (return receipt requested), hand delivery, email, or facsimile, to:

Nebraska Department of Transportation
Construction Division — Insurance Section
1500 Nebraska Parkway, P.O. Box 94759
Lincoln, NE 68509-4759
Facsimile: (402) 479-4854

Email: NDOT.ConstructionInsurance@nebraska.gov

- b. Certificates of Insurance must be resubmitted to the Department at least thirty (30) Calendar Days prior to the expiration of the current policy, or annually after Agreement execution.

107.16 -- Opening of Sections of the Project to Traffic

The Department may direct that all or part of the Project, in which the road is closed, shall be opened to traffic during construction or at any time prior to Final Acceptance of the Work. Opening such sections will not constitute Final Acceptance of the Work or a waiver of any Agreement provisions.

2.

- a. In the event that the opening of a closed road occurs during the orderly progression of the Work, the section will be inspected, and the section turned over to the Department for maintenance.
- b.
 - (1) Whenever the Department permits the public use of a highway undergoing construction, repair, or maintenance in lieu of using a detour route, the Design-Builder shall not be held responsible for damages directly caused by the traveling public to those portions of the Project upon which the Department permitted public use, if such damages are the result of no proximate act or failure to act on the part of the Design-Builder.
 - (2) If the traveling public should cause damage to the roadway, the Design-Builder shall assist the Department in identifying the responsible party. The Design-Builder shall, at a minimum, especially if present at the time of the damage, record and furnish to the Department all pertinent information regarding the accident (who caused the damage; when the damage occurred; how the damage occurred; etc.).

- c. The Design-Builder shall remain responsible for any damages which are due to or caused by defective Work or because of noncompliance with the Agreement.
- 3.
- a. The Department may direct that all or part of the Project be opened to traffic when:
 - (1) The Work is not progressing satisfactorily or the Work has been delayed for reasons attributable to the Design-Builder.
 - (2) The Department finds it in the public interest to open the Project to traffic (such as during the winter months).
 - b. In such cases and except for damages due to the ordinary action of traffic, the Design-Builder shall not be relieved of any responsibility or liability for maintaining the Work. Furthermore, the Design-Builder shall conduct the remaining Work with minimum interference to traffic and without additional compensation for any added cost of the Work due to the opening of the project to traffic.
- 4.
- a. Only upon receipt of specific written authorization covering traffic control devices from the Department may the Design-Builder cease to maintain warning signs, barricades, warning lights, and all other traffic control devices regardless of whether the Design-Builder erected the device or it was erected by a Third Party.
 - b. Warning signs, barricades, warning lights, and all other traffic control devices shall not be removed if the hazard has not been eliminated.
5. The Department may issue a written order relieving the Design-Builder of public liability in areas where the Design-Builder has, with the Department's approval, removed his/her equipment from the Right-of-Way and completed all Work.

107.17 -- Design-Builder's Responsibility for Work

- 1.
- a. Until Final Acceptance of the Work by the Department, the Design-Builder shall be responsible for the protection, care, and upkeep of the Work, all associated storage sites, and other areas used to execute the Agreement. The Design-Builder shall take every precaution against injury or damage to the Work due to the weather or from any other cause.
 - b. The Design-Builder shall rebuild, repair, restore, and make good all injuries or damages to the Work due to any cause before Final Acceptance at no additional cost to the Department except as follows:
 - (1)
 - (i) The Design-Builder shall not bear the expense for damage to the Work resulting from a Force Majeure Event.
 - (ii) Evacuation and remobilization of equipment, repair of Design-Builder's equipment, or repair and replacement of Design-Builder's material are not a Relief Event pursuant to Design-Build Specification Section 108.03. The Design-Builder is responsible for protecting material to be used in the Work. The repair or replacement of damaged material will not be a Relief Event pursuant to Specification Section 108.03 when the Design-Builder fails to take reasonable precautions to protect material.
 - (2) The Design-Builder will not be liable for damage or injuries caused by acts of war or Governmental Entities.
 - (3) The Design-Builder shall not be held responsible for damage caused by the traveling public on those portions of the Project where the Department has permitted public use of the road in

- lieu of using a detour route and the damage is not the result of any proximate act or failure to act on the part of the Design-Builder.
2. In case of Suspension of the Work, the Design-Builder shall, at no additional cost to the Department:
 - a. Be responsible for the Work.
 - b. Take such precautions to prevent damage to the Project.
 - c. Provide appropriate drainage and erosion control.
 - d. Erect any necessary temporary structures, signs, or facilities.
 - e. Maintain all newly established plantings, seedings, and soddings furnished under the Agreement.
 - f. Protect new trees and other important vegetative growth against injury.
 3. The Design-Builder must at all times have in place and maintain adequate erosion control measures as described in the Agreement.
 4. If the traveling public should cause damage to the roadway, the Design-Builder will not be held responsible and shall assist the State in identifying the responsible party. The Design-Builder shall, at a minimum, especially if present at the time of the damage, record and furnish to the Department all pertinent information regarding the accident (who caused the damage; when the damage occurred; and how the damage occurred, etc.).

107.18 -- Design-Builder's Responsibility for Utility Property and Services

1. The accuracy of information furnished with respect to utility owner and railroad facilities (facilities) is not guaranteed, and the Design-Builder must verify all such information.
2. The Design-Builder shall notify all utility and railroad companies who may have facilities in the Work area and secure their assistance in locating and identifying all facilities.
3. The Design-Builder shall determine the actual locations of all underground and above ground facilities before starting any Work that may cause damage to such utilities. The Design-Builder must protect and keep operational all encountered utility facilities. The Design-Builder shall promptly notify the facility owner of any damage to the facilities. The restoration of damaged facilities shall be done at no additional cost to the Department.
4. Where operations are adjacent to properties of railway, telegraph, telephone, power, or other utility facilities, Work shall not begin until all arrangements necessary for their protection have been made by the Design-Builder and the Design-Builder has explained the arrangements to the Department.
5.
 - a. The Design-Builder shall cooperate with any affected utility owner to insure that:
 - (1) Removal and relocation of facilities progresses in a reasonable manner.
 - (2) Relocation Work is not unnecessarily duplicated.
 - (3) Interruption of service is kept to an absolute minimum.
 - b. In the event of a project-related interruption to utility services, the Design-Builder shall promptly notify the utility owner and the Department. The Design-Builder shall cooperate fully in the prompt restoration of service.
6. Fire hydrants shall be kept visible and accessible to the Fire Department at all times. No materials shall be stored within 15 feet of any fire hydrant.
7. The Design-Builder shall schedule Work in such a manner as to protect existing utility facilities until they are relocated, abandoned, or replaced. When partial grading is necessary before a utility owner

can perform such work, the Design-Builder shall coordinate efforts with the utility owner to provide the utility owner adequate time to plan and complete its work.

8. The Design-Builder shall perform all Work required beyond the pole lines after the poles have been moved. If the poles rest within an area outside the right-of-way limits from which borrow is to be taken, the Design-Builder shall use such equipment as may be required and/or employ hand labor methods to avoid causing damage to the poles or wires.
9. Unless otherwise provided in the Agreement, utility facilities shall be moved by their owners when necessary to preclude damage during construction.

107.19 -- State Owned Utilities

1. This Specification Section applies to the operating procedures of marking the State owned utilities on State Highway Right-of-Way.
2. The Design-Builder shall notify the Department of an intent to excavate a minimum of three Business Days prior to the day the Work is to begin. The Design-Builder shall submit a completed "Locate Request Form" as part of the notification. A copy of the "Locate Request Form" will be provided by the Department upon request.
3. The Design-Builder shall mark the intended excavation area with white paint, flags or other suitable markings three Business Days prior to the "Tentative Start Date For Excavation Work".
4. The standard start date for excavation activities shall be 12:00 a.m. (Midnight) three Business Days after the date on which the ticket was transmitted to the Department.
5.
 - a. If a Design-Builder provides a start date on the submitted information to the Department that is beyond the three Business Day requirement, this shall be deemed to automatically constitute a mutually agreed upon start time for that ticket.
 - b. The ticket life shall be fourteen Calendar Days after the Utilities have been located and marked. The Department will locate the State owned utilities within two Business Days prior to the "Tentative Start Date For Excavation Work" as indicted by the Design-Builder on the Locate Request Form.
 - c. The Department will locate the Utilities in the area identified once. The Design-Builder shall be responsible to perpetuate the markings.

107.20 -- Personal Liability of Public Officials

1. The Department's authorized representatives shall not be liable, either personally or as employees of the Department, for any action taken in performance of their authorized duties.

107.21 -- No Waiver of Legal Rights

1. Whether before or after Final Acceptance for the Work, the Department will not be prevented from:
 - a. Correcting any time allowance, measurement, estimate, or certificate made before or after completion of the Agreement.
 - b. Showing the true character of the materials furnished or Work performed and determining their conformance to the Agreement.
 - c. Recovering from the Design-Builder or his/her Surety, or both, such damage as it may sustain by reason of the Design-Builder's failure to comply with the Agreement.
2. Neither the acceptance of the Work by the Department, nor any payment for or acceptance of any or all of the Work, nor any extension of time granted for completion of the Work, nor any possession taken by the Department shall operate as a waiver of:

- a. Any portion of the Agreement.
 - b. Any power herein reserved.
 - c. Any right to damages.
3. A waiver of any breach of Agreement shall not be held to be a waiver of any other or subsequent breach.

SECTION 108 -- PROSECUTION AND PROGRESS

108.01 -- Subletting or Assigning of Agreement for Hauling

1.
 - a.
 - (1) For Davis Bacon (DBRA)-covered projects and Non-DBRA-covered projects, a Design-Builder or Subcontractor may wish to use another individual owner-operator or trucking company to supplement his or her hauling fleet. (The Department will not recognize multiple individuals claiming to be collectively identified as a single "owner operator".)
 - (2) This supplemental individual or company must either become a Subcontractor (first tier or lower tier, as the case may be) or be otherwise documented by the utilizing Design-Builder or Subcontractor by entering into a lease agreement for the trucks and showing the driver (or drivers) from the supplemental company on the Design-Builder's or Subcontractor's payrolls in the manner described below.
 - (3) Payrolls will only be accepted from the Design-Builder or approved Subcontractors.
 - b.
 - (1) If the decision is made to subcontract the hauling, the Design-Builder must first notify the NDOT Construction Office to request Subcontract approval. As part of the Subcontract approval process --- at any tier --- the proper certificates of insurance must be provided before approval will be granted.
 - (2) Additionally, on DBRA-covered projects, the Design-Builder must submit payrolls for all Subcontractors --- at any tier.
 - c.
 - (1) Owner/Operators of trucks hired by a Design-Builder or Subcontractor to supplement his or her hauling fleet are not subject to Davis Bacon wage requirements. However, they must still be shown on a payroll prepared by the Design-Builder or Subcontractor for whom they are working with the notation "owner/operator."
 - (2) Any other employees of the "owner/operator" must appear on the certified payroll in complete detail and must be compensated according to the wage rates established for the Project.
 - d. In the event a Design-Builder or Subcontractor elects to not subcontract the supplemental driver or drivers but instead chooses to "carry the workers/truckers on their payroll," the following requirements must be met:
 - (1) The Design-Builder's or Subcontractor's certified payroll must contain the names of all workers/truck drivers, and the payroll should identify their supervisors (including "owner-operators").
 - (2) Pay checks for the workers/truckers in question must be drawn against the Design-Builder's or Subcontractor's payroll or other account.

- (3) Owner/Operators need only be identified as such on the payroll. Additional drivers, if any, from the “owner-operator’s” company must appear on a payroll in complete detail and be compensated according to the wage rates established for the Project.
- (4) The Design-Builder or Subcontractor must enter into a lease agreement for the trucks driven by such drivers, and the lease agreement must show that the compensation for the leased equipment is on a time basis and not based on the amount of work accomplished. The lease agreements must be available for inspection by the Department.
- (5) Any supplemental truckers employed under this arrangement must still carry the minimum automobile liability coverage specified in the Agreement. It shall be the duty of the Design-Builder to ensure that the supplemental truckers have such coverage in effect. Evidence of proper insurance must be presented for verification on demand.

108.02 – [RESERVED]

108.03 -- Requests for Adjustment in Agreement Time or Agreement Price

1. Relief Event Notice

- a. The Design Builder may be entitled to an equitable adjustment in Agreement Time, Agreement Price or both upon the occurrence of a Relief Event as defined Section 17 (Relief Events/Change Orders). Entitlement shall be limited to the additional time or compensation reasonably required to address the direct impacts of the Relief Event.
- b. Except as otherwise expressly provided in the Agreement Documents, if at any time the Design-Builder determines that a change to the Work has occurred or is imminent, and that change constitutes a Relief Event, the Design Builder shall submit a Relief Event Notice to the Department (“Relief Event Notice”). The Design-Builder shall provide notice to the Department within fourteen (14) Calendar Days after the date on which the Design-Builder first knew or should have known that a Relief Event occurred or is imminent.
- c. Time is an essential Design-Builder’s delivery of the Relief Event Notice.
- d. Accordingly, if for any reason the Design-Builder fails to deliver a Relief Event Notice in strict accordance with this Section 108.03, Design-Builder shall be deemed to have irrevocably and forever waived the right to assert a Relief Event, with respect to the incident giving rise to the determination made under this Section 108.03.
- e. If any notice of Relief Event concerns any Hazardous Materials, then Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the Department not afforded the opportunity to inspect such material or condition before it is disturbed.

2. Relief Event Notice Requirements.

- a. Each Relief Event Notice will include, to the extent then known: (1) a description of the Relief Event, its date of commencement (or expected commencement), cause, and the obligations affected; (2) the estimated duration and qualitative and quantitative impact on time and costs, including a preliminary estimate of any extension of time and additional costs sought; (3) the steps taken and planned to mitigate or avoid the effects, with a timeline for such steps; (4) any dependencies on the Department or Third Parties, and any approvals or decisions required; (5) supporting evidence then available, including relevant orders, correspondence, site records, schedules, logs, and computations; and (6) the specific relief requested (time, cost, performance adjustment, or other remedy) and the Agreement Document provisions on which the request is based.

3. Continuing Relief Event Notice.

- a. If, following delivery of a Relief Event Notice while the asserted Relief Event is ongoing (i.e., the event has not concluded), Design-Builder receives or becomes aware of any further information relating to the asserted Relief Event, Design-Builder shall amend its original Relief Event Notice (labeling as, for example, “Amendment 1 to Notice of Relief Event No. 1”) and deliver such amended Notice to the Department not later than five (5) Calendar Days after Design-Builder’s receipt or knowledge of the additional information. The Department may request from Design-Builder any further information that the Department may reasonably require, and Design-Builder shall supply the same within a reasonable period but not later than five (5) Calendar Days after such Department request. Within five (5) Calendar Days after the conclusion of an asserted Relief Event, Design-Builder shall update (or further update), by amendment, its Relief Event Notice with the date of its actual or estimated conclusion. It is the intent of the Parties that the original Relief Event Notice meet all Relief Event Notice Requirements.
4. For those Relief Events for which the Design-Builder is afforded additional time for performance (or excuse from performance for a period of time), delays are measured as direct delays to the Critical Path on the affected Baseline Schedule.
5. For those Relief Events for which the Design-Builder is afforded an increase in the Agreement Price, the amount of the additional compensation shall equal the increased actual costs incurred by and necessary for Design-Builder's performance in accordance with the Agreement, or actual time or quantities under unit prices for the same, if so identified.
6. The Design-Builder shall submit to the Department a Request for Change Order (“RCO”) within thirty Calendar Days after submitting the Relief Event Notice. The RCO shall include:
 - a. Scope of Work: The scope of Work shall describe in detail satisfactory to the Department all additional or changed (or both) activities to be authorized by the Change Order. A statement that the basis of any additional Work or costs related thereto are not already included in the Work.
 - b. Cost Estimate: for requests for an adjustment to Agreement Price, Design-Builder shall include a detailed, itemized estimate of all amounts claimed to the extent such amounts are eligible for compensation as a Relief Event. All such amounts shall be broken down in terms of the eligible direct costs for labor, materials, equipment, Third Party fees and charges, extra insurance and performance and payment security (e.g., bonds and letters of credit), as applicable, and other direct costs, including expenses and profit, and any other cost category or categories the Department reasonably specifies;
 - c. Time Impact Analysis: For requests for an adjustment to any Completion Deadline, a time impact analysis of the Project Schedule that: (i) identifies Controlling Work Items and Critical Path (with activity durations, predecessor and successor activities and resources, including total Project Float), and illustrates the effect of schedule changes or disruptions on the Completion Deadlines; and (ii) complies with the requirements of Technical Provision Section 3 (Project Schedule).
 - d. Justification: Each RCO shall include a justification detailing all causes of the proposed change and describing the data and documents which establish the necessity of such proposed change including the effect of the Relief Event on the Design-Builder’s ability to perform any of its obligations under the Agreement including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;
 - e. Mitigation: an explanation of the measures that Design-Builder has previously taken to prevent, and proposes to undertake to mitigate, the costs, Delay and other consequences of the Relief Event; and
 - f. Other Supporting Documentation: The Design-Builder shall provide other supporting documentation including Environmental Commitment status as required by the Department.
7. Neither the fact that the Design-Builder submits a RCO to the Department, nor the fact that the Department keeps account of the costs of labor, materials, or equipment or time, shall in any way be

construed as establishing the validity of the RCO or the Claims therein or method of computing any compensation or extension of Completion Deadlines.

8. If the Design-Builder fails to deliver the RCO within such thirty (30) Calendar Days, the Design-Builder shall have irrevocably and forever waived and released any Claim or right to relief for the adverse effect attributable to the Relief Event occurring before the date of actual delivery of a Relief Event Notice.
9. The Department and the Design-Builder may mutually agree to extend the deadline for submission of the RCO.
10. The Department and the Design-Builder shall use good faith efforts to agree on the extent to which the Design-Builder is entitled to cost, schedule, or performance relief, as may be applicable, as a result of any such Relief Event. Once the Parties have mutually agreed as to the Design-Builder's entitlement to cost relief, they shall enter into a Change Order reflecting their agreement as to the adjustment in the Agreement Price.
11. The rights and remedies set forth in this Section shall be the Design-Builder's sole and exclusive rights and remedies upon the occurrence or due to the effects of a Relief Event, and the Design-Builder hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against the Department on account of a Relief Event.
12. The Design-Builder acknowledges and accepts all risks, responsibilities, obligations, and liabilities in connection with performance of the Work and delivery of the Project and is not entitled to make any claim under the Agreement, at law, or in equity against the Department, for any losses suffered in connection with the Project, the Work, or the Agreement.

108.04 -- Change Orders

1. Adjustments to the Agreement Time or Agreement Price may be made only in accordance with Section 3 (Agreement Price) and only by written Change Order executed by the Department.
2. The Department may reject the Design-Builder's RCO at any point in the process. The Department shall have no obligation to review the supporting documentation associated with any RCO until a complete RCO is provided. Only complete Change Orders executed by the Department shall result in an adjustment of the Agreement Price and/or Completion Deadlines.
3. If the Design-Builder undertakes any Work without receiving a Change Order executed by the Department, or specific written Approval to proceed with the Work prior to receiving a Change Order, the Design-Builder shall be deemed to have performed such Work voluntarily, without right to a Change Order. In addition, the Design-Builder may be required to remove or otherwise undo any such Work at its sole cost.
4. If the Design-Builder complies with all Notice and information requirements of Section 108.03, then within thirty (30) Calendar Days after receipt of the RCO, or such longer time as the Parties may mutually agree, the Department shall provide its written response to the Design-Builder. The Department's failure to respond to a full and final RCO within thirty (3) Calendar Days shall constitute the Department's rejection of the RCO.
5. If the Department determines that the RCO or any part thereof is valid, after the delivery of written notice to the design-Builder, the Parties shall promptly execute a Change Order documenting the Relief Event claim.
6. Request for Department Directed Change Order
 - a. If the Department desires to initiate a Department Directed Change Order or to evaluate such change, then the Department, at its discretion, may issue a Department Directed Change Order to set forth the nature, extent, and details of the proposed Department Directed Change Order.

Within seven (7) Calendar Days after the Design-Builder's receipt of a Department Directed Change Order or as otherwise agreed, the Department and the Design-Builder shall consult to define the proposed scope of the change, including rough order of magnitude of cost and time impacts, if any, as relates to Construction Services.

- b. Within twenty-one (21) Calendar Days following the Department's delivery to Design-Builder of the Department Directed Change Order, Design-Builder shall provide the Department with a written response as to whether, in Design-Builder's opinion, the proposed change will impact Design-Builder's costs, or will impact Design-Builder's Baseline Schedule (or both), and if so, a detailed assessment of the cost and schedule impact of the proposed Department Change, including the following:
 - (i) Design-Builder's detailed estimate of the impacts on costs of carrying out the Department Directed Change Order;
 - (ii) the effect of the proposed Department Directed Change Order on the Baseline Schedule, including achievement of any Milestone Deadlines, taking into consideration Design-Builder's duty to mitigate any Delay to the extent reasonably practicable; and
 - (iii) and any other relevant information related to carrying out the proposed Department Directed Change Order.
- c. The Department and Design-Builder shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including adjustment of the Baseline Schedule and Completion Deadlines, any compensation amount to which Design-Builder is entitled, and the timing and method for payment of any compensation amount, in accordance with the Agreement Documents.
- d. Department shall be entitled to the full benefit of the net cost savings and revenue benefit, if any, attributable to the Department Change agreed upon or determined through the Dispute Resolution Procedures, and the Baseline Schedule shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, to reflect the effects of the Change Order.
- e. If a Department Directed Change Order results in a net decrease in the Agreement Price, then any payment due from Department to Design-Builder under the Agreement may be adjusted downwards (or a credit may be owed in the future) to reflect that Department shall take the benefit of one hundred percent (100%) of such net decrease or such net savings. Furthermore, Department shall take the benefit of one hundred percent (100%) of the effect, if any, on the Baseline Schedule resulting from such Department Directed Change Order.

108.05 -- Prosecution of Construction Work

1. The Design-Builder shall start Construction Work and the determination and count of Calendar Days will begin on the date specified in the written "Notice to Proceed".
 - a. If, after the Notice to Proceed has been issued, circumstances prevent the Design-Builder from beginning Construction Work on the date specified in the written Notice to Proceed, the Design-Builder may request from the Department a new starting date, in writing, three Business Days before the original date specified in the written Notice to Proceed.
 - (1) This request must include the reason for the change.
 - (2) The start date may be postponed if in the discretion of the Department, the postponement is not detrimental to the Department, or if the Agreement is amended to address the issue of the delay.

108.06 -- Limitation of Operations

1. The Design-Builder shall work to minimize interference with traffic. Design-Builder shall schedule and perform the Work so that successive construction operations and lane or roadway openings follow preceding operations as closely as possible. Limit work zones according to the Special Provisions. Confine construction operations adjacent to traffic to one side of the roadway at a time unless otherwise specified by the Agreement. Where the Work is performed in stages adjacent to traffic, ensure that the road opened to traffic adequately accommodates traffic. Do not interfere with existing traffic access, except when required to perform the Work or as approved by the Department. The Design-Builder shall have due regard to the location of detours and to the provisions for handling traffic. The Design-Builder shall not open up Work to the prejudice of Work already started.
2. Placing right-of-way markers shall be one of the first orders of Work.

108.07 -- Design-Builder Employees, Methods, and Equipment

1. The Design-Builder shall employ sufficient labor and equipment for completing all Work required by the Agreement.
2. All Design-Builder employees must have sufficient skill and experience to perform their assigned Work. All employees engaged in special or skilled work shall have sufficient experience in such work and in the operation of the equipment so as to perform all Work in accordance with the Agreement, and industry standards.
3. Any Design-Builder employee or Subcontractor employee who, in the judgment of the Department, does not perform the Work in a proper and skillful manner or acts unprofessionally or disorderly shall, at the written request of the Department, be removed from the Site and not allowed on Site again without the approval of the Department.
4. Should the Design-Builder fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Department may withhold payments which become due and suspend the Work until such orders are implemented.
5.
 - a. All equipment shall be of sufficient size and proper mechanical condition to meet the requirements of the Agreement, and industry standards. The Department may require replacement of any unsatisfactory equipment.
 - b. Specified equipment and methods shall be used and followed unless changes are authorized by the Department.
 - c. The Design-Builder may request a change of method or equipment from the Department. The written request shall include a complete description of the methods and equipment and an explanation of the reasons for the change. If approval is given, the Design-Builder will be responsible for producing Work that conforms with original Agreement requirements.
 - d. If, after trial use of the substituted methods or equipment, the Department determines that the Work produced does not meet Agreement requirements, the Department will direct the Design-Builder to discontinue the use of the substitute methods or equipment and complete the remaining construction with the originally specified methods and equipment. The Design-Builder shall remove the deficient Work and replace it with Work of specified quality or take other action as the Department may direct.
6. When the Department grants permission to use any particular methods, equipment, or appliances, this action does not:
 - a. Relieve the Design-Builder from furnishing other equipment or appliances or adopting other methods when it appears necessary to prosecute the Work as specified.

- b. Bind the Department to accept Work which does not meet Agreement specifications.
- c. Preclude the Department from requiring other methods, equipment, or appliances at any time when in his/her judgment the methods, equipment, or appliances which he/she has allowed the Design-Builder to use prove to be inadequate, insufficient, or unsatisfactory.

108.09 – [RESERVED]

108.08 – [RESERVED]

SECTION 109 -- MEASUREMENT AND PAYMENT

109.01 – [RESERVED]

109.02 -- Scope of Payment

1. The Design-Builder shall accept the Department's compensation as full payment for:
 - a. Furnishing all materials, labor, tools, and equipment necessary to complete the Work and for performing all Work included in the Agreement.
 - b. Loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the Department.
 - c. For all risks of every description, except as noted, connected with the prosecution of the Work.
 - d. For all expenses incurred in consequence of the suspension or discontinuance of the Work as herein specified.
 - e. For any use of patented, trademarked, or copyrighted items.

109.03 -- Responsibility for Payment

1. Payment for the Work will be made by the State of Nebraska. A county or other agency may provide the Department funds for any portion of a project.

109.04 -- Compensation for Changes in the Work

1. The Department reserves the right to order changes in the scope of the Agreement Work as is necessary to complete the Project, in accord with the intent of the Agreement Documents. Adjustments to the Agreement Price shall be based on negotiations between the Design-Builder and the Department.
2. The Design-Builder shall complete all Work for the lump sum Agreement Price. Variations between estimated quantities and actual quantities encountered shall not constitute a basis for adjustment to the Agreement Price, except as expressly provided in the Agreement Documents.
3. Except as allowed in the Agreement Documents, the Department will make no pay adjustment or allowance for the Design-Builder's:
 - a. Increased operating expense.
 - b. Loss of expected reimbursement.
 - c. Loss of anticipated profit.
4. Design-Builder Responsibility for Quantity Risk
 - a. Discovery of differing quantities, conditions, or material requirements that could have been identified through reasonable design development, investigation, or due diligence shall not constitute a basis for additional compensation.

109.05 -- Extra Work

1. The Design-Builder shall not proceed with Extra Work without prior written authorization from the Department. Unauthorized Work is performed at the Design-Builder's risk and expense, with no obligation for Department reimbursement.
2. Force Account
 - a. If the Parties are unable to agree upon a price for the Work, the Department may direct the Design-Builder to perform the Work as Force Account Work. Payment for Force Account Work shall be made in accordance with one of the following procedures:
 - (1) A supplemental agreement will be completed following completion of the Work to pay for labor, materials, and equipment. The payment for labor, materials, and equipment will be determined in accordance with Paragraphs 6., 7., and 8. of this Subsection.
 - (2) A DR Form 58, "Force Account Agreement" will be completed before the Work begins to provide for the labor, materials, and equipment necessary to complete the work specified in the DR Form 188, "Work Order"; and DR Form 204, "Weekly Force Account Statements", will be prepared during the course of the Work. The payment for labor, materials, and equipment will be determined in accordance with Paragraphs 6., 7., and 8. of this Subsection.
 - b. No Force Account Work will be paid for unless unit prices, wages, material costs, and rental rates (or the method used to determine them) have been agreed upon in writing before such Work is started.
 - c. When payment is accomplished according to the procedures shown in Paragraphs 1.b. and 1.c. of this Subsection, the Department and the Design-Builder shall compare records of labor, equipment, and material used on a daily basis and promptly reconcile any differences between them.
 - d. The Design-Builder shall accept the compensation provided in Paragraphs 6., 7., and 8. of this Subsection as full payment for Force Account Work done, including any amounts for overhead, profit, administration, bond, and the use of tools and equipment not specifically identified in the DR Form 188, "Work Order."
 - e. When Force Account Work is performed by an approved Subcontractor, the Design-Builder shall receive a negotiated amount not to exceed 5% of the compensation provided to the Subcontractor for completion of the Work.
 - f.
 - (1) For all labor, including the foreperson in direct charge of the Force Account Work, the Design-Builder shall receive 120% of the amount paid for the following:
 - (i) Wages.
 - (ii) Property damage insurance.
 - (iii) Liability insurance.
 - (iv) Worker's compensation insurance premiums.
 - (v) Unemployment insurance contributions.
 - (vi) Social security taxes.
 - (vii) Health and welfare benefits.
 - (viii) Pension fund benefits.
 - (ix) Other benefits.
 - (x) (Benefits (7), (8), and (9) must be required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.)

- g. The wages for any foreperson employed on both Force Account Work and other Work shall be prorated between the two classes of work.
- h. For all material entering permanently into the Work and for specialty items of work not performed by the Design-Builder's or Subcontractor's own forces, the Design-Builder shall receive 115% of the actual cost, as evidenced by receipted bills, of such materials (including freight and hauling charges) or specialty items of work.
- i.
 - (1) For specific machinery, special equipment, or tools (including fuel and lubricants) identified in the DR Form 188, "Work Order", and deemed necessary to complete the "extra work", the Design-Builder shall be allowed 115% of the rental price established by applying the prevailing Departmental policies and formulas to the rates established in the *Rental Rate Blue Book for Construction Equipment* published by EquipmentWatch.
 - (2) When it is necessary for the Design-Builder to rent such equipment, the Design-Builder shall be allowed 115% of the actual rental price, if reasonable and substantiated by a receipted bill.
- j.
 - (1) In any case where the Design-Builder feels that additional compensation is due for Force Account Work or material neither clearly covered in the Agreement nor ordered in writing by the Department, the Design-Builder shall give written notice of their intention to make a claim for such additional compensation before the Work begins.
 - (2) If such notification is not given or if the Department is not afforded an opportunity to keep an account of the actual costs incurred by the Design-Builder, the Design-Builder's claim for such extra compensation will not be allowed.
 - (3) Notification by the Design-Builder and the fact that the Department has had an opportunity to keep an account of the costs incurred shall not be construed as providing the validity of the claim. The validity of the claim shall be determined by the Department.

109.06 -- Cancelled Items

- 1. The Department shall have the right to cancel the portions of the contract relating to the construction of any item therein by the payment to the Design-Builder of a fair and equitable amount covering all items of cost incurred before the date of cancellation or suspension of the work by order of the Department.
- 2. If the Design-Builder chooses, material ordered for the cancelled Work and delivered to the location of the Work (or such other location designated by the Department) shall be retained by the Department. The Design-Builder shall be compensated for the actual cost of the material plus 10% to cover overhead, handling, other costs, and profit.

109.07 -- Partial Payment

- 1. Stockpiled Material
 - a.
 - (1) Upon presentation by the Design-Builder of receipt of payment, billing invoices, or such other documentation sufficient to satisfy the Department and verify the Design-Builder's or Subcontractor's actual costs for the materials, partial payments may also be allowed for acceptable nonperishable materials purchased expressly to be incorporated into the Work and:
 - (2) delivered in the vicinity of the project or stored in acceptable storage places within Nebraska.
 - (3) not stockpiled in Nebraska but stored in an acceptable storage place. Payment for these items is subject to the Department's approval. In general, these items require approved Working Plans or field checked order lists prior to manufacture. Other items manufactured specifically

for a project but stockpiled outside of Nebraska may be approved for partial payment at the Department's sole discretion. The Design-Builder shall be responsible for costs incurred by the Department to ensure the stockpiled material conforms to the contract. Partial payments for material stockpiled outside of Nebraska shall not exceed 90% of the value of the materials, to be determined by the Department.

- (i) Materials not stored in the immediate vicinity of or on the Site must be clearly marked to identify the project on which they are to be used, must be segregated from similar materials at the storage site, and cannot be included in a supplier's inventory of material available for sale for other purposes.
 - (ii) All items eligible for partial payment as stored materials must be available for verification, sampling, and measurement.
- b. The amount to be included in the payment will be determined by the Department, but in no case shall it exceed 100% of the value of the materials.
 - c. Payment will not be approved when the documented value of such materials amounts to less than \$1,000.00, when the progress of the Work is not in accordance with the requirements set forth in Section 108.07, or when the material can reasonably be expected to be incorporated into the Work and eligible for payment as completed Work on a progress estimate within fifteen (15) Business Days of being placed into storage.
 - d. Deductions at rates and in amounts which are equal to the payments will be made from estimates as the materials are incorporated in the Work.
 - e. Payment for the materials shall not in itself constitute acceptance, and any materials which do not conform to the specifications shall be rejected in accordance with Section 106.05.
 - f. The Design-Builder shall be responsible for all damages and material losses until the material is incorporated into the Work and the Work is Accepted.
 - g. Partial payment will not include payment for fuels, supplies, form lumber, falsework, other materials, or temporary structures of any kind which will not become an integral part of the finished construction.
 - h. No partial payments will be made on living or perishable plant materials until planted.

SECTION 110 -- WAGES AND CONDITIONS OF EMPLOYMENT

110.01 -- Scope

1. This Section 110 shall apply to all Work performed by the Design-Builder with their own organization and with the assistance of workers under their immediate superintendence and to all Work performed by piecework, station work, or by Subcontract.
2. The Design-Builder shall insert in each of their Subcontracts all of the stipulations contained in this Section 110.
 - a. Any supplier furnishing material to the Project from a plant or facility at or near the site of the Work, and set up for that purpose exclusively, shall be considered a Subcontractor for labor compliance purposes only and shall comply with all requirements for set forth herein.
 - b. A plant or facility is considered to serve a Project "exclusively" if not more than 10% of sales from the plant or facility are made to others.
3. A breach of any of the stipulations contained in this Section 110 may be grounds for termination of the Agreement.

110.02 -- Labor Laws Cited

1. The Design-Builder shall comply with Federal and State wage and labor laws.

110.03 -- Employment of Labor

1. General

- a. No person under the age of sixteen (16) years, and no one whose age or physical condition is such as to make their employment dangerous to their health or safety, or to the health and safety of others shall be employed on the Project. This paragraph shall not be construed to deny the employment of older people or physically handicapped persons, otherwise employable, where such persons may be safely assigned to Work which they can ably perform.
- b. No person currently serving sentence to a penal or correction institution shall be employed on the Project.
- c. Except as specifically provided under this Specification Section, workers who are qualified by training or experience to be assigned to projects of this character shall not be discriminated against on any grounds whatsoever.

2. Equal Opportunity

a. Selection of Labor

- (1) During the performance of this Agreement, the Design-Builder shall not discriminate against labor from any other state.

b. Nebraska Fair Employment Practices Act

- (1) The Design-Builder shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability or national origin. The Design-Builder agrees to post in a conspicuous place or places a notice to be provided by the State Highway Department which sets forth excerpts of the Act.

c. Nebraska Equal Pay Act

- (1) The Design-Builder shall not discriminate on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements. An abstract of the Nebraska Equal Pay Act is included on the notice which is provided by the Department.

3. Payrolls

- a. Payrolls and basic records relating thereto will be maintained during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working on the Site of the Work.
- b. The Design-Builder's and Subcontractor's payroll records shall be available for inspection by authorized representatives of the Department and authorized representatives of federal agencies.
- c. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the Design-Builder shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.
- d. No fee of any kind shall be asked or accepted by the Design-Builder from any person as a condition of employment on the project.
- e. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.
- f. Every employee on the Work covered by this Agreement shall be permitted to lodge, board and trade where and with whom they elect and the Design-Builder shall not directly or indirectly

require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

- g. No charge shall be made for any transportation furnished by the Design-Builder to any person employed on the Work.
 - h. No individual shall be employed as a laborer on this Agreement except on a wage basis, but this shall not be construed to prohibit the rental of trucks or other equipment from individuals. No such rental agreement, or any charges for gasoline, supplies, or repairs on account of such agreement, shall cause any deduction from the wages accruing to any employee except as authorized by the regulations hereinbefore cited.
 - i. On projects requiring submittals of certified payrolls, Design-Builders shall submit their payrolls electronically, meeting the following requirements:
 - j. Format – Portable Document Format (PDF)
 - k. Size of file – Limited to 25 MB
 - (1) Signatures – A scanned copy of the original certified payroll or Adobe digitally signed.
 - (2) Payrolls certified by the Design-Builder must be emailed to the Project Manager within seven (7) Calendar Days of the payment date thereof. Payrolls must be complete and accurate.
4. Safety and Accident Prevention
- a. In the performance of this Agreement, the Design-Builder shall comply with all applicable Federal, State and local Laws governing safety, health and sanitation. The Design-Builder shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on their own responsibility or as the contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the Work covered by the Agreement.
5. Disadvantaged Business Enterprises
- a. The Design-Builder agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have a “level playing field” and equal opportunity to participate in the performance of contracts and Subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, the Design-Builder shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have a “level playing field” and equal opportunity to compete for and perform contracts. The Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.
 - b. Failure of the Design-Builder to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of the FHWA, may result in termination of the Agreement by the State or such remedy as the State deems appropriate.
6. Worker Visibility
- a. Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:
 - (1) Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the Work area shall wear high-visibility safety apparel.
 - (2) High-visibility safety apparel is defined to mean personal protective safety clothing that:
 - (i) is intended to provide conspicuity during both daytime and nighttime usage, and
 - (ii) meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107 publication titled "American National Standards for High Visibility Safety Apparel and Headwear."

7. Federal Immigration Verification System

- a. The Design-Builder shall register with and use a Federal Immigration Verification System to determine the work eligibility status of newly hired employees physically performing services within the State of Nebraska. The Design-Builder shall contractually require every Subcontractor to register with and use a Federal Immigration Verification System to determine the work eligibility status of newly hired employees physically performing services within the State of Nebraska.
- b. The Federal Immigration Verification System shall be an electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program. The Design-Builder may use 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. The equivalent program shall comply with the Immigration Reform and Control Act of 1986.
- c. The Design-Builder shall furnish a letter to the NDOT Construction Division in Lincoln on company letterhead and signed by an officer of the company stating that documentation is on file certifying that the Design-Builder and all subcontractors have registered with and used a Federal Immigration Verification System. The Design-Builder shall maintain all records of registration and use for a period of three years and make records available upon request. The Design-Builder shall contractually require subcontractors to maintain all records for a period of three years and make records available upon request.
- d. Payment will not be made to the Design-Builder for using the Federal Immigration Verification System or the maintenance of the records. This work shall be subsidiary to the work being performed.
- e. The Design-Builder's Certification shall become part of the final records of the Agreement. The Department considers this document to have direct bearing to the beginning interest date and may affect the amount of interest earned.

SECTION 111 -- [RESERVED]

SECTION 112 -- MOBILIZATION

112.01 -- Description

1. This Work shall consist of preparatory Work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the Site; for the establishment of offices, buildings and other facilities necessary for Work on the Project; and for all other Work and operations which must be performed or costs incurred before beginning Work at the project site. It shall also include pre-construction costs which are necessary direct costs to the Project and are of a general nature rather than directly attributable to other pay items under the Agreement.
2. The Design-Builder must include all costs that he/she expects to incur for all movements of his/her equipment and personnel. Additional payments will not be made should the Design-Builder elect to move his/her equipment and/or crew to another project site before the Work is complete or if the Design-Builder fails to adequately assess the actual cost of Mobilization for the Work.

112.02 -- Method of Measurement for Cost Estimating Principles

1. No measurement is required.
2.
 - a. The partial payment for any Mobilization will be limited to an amount not to exceed 10% of the total amount of the Agreement Price. In the event the item for Mobilization exceeds 10% of the

total Agreement Price , the amount in excess of 10% will not be paid until the Department has made Substantial Completion of the Work.

- b. When it is necessary to delay Substantial Completion because of a required observation period, the entire amount for Mobilization may be paid upon Substantial Completion of the other Work.
3. Subject to the limitations stated in Paragraph 2. of this Subsection, partial payments will be made as follows:
 - a. Upon completion of 5% of NTP2, excluding Mobilization, the Department will pay 50% of the Mobilization amount.
 - b. Upon completion of 10% of NTP2, excluding Mobilization, the Department will pay 100% of the Mobilization amount.

SECTION 113 --

[RESERVED]

SECTION 114 -- CONSTRUCTION STAKING

114.01 -- Description

1. Department and Design-Builder Responsibilities:
 - a. The Project will have the Construction Staking performed by the Design-Builder.
2. The Department will provide a set of preliminary surveying control points for the Project:
3. The Design-Builder shall be responsible for providing construction stakes, lines, and grades:
 - a. All Construction Staking performed by the Design-Builder shall be incidental to the Work.
 - b. The Design-Builder shall be responsible for verifying the Department provided survey control prior to commencing any Construction Services. Any discrepancies shall be brought to the immediate attention of the Department.
 - c. Design-Builder Construction Staking shall consist of:
 - (1) Establishing or reestablishing the Project centerline.
 - (2) Referencing or re-referencing all necessary control points.
 - (3) Running a circuit of bench levels to check or reestablish plan benchmarks.
 - (4) Setting other benchmarks as needed.
 - (5) Staking right-of-way or restaking right-of-way where needed if it has been previously staked and performing all construction layout and reference staking necessary for the proper control and satisfactory completion of all structures, grading, paving, drainage, and all other appurtenances required for the completion of the NTP2 and Final Acceptance of the Project.
 - (6) Provide station lath for concrete paving (100 feet interval) and asphalt paving (200 feet interval) projects.
 - (7) Providing flagging and signage for traffic control.
 - (8) Shim shots for bridge decks.
 - d. Construction Requirements:
 - (i) The construction staking shall be done by personnel who are trained and experienced in construction layout and staking of the type and kind required in the Agreement.
 - (ii) All right-of-way monuments and lines shall be established by a registered Land Surveyor under the control of the Design-Builder.
 - (iii) It is recommended that the crew chief be NICET Certified Level III or a registered Land Surveyor.
 - (iv) It is recommended that 50% of the survey crew be NICET Certified Level II.
- (2) All stakes, references, lines, grades, and batter boards which may be required for the construction operations shall be furnished, set, and properly referenced by the Design-Builder in a manner consistent with standard engineering practices and in accordance with the Department's *Construction Manual* or alternate procedures approved by the Department. The Design-Builder shall be solely and completely responsible for the accuracy of the line and grade of all features of the Work. Any errors or apparent discrepancies found in previous surveys, plans, specifications, or special provisions shall be corrected.
- (3) Field notes shall be kept in standard, bound field notebooks or in a Department approved computer file. The data shall be clear, orderly, and neat; consistent with standard engineering practices; and in accordance with the Department's notebook procedures. The Design-Builder shall provide the notebooks, which become the property of the Department upon completion

of the project. The field notebooks shall be subject to inspection by the Department at any time.

- (4) The Design-Builder shall be responsible for the placement and preservation of adequate ties and references to all control points, whether established by him/her or found on the Project, necessary for the accurate reestablishment of all base lines or centerlines shown in the Design Plans. All land ties (i.e., section corners, fractional section corners, etc.) that may be lost or destroyed during construction shall be carefully referenced and replaced by a licensed Nebraska Land Surveyor in accordance with the Department's *Construction Manual*. A copy of the completed survey and references to the corner or accessory shall be filed with the State Surveyor and with the County Surveyor for the county or counties in which the survey corner exists within thirty Calendar Days of the date the activity is completed.
- (5) On road projects, the circuit of bench levels to check the plan benchmarks shall be run the full length of the project. At bridge sites, the circuit shall include four benchmarks; if possible, two on each end of the structure.
- (6) The Design-Builder shall correct any deficient staking which resulted from inaccuracies in the staking operations or from the Design-Builder's failure to report inaccuracies in the Agreement or survey data furnished by the Department.
- (7) Following a written request by the Design-Builder, the Department may approve the start of construction staking operations before the tentative or anticipated beginning date.

SECTION 115 -- ENVIRONMENTAL COMMITMENT COMPLIANCE

115.01 -- Description

1. This Section establishes methodology for evaluation of and payment for the Design-Builder's compliance with Agreement environmental commitments.

115.02 -- Material Requirements

1. Materials required for restoration Work under this Section shall conform to the Material Requirements in the subsections where the restoration Work is described.
2. Division 800 contains the Subsections of the typical Work required and the materials furnished for accomplishing the restoration Work.

115.03 -- Environmental Commitments

1. The provisions titled Environmental Commitments included in the Technical Provisions identify Project specific environmental commitments.
 - a. The Environmental Commitments provisions include information, contractual duties, roles, and responsibilities pertaining to the following, when applicable:
 - (1) U. S. Army Corps of Engineers (USACE) Section 404 Permit.
 - (2) Nebraska Department of Environmental Quality 401 Water Quality Certification.
 - (3) State Title 117 Waters Letter of Opinion (for USACE Non-Jurisdictional wetlands or waters).
 - (4) Floodplain Permit.
 - (5) Historic Preservation Act.
 - (6) Endangered Species Act and Conservation Measures.
 - (7) Nebraska Nongame and Endangered Species Conservation Act.
 - (8) National Environmental Policy Act Compliance.
 - (9) National Pollutant Discharge Elimination System (NPDES) Construction Stormwater Permit.
 - (10) EPA or Nebraska Construction Stormwater General Permits.

- (11) Concrete grooving and grinding discharge permit.
 - (12) Dewatering permit.
 - (13) Municipal Separate Storm Sewer System (MS4) Permit.
 - (14) Migratory Bird Treaty Act.
 - (15) Bald and Golden Eagle Protection Act.
- b. When required by the construction stormwater general permit, the Stormwater Pollution Prevention Plan (SWPPP) provides information, contractual duties, roles, and responsibilities pertaining to compliance with those permit conditions.

115.04 -- Environmental Commitments – Design-Builder Compliance

1. The following items shall be submitted and reviewed with the Department prior to commencing construction. Work shall not begin until the following have been submitted and reviewed. Failure on the part of the Design-Builder to comply with this section will result in delay to the start of the project and may result in a delay.
- a. The Design-Builder shall submit to the Department a plan, documenting pollution prevention strategies necessary for the initial stages of construction. The plan shall contain the following information:
 - (1) Best Management Practices with locations clearly identified necessary for the initial construction operations.
 - (2) Location of camp and plant site(s) within or contiguous to the project.
 - (3) Perimeter control around mixing plants and/or hazardous materials that are located on Department ROW.
 - (4) Locations of hazardous materials including petroleum products.
 - (5) Location and identification of material stockpiles that can be considered a pollutant when mixed with stormwater.
 - (6) Location of borrow and waste sites, including those outside the L.O.C. and contiguous to the project.
 - (7) Location of all stabilized construction exits.
 - (8) Location of concrete wash-out facilities.
 - (9) Location of equipment fueling areas.
 - (10) Location of equipment maintenance and washing areas.
 - (11) Location(s) of equipment storage.
 - (12) Location(s) of portable toilets.
 - (13) If locations for items 2, 5, and 6 are not on state-owned right-of-way, the Design-Builder should outline the site on the plan and note that it is privately owned. The Design-Builder has sole responsibility for complying with construction stormwater permit requirements on these sites.
 - (14) The plan shall identify those activities will be performed by Subcontractors.
 - b. The Design-Builder shall submit to the Department a Spill Prevention and Control Plan.
 - c. The Design-Builder shall submit to the Department a Migratory Bird Treaty Act Compliance Plan as described in Subsection 107.01, Paragraph 4.h.3. of the Standard Specifications for Highway Construction and shall conform to the requirements of the NDOT Avian Protection Plan (APP). <https://dot.nebraska.gov/media/4f1hf1ta/avian-protection-plan.pdf>.
 - d. The Design-Builder shall provide information pertaining to other environmental items as defined elsewhere in the Agreement.

2. The Design-Builder shall designate an Environmental Representative who will be responsible for ensuring Design-Builder Compliance of Agreement Environmental Commitments. The designated Environmental Representative may be an employee of an approved Subcontractor.
 - a. The designated Environmental Representative shall be:
 - (1) Authorized to act as the Design-Builder's agent.
 - (2) Authorized to receive instructions from the Department.
 - (3) Authorized to execute the orders or directions of the Department.
 - (4) Capable of thoroughly understanding Agreement Environmental Commitments.
 - (5) Authorized to negotiate or recommend Corrective Action Resolutions.
 - (6) Familiar with current Project activities and Project schedule.
 - (7) Familiar with erosion and sediment control products and their applications.
 - b. The Design-Builder's Environmental Representative is encouraged to participate in all Environmental Inspections or meetings. Participation is not required unless requested by the Department.
 - c. The Design-Builder shall provide to the Department the designated Environmental Representative's name and contact information prior to the start of the project.
 - d. The Design-Builder's Environmental Representative shall be certified as an NDOT Erosion and Sediment Control Inspector.
3. The Design-Builder shall provide on-site an individual certified as an NDOT Erosion and Sediment Control Installer, or approved equivalent certifications, to direct the installation and/or maintenance Work of erosion and sediment control BMPs. The individual may be an employee of an approved Subcontractor.
4. The Design-Builder shall schedule and conduct the Work in a manner that complies with all environmental commitments in the Agreement.
5. The Design-Builder's Work shall not violate any federal, state, or local environmental quality regulations or laws whether or not they are identified in the Environmental Commitments.
 - a. In accordance with Subsection 105.01 paragraph 3 of the Standard Specifications for Highway Construction, 2017 Edition, the Department may suspend the Work in whole or in part if a violating activity occurs. Work on the Project shall not resume until notified in writing by the Department that the violation or non-compliance has been satisfactorily resolved.
 - b. The Design-Builder shall notify the Department immediately if the Design-Builder becomes aware that a construction activity may violate any federal, state, or local environmental quality regulations or laws.
6. The item, 'Environmental Commitments – Design-Builder Compliance', shall also include, but is not limited to the following activities:
 - a. Providing all documents and submittals, as described in Subsection 115.04.
 - b. Design-Builder attendance when requested during Environmental Inspections, as described in Subsection 115.05.
 - c. The installation of environmental commitment BMPs required by the Agreement for which no direct payment is made.
7. Delays incurred as a result of the Design-Builder's failure to comply with environmental regulations or commitments will not be considered a Relief Event. Any cost resulting from the delay shall be borne by the Design-Builder.

115.05 -- Environmental Inspections

1. NDOT Scheduled Environmental Inspections
 - a. Scheduled Inspections on projects regulated under a construction stormwater general permit will occur as required by the construction stormwater general permit (generally every fourteen Calendar Days), or as determined by the Department. Scheduled Inspections will begin on the first Calendar Day of construction activities that cause land disturbance and will end on the date of Project completion.
 - b. Design-Builder compliance with the Project's environmental commitments shall be evaluated during Scheduled Inspections.
2. NDOT Storm Event Inspection
 - a. Storm Event Inspections on projects regulated by a construction stormwater general permit will occur as required by the permit (generally within twenty-four hours or the next Business Day following a rain event of 0.25 inches of precipitation or greater). Storm Event Inspections may begin on the first Calendar Day construction activities cause land disturbance and end on the date of Project completion.
 - b. Compliance with the construction stormwater general permit commitments will be evaluated during Storm Event Inspections.
3. NDOT Environmental Oversight Inspections will occur routinely during active construction periods and in response to any Notice of Violations or Noncompliance Notices from regulatory agencies.
4. At the discretion of the Department, the Design-Builder's Environmental Representative, or a designee approved by the Department, may be required to participate during an Environmental Inspection or meeting. The Design-Builder will be notified at least twenty-four hours in advance when participation is required. Failure to participate during an Environmental Inspection or meeting as requested by the Department will result in the Design-Builder's forfeiture of the ability to negotiate or recommend Corrective Action Resolutions and may result in the assessment of an "Environmental Disincentive."
5. The Department will maintain a Temporary Erosion Control Plan. This plan documents the locations of Best Management Practices as they are installed or removed from the project.
6. The Department will generate an Environmental Inspection Report detailing the findings and any Corrective Actions associated with an Environmental Inspection. The Department will provide the Design-Builder's Environmental Representative, and others as identified, a copy of the completed inspection report.

115.06 -- Environmental Commitment Enforcement

1. Environmental Corrective Actions
 - a. A Corrective Action is defined as an item of work that must be completed to maintain compliance with the environmental commitments associated with the project. The Design-Builder shall resolve Corrective Actions within seven Calendar Days of a written notification or within the timeframe of a Time Extension authorized by the Department. Corrective Actions may be, but are not limited to:
 - (1) The installation and maintenance erosion and sediment control measures.
 - (2) The inclusion or maintenance of other pollution prevention control BMPs.
 - (3) The removal of sediment from off-site locations.
 - (4) The management of litter, construction debris, or construction chemicals in a manner that prevents them from becoming a pollutant source.

- (5) The need to initiate stabilization practices when construction activities on all or portions of the project have temporarily or permanently ceased for more than fourteen Calendar Days.
 - (6) The removal of sediment from sediment basins, traps, silt fences or other sediment control BMPs when their capacity has been reduced by approximately half.
- b. An Immediate Corrective Action is an item of work that must be completed resulting from a violating activity that the Department determines to be an imminent threat to the environment. Upon written notification of an Immediate Corrective Action, the Design-Builder shall begin work to resolve the Immediate Corrective Action. Immediate Corrective Actions must be resolved within forty-eight hours of written notification or within the timeframe of a Time Extension authorized by the Department. Examples of Immediate Corrective Actions include, but are not limited to:
- (1) Operations causing unauthorized impacts to Threatened and Endangered Species or designated critical habitat.
 - (2) Operations causing unauthorized impacts to other sensitive areas, such as:
 - (i) Protected 4(f) recreational facilities, such as publicly owned parks, recreation areas, wildlife and waterfowl refuges, and publicly and privately owned historic sites.
 - (ii) Wetlands and Waters of the US.
 - (iii) Operations causing sediment discharges to wetlands waterbodies or other sensitive areas.
 - (iv) Unauthorized channel crossings and/or wetland fill.
 - (v) A spill or release of hazardous materials as described in Section 116 Hazardous Materials Management.
 - (vi) Failure to comply with the requirements of Subsection 107.01, Paragraph 4h. Migratory Birds.
 - (vii) The discovery of cultural or archeological artifacts.
 - (viii) Operations that do not meet the commitments for access accommodations in the contract.
- c. In the event that soil, weather, or other site conditions are such that BMPs cannot be installed or repaired within the required timeframe, the Department may approve a Corrective Action Time Extension to complete some or all of the Corrective Actions detailed on the Inspection Report. Approval of a Corrective Action Time Extension shall be at the sole discretion of the Department.
- d. Corrective Action Resolution is defined as when the Design-Builder has completed the item(s) of work to the satisfaction of the Department. The Design-Builder shall provide appropriate equipment and personnel to resolve all Corrective Actions within the approved time.
2. Environmental Deficiency is defined as when Corrective Action Resolution has not been achieved within the approved time. The Department shall notify the Design-Builder in writing when an Environmental Deficiency occurs. Failure to resolve corrective actions by the assigned due date may result in Environmental Disincentives. The Department has the right but not the duty to apply an Environmental Disincentive, withhold progress payments, and/or temporarily suspend Work in accordance with the Agreement.
 3. The Environmental Disincentive shall be \$1,000 per Calendar Day per Environmental Inspection Report containing unresolved Corrective Actions.
 4. Erosion Control Mobilization applies to contracts with a Construction Stormwater General Permit. Erosion Control Mobilization will be paid when the Design-Builder resolves all Corrective Actions originating from a Storm Event Inspection Report within the approved timeframe. Failure to reach Corrective Action Resolution within the approved time will result in forfeiture of the Erosion Control Mobilization.

5. Rights Reserved

- a. The Department has the right, but not the duty, to initiate and perform the Work necessary to resolve any deficiencies that are a result of the Design-Builder's failure to comply with any environmental commitment, whether through the Design-Builder's action or inaction.
- b. The Design-Builder shall be liable to the Department for all costs incurred by the Department for the resolution of project deficiencies performed by the Department.
- c. It is expressly understood that the provisions of this specification shall not relieve the Design-Builder of their responsibilities under this contract, nor shall it relieve the Surety of its obligation for and concerning any just claim.
- d. The Design-Builder shall indemnify and save harmless the Department and all of its representatives from any and all actions or claims brought because of the Design-Builder's failure to comply with any environmental commitment, whether through the Design-Builder's action or inaction.

SECTION 116 -- HAZARDOUS MATERIALS MANAGEMENT

116.01 -- Description

1. This Work shall consist of minimizing the exposure of the environment, including Waters of the State as defined by Title 126, Chapter 1 from the Nebraska Department of Environment and Energy (NDEE), to hazardous materials. This specification also includes the requirements for clean-up of releases (spills) of hazardous materials.
2. The Department defines hazardous materials as a broad category of materials that, because of their quantity, concentration, physical or chemical characteristics, pose a potential hazard to human health and safety or to the environment if released into the environment. Hazardous materials include, but are not limited to, materials that are regulated as solid waste, hazardous waste, and other wastes contaminated with hazardous substances, radioactive materials, petroleum products, toxic substances, and other pollutants. 116.02 -- Submittal and Material Requirements No Work shall be allowed to begin on the project until the Design-Builder has prepared and submitted a Spill Prevention and Control Plan (SPCP) to the Department. The SPCP shall clearly state the measures to prevent a spill, contain a spill, clean up a spill, and dispose of contaminated materials. The SPCP shall include:
 - a. A site plan showing intended locations for loading of equipment and materials, storage of equipment and materials, equipment fueling and wash areas, portable toilet locations and waste disposal areas.
 - (1) Site Plan and Temporary Erosion Control Plan information may be combined.
 - (2) For items on the project that are considered mobile, documentation on the site plan may be labeled as "mobile".
 - b. Descriptions of the following:
 - (1) Best Management Practices (BMPs) for secondary containment for hazardous materials stored on site.
 - (2) Spill response equipment and materials, including safety and clean up equipment.
 - (3) Preventative inspection and maintenance techniques to minimize equipment leaks.
 - (4) Procedures for filling tanks and equipment to prevent spills.
 - (5) Procedures for containing, diverting, isolating and cleaning up a spill.
 - (6) Procedures and BMPs to ensure that runoff of hazardous materials does not occur at bridge sites, culvert sites, or when working within the boundaries of wetlands as shown in the Agreement or identified during construction.

- (i) Immediate containment and remediation of spills are required when water is present.
 - (ii) The Design-Builder shall notify the NDOT Project Manager and Department of Environment and Energy (NDEE) upon release of any quantity of hazardous materials to wetlands and waters of the state. The NDOT Project Manager will notify the NDOT Environmental Section upon notification of a release.
- (7) Spill training agenda and materials for the Design-Builder's staff and subcontractors.
- c. Identify individual(s) responsible for implementing the plan.
 - d. Specify procedures for how and when to notify the Department and appropriate authorities such as NDEE and Nebraska State Patrol in the event of a spill of a reportable quantity.
 - e. A detailed plan to train personnel as follows:
 - (1) All on-site employees will be trained:
 - (i) to prevent spills of hazardous or regulated materials.
 - (ii) to recognize spills of hazardous or regulated materials.
 - (iii) to report such spills to the appropriate response personnel.
 - (2) The response personnel will be trained:
 - (i) to perform all of the above listed in Subsection 116.02 e.i. and,
 - (ii) to control/contain spills.
 - (iii) to clean up of spills.
 - (iv) to notify NDEE or Nebraska State Patrol when appropriate (reportable quantities).
 - (v) to properly dispose of contaminated materials.
 - f. The plan shall include the notification contacts, as well as the processes and timeframes to address the situation in the event that a spill occurs.
3. Safety Data Sheets (SDS) shall be maintained on site for all hazardous materials being used or stored for the project, including those used and documented separately by subcontractors.
4. The Design-Builder shall provide and maintain a spill kit with appropriate materials to clean up minor spills on site as described in the SPCP. A minor spill is a release that is less than 25 gallons, or a lesser amount as defined by NDEE Title 126 and will not be considered as a reportable quantity and not entering a Waters of the State.

116.03 -- Construction Methods

- 1. The Design-Builder shall store petroleum products with containers of 55 gallons or larger in areas with secondary containment. Paints, solvents, pesticides, and other hazardous materials shall be stored in a dry, weather protected area off the ground. In no case shall paints, solvents, pesticides, petroleum products, and other hazardous materials be stored in restricted areas
- 2. The Design-Builder shall perform washout of concrete mixers, delivery trucks, and other delivery systems in conformance with Section 824.
- 3. Hazardous materials storage, including portable toilets, shall be restricted to specific areas away from:
 - a. vehicular traffic, no less than a distance equal to the lateral/fixed clear distance, as shown in the plans.
 - b. sensitive areas or restricted use areas as shown on the plans.
 - c. waters of the state, including wetlands (50 feet minimum distance).
 - d. Wellhead Protection Areas, unless designated in a Wellhead Protection Plan that has been approved by the local authority.

4. The Design-Builder shall inspect hazardous material containers bi-weekly to ensure that all containers are clearly identified and that no leaks are present. The inspections must document any leaks observed and corrective actions taken.
5. The Design-Builder shall inspect all equipment for leaks bi-weekly. The Design-Builder shall fix any leaks and clean up any spilled fluids as soon as possible prior to the next use. In the event that the leaking equipment repair is delayed, the Design-Builder shall install secondary containment until the repair and subsequent clean-up operations have been made.
6. The Design-Builder shall ensure that cleanup procedures are posted in a location that is accessible.
7. The Design-Builder shall verify and update the SPCP site maps as necessary during inspections to accommodate changes in the site.
8. A spill kit shall be readily available, in close proximity and adequately stocked when applying petroleum based or other hazardous materials to bridge and culvert sites.
9. The Design-Builder shall implement and maintain a training program regarding hazardous materials management. Training of the Design-Builder's staff and subcontractors shall be conducted to ensure that workers are knowledgeable of the procedures, materials and equipment outlined in the SPCP.
 - a. Specific hazardous materials and their handling procedures shall be discussed during safety briefings.
10. The Design-Builder shall maintain and provide to the Project Manager, upon request, a record of spills occurring on site, as defined by Subsection 116.02, Paragraph 1(d). This record shall include:
 - a. The circumstances leading to the spill.
 - b. The date of the release.
 - c. Measures taken to clean up the spill.
 - d. Measures taken to prevent a reoccurrence.
 - e. Measures taken to dispose of contaminated materials.
11. The Design-Builder shall follow NDEE notification procedures for all spills in excess of a reportable quantity as defined by NDEE Title 126.
12. The Design-Builder shall follow all local, state and federal regulations associated with the release and/or cleanup of a hazardous material, including disposal of the hazardous material.