

EXHIBIT C

NEBRASKA DEPARTMENT OF TRANSPORTATION

**CONSTRUCTION MANAGER / GENERAL CONTRACTOR
(CM/GC)**

Division 100 General Requirements and Covenants

FOR THE

Red Cloud South Bridge Project

Project Number: STP-281-1(116)

Control Number: 42717

ISSUED:

October 17, 2025 – DRAFT

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SECTION 101 -- GENERAL INFORMATION, DEFINITIONS, AND TERMS

101.01 -- Abbreviations and Definitions

1. Whenever in the Specifications for or the Contract, the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows.

101.02 -- Abbreviations

1. Whenever the following abbreviations and acronyms are used in the Specifications or in the Contract, they are to be construed the same as the respective expressions represented:

AAN	American Association of Nurserymen.
AASHTO	American Association of State Highway and Transportation Officials.
ACI	American Concrete Institute.
AISC	American Institute of Steel Construction.
ANSI	American National Standards Institute.
ASTM	American Society for Testing and Materials.
ATSSA	American Traffic Safety Services Association.
AWG	American Wire Gage.
AWPA	American Wood Preservers Association.
AWS	American Welding Society.
CFR	Code of Federal Regulations.
DBE	Disadvantaged Business Enterprises.
EBS	Electronic Bidding System.
EEO	Equal Employment Opportunity.
FAA	Federal Aviation Administration.
FHWA	Federal Highway Administration.
HCSS	Heavy Construction Systems Specialist
IMSA	International Municipal Signal Association.
ICEA	Insulated Cable Engineers Association.
ITE	Institute of Transportation Engineers.
MOT	Maintenance of Traffic
MUTCD	Manual on Uniform Traffic Control Devices.
NDOR/NDR/NDOT	Nebraska Department of Transportation.
NEC	National Electrical Code.
NEMA	National Electrical Manufacturers Association.
NPDES	National Pollution Discharge Elimination System.
OJT	On the Job Training
OPCC	Opinion of Probable Construction Costs
RFI	Request for Information
ROW	Right-of-Way.
SAE	Society of Automotive Engineers.
SSPC	Steel Structures Painting Council.
SWPPP	Storm Water Pollution Prevention Plan
UL	Underwriters Laboratories.
USACE	United States Army Corps of Engineers.
WBS	Work Breakdown Structure

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
yd ² or SY	Square Yards

Section 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.
Applicable Standards	The standards included in <u>Exhibit A (Form of Preconstruction Service Amendment)</u> , and those additional standards included in the Construction Services Amendment or Specifications
Approve or Approval	The meaning set forth in the <u>CM/GC Master Contract Section 3.1 (Approval)</u>
Arterial Highway	A highway primarily for through traffic, usually on a continuous route.
Authorized Representative	The Person identified in the Contract who is authorized to investigate and report of matters related to the Contract for either Party.
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.
Baseline Design	The meaning set forth in the Preconstruction Phase described in <u>Exhibit A, Attachment 1 Section (K) (Preconstruction Services Amendment –Pricing Milestones)</u> .
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 twenty 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.
Business Day(s)	Any day excluding Saturday, Sunday, and Federal and State Holidays.
Calendar Day	Every day shown on the calendar, including Saturdays, Sundays and holidays, beginning and ending at midnight, except a Calendar Day does not include a day when work cannot be performed because of natural phenomena of such magnitude that they result in the Governor issuing a Disaster Declaration.

Certificate of Final Acceptance	The certificate from the Contractor to the Department attesting that all the conditions of Final Acceptance in <u>Specification Section 105.14 (Final Acceptance of Portions of the Project)</u> have been met.
Certificate of Substantial Completion	The certificate from the Contractor to the Department attesting that all the conditions of Substantial Completion in <u>Specification Section 105.13 (Substantial Completion of Portions of the Project)</u> have been met.
Change of Control	Any assignment, sale, financing, grant of security interest, transfer of interest, or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Contractor or a material aspect of its business. A change in the power to direct, control, or cause the direction or control of the management of any member, partner, or shareholder of the Contractor may constitute a Change of Control of the Contractor if such member possesses the power to direct or control or cause the direction or control of the management of the Contractor.
Change Order	A written amendment to certain terms and conditions of the Contract issued in accordance with the <u>Specifications Section 108.04 (Change Orders)</u> .
Channel	A natural or artificial waterway.
Claim	A request by the Contractor for a time extension disputed by the Department, or payment of money or damages arising from Work done by or on behalf of the Contractor in connection with the Contract that is disputed by the Department. A Claim will cease to be a Claim upon resolution thereof, including resolution by execution and delivery by the Parties of a Change Order, a Preconstruction Services Amendment, or Construction Services Amendment.
CM/GC – Construction Manager/General Contractor	A two-phase project delivery method wherein the Department procures a contractor based on a qualifications-based selection process. The Contractor acts as the consultant during the design process to offer constructability, pricing, and schedule feedback on design options and can identify risks based on the Contractor's established means and methods. If the Department agrees that the Contractor has submitted an acceptable price, the Department issues one or more Construction Services Amendment(s).
CM/GC Master Contract	The meaning set forth in the <u>CM/GC Master Agreement</u> recitals.
Commission	The Nebraska State Highway Commission.
Completion Deadline	The deadline for completion of milestones, if any, identified in the Construction Services Amendment.
Confidential Information	Any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §407.
Constituent	With respect to any entity or group of entities, any or all of its members, managers, officers, directors, share/stockholders, commissioners and officeholders (public Persons only), partners, employees, agents, representatives, consultants, attorneys, contractors, successors, and permitted assigns
Construction Documents	Any and all documents related to the Construction Services including but not limited to Shop Drawings and Inspections Reports.
Construction Markup	The markup applied to certain portions of the Construction Services that accounts for the Contractors indirect costs and profit.

Construction Phase	The Project phase beginning and ending as set forth in the Construction Services Amendment during which all Construction Services will be completed.
Construction Schedule	The Critical Path Method schedule incorporating activities for Construction Services for each Construction Services Amendment. Each Construction Services Amendment has an independent Construction Schedule.
Construction Services	All Work necessary to construct the Project during the Construction Services Phase.
Construction Services Amendment	An amendment to the CM/GC Master Contract that establishes the commencement of the Construction Phase and satisfying the requirements set forth in <u>CM/GC Master Agreement Section 2.2.1 (Construction Phase Amendment)</u> .
Construction Services Amendment Guaranteed Maximum Price (GMP)	The maximum amount payable to the Contactor identified in a Construction Services Amendment.
Contract	The CM/GC Master Contract, Preconstruction Services Amendment, Construction Services Amendment, Specifications, Change Orders, and all exhibits, amendments, attachments to those documents whether existing initially or created during the progression of the Project.
Contract Bond	The approved security described in the Contract that the Contractor and the Contractor's Surety executes guaranteeing the completion of the Project.
Contractor	The Person who has agreed to perform the services of a Construction Manager/General Contractor.
Contractor Project Manager	The Contractor's point of contact for all Project-related communications.
Contractor Risk Contingency	A fixed sum for a specific line item of Work that may be included as a contingency amount in a Construction Services Amendment GMP upon agreement by the Contractor and the Department. Contractor Risk Contingency Sums may be used at the Department's discretion to allow the Contractor to utilize contingency sums for Pricing Packages. Where agreed as reflected in the Risk Register, Contractor Risk Contingency Sum may include a designation of unit pricing and the estimated number of units making up the Contractor Risk Contingency Sums.
Contractor Risks	A risk identified as a Contractor Risk on the Risk Register described in <u>CM/GC Master Agreement Section 2.3.3 (Contractor Risks)</u> .
Contractor-Related Entity	The Contractor, each Key Personnel Firm, Subcontractors, and each of their respective employees, agents and officers, and all other Persons for whom Contractor may be legally or contractually responsible.
Control of Access	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.
Coordinating Professional	A licensed professional engineer, architect, or landscape architect recognized as such by the Department. A Coordinating Professional is required when more than one licensed professional is involved with a project, such as two professional engineers, one professional engineer and one architect, two architects, and so on. The Coordinating Professional may, but need not, provide architectural or engineering services on the project.
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.

Critical Path	The sequence of a Construction Schedule's activities that determine the total minimum duration of the Construction Work for a Construction Services Amendment; the precedence of which activities have a total Float of less than or equal to zero. Generally, the Critical Path is the sequence of a Construction Schedule's activities that must be completed on schedule for a Construction Services Amendment to be completed on time in accordance with applicable Completion Deadlines. This is the longest duration path (or chain), in terms of time, of logically connected Construction Work activities in the Construction Schedule, updated in accordance with the Contract and, where relevant to time impact analyses, with a data date based upon Construction Work completed, corrected for any improper logic, improper activity durations, and errors.
Culvert	Any structure not classified as a bridge which provides an opening under any roadway.
Current Controlling Operation	The operation that must be performed on the current day to prevent delay in the final completion of the Work.
Department	The State of Nebraska, Department of Transportation
Department Project Manager	The Department employee duly authorized to bind the Department in Contract matters.
Department Risk	A risk identified as a Department Risk as described in <u>CM/GC Master Contract Section 2.3.1</u> (<i>Department Risk</i>)
Department Risk Contingency	The sum of all Department Risks identified in the Risk Register.
Department-Related Entity	The Department and all other Persons for whom the Department may be legally or contractually responsible (including specifically the Engineer of Records), and each of their Constituents; provided, however, that the Contractor, when acting under or relating to the Work, shall not be considered (a) "Department-Related Entity/ies"
Pricing Milestone	The meaning set forth in <u>Exhibit A, Attachment 1 Section M</u> (<i>Preconstruction Services Amendment - Design Milestones</i>)
Design Plans	Collectively, the drawings, specifications, studies, designs, "architectural work" (as such term is defined in the Architectural Works Copyright Protection Act of 1990), reports, calculations, and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract, including electronic files thereof.
Designer	The Person performing the design services for the Project.
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.

Differing Site Conditions	Subsurface or latent conditions encountered at the Site identified in the work product resulting from Preconstruction Services that differ materially from the information provided in the work product resulting from the Preconstruction Services for such locations; or physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of Work provided for work product resulting from the Preconstruction Services. The term shall specifically exclude the following: 1. all such conditions of which the Contractor had, or should have had, actual or constructive knowledge as of the effective date of the Construction Services Amendment; 2. conditions that could have been discovered by reasonable investigation prior to the effective date of the Construction Services Amendment; 3. Utility facilities and all conditions arising out of, relating to, or resulting from Utility Work; 4. non-contaminated water; 5. variations in soil moisture content or groundwater levels from that indicated in the work product resulting from the Preconstruction Services; 6. hazardous substances; 7. any other such site conditions that would otherwise qualify for other relief expressly stated, under the terms, and subject to the conditions, of the Contract.
Disadvantaged Business Enterprise (DBE)	A Disadvantaged Business Enterprise (DBE) is a for-profit small business concern: 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 b. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
Dispute Resolution	A procedure that addresses how Claims are resolved.
Divided Highway	A highway with separated roadways for traffic to travel in opposite directions.
Drug-Free Workplace Policy	A requirement that the Contractor have and maintain that prohibits the Contractor's employees from using or consuming illegal drugs or alcohol during the Work.
Duration of the Agreement	The time period described in a Preconstruction Services Amendment for which the Amendment is valid.
Earthwork Measured in Embankment	The calculated compacted volume of the embankment shown in the contract, where balance factors do not apply.
Easement (Right-of-Way)	A right acquired by public authority to use or control property for a designated highway purpose.
Effective Date	Depending on the context, the date where a Contract document first becomes effective.
Embankment	A raised soil structure.
Engineer of Record	The registered, licensed professional engineer employed by the Designer who is responsible for the design of the Project, ensuring adherence to codes and regulations, and who signs and seals the Design Plans.
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.
Expiration Date	The date in a Preconstruction Services Amendment upon which the Amendment will cease.

Expressway	A divided arterial highway for through traffic with full or partial control of access and which may have grade separations at intersections.
Extra Work	An item of Work and/or provisions for materials not included in the original Contract.
Federal Agencies and Officers	Agencies, officers, and their successors of the United States Government.
Federal Requirements	All Laws applicable to Work financed with federal funds and the provisions required to be included in FHWA-assisted contracts.
Fee Proposal	The document that identifies the Contractor's personnel, Specific Rates of Compensation, and eligible Direct Expenses for the Preconstruction Services.
FHWA	The Federal Highway Administration
Final Acceptance	Final Acceptance is the date a final payment document is drawn by the Department.
Final Design	The portion of the Preconstruction Phase described in <u>Exhibit A, Attachment 1 Section (M)(3) (Preconstruction Services Amendment – Final Design Milestone and Review)</u>
Float	The amount of time that any given activity or logically connected sequence of activities shown on a Construction Schedule may be delayed before it will affect completion of any Work as required to achieve any applicable Completion Deadline. "Float" generally means the calculated difference between early completion times and late completion times for activities shown on a Construction Schedule, including any float contained within an activity.
Foreslope	The surface sloping downward and away from shoulder line.
Freeway	An expressway with full control of access.
Frontage Street or Frontage Road	A local street or road adjacent to a highway for service to abutting property.
GMP or Guaranteed Maximum Price	The maximum amount of compensation due for a Construction Services Amendment or the sum of all Construction Services Amendment GMPs (Total Construction GMP).
GMP Workbook	A record documenting the components of the Construction Services GMP, including the agreed to cost of the Work under the Construction Services Amendment, the Construction Markup Fee, payment deductions for Nonconforming Work, and the Department Risk Contingency.
Good Industry Practice	The exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced construction manager, surveyor, constructor, supplier, or other contractor that (a) is engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic areas as the Project, and (b) seeks in good faith to comply with its contractual obligations, in conformance with (i) all professional construction practices generally accepted as standards of the industry in the State of Nebraska, and (ii) applicable Law and Governmental Approvals.
Government Entity	Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Entity in order to design and construct the Project.
Grade Separation	A crossing of two highways at different elevations.
Hazardous Materials	Any substances regulated under applicable Laws, including petroleum, asbestos, and lead-containing materials.

Highway	A road or street, including the entire area within the right-of-way, which has been designated a part of the State Highway System.
Hold Point	A point in time when construction activities are temporarily stopped to confirm that the prerequisites for continuing Work are met. Construction inspection Hold Points occur as requested by the Department and when Work cannot be inspected later due to it being covered.
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.
Indemnified Parties	The meaning set forth in <u>Specification Section 107.22 (Indemnification)</u> .
Independent Cost Estimator (ICE)	The Person identified by the Department to perform independent cost estimation services for the Department.
Initial Risk Workshop	The meaning set forth in <u>Exhibit A, Attachment 1 Section (E)(6) Preconstruction Services Amendment – Initial Risk Workshop</u> .
Innovations	Proposed concepts that revise or refine the Project design, specifications, or requirements in an attempt to provide improved solutions that address cost, schedule, or risk concerns.
Inspector	The Department's authorized representative assigned to make detailed inspections of the Work performed and materials furnished by the Contractor.
Intellectual Property	All current and future legal and/or equitable rights and interests in know-how (including trade secrets and confidential business information that have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, plant varieties, database rights, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, other proprietary information, all analogous rights in other jurisdictions and applications (drafted or pending) of or for any of the foregoing, subsisting in or relating to the Work, the Project, Project design data or other Project data (including testing data, traffic data and Project Data).
Intermediate Design	The portion of the Preconstruction Phase described in <u>Exhibit A, Attachment 1 Section (M)(2)</u> . (<i>Preconstruction Services Amendment – Intermediate Design Milestone and Review</i>)
Key Personnel	The individuals presented by the Contractor to meet the qualification requirements for selection identified in the Staffing Plan.
Laboratory	The testing laboratory of the Department or any other testing laboratory which may be designated by the Department.
Law	All applicable federal, state, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Laws" includes all consolidations, amendments, extension, or replacements, unless otherwise indicated. The term "Laws" does not include Governmental Approvals.
Liquidated Damages	The charges described in <u>Specification Section 108.10 (Liquidated Damages)</u> .

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.
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 the 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 Workday	"NDOT Workday" is any weekday (Monday thru Friday) excluding holidays when the Department is open for normal (not emergency) business.
Notice of Final Acceptance	A letter from the Department to the Contractor indicating that Final Acceptance has been achieved and final payment has been made to the Contractor.
Notice of Substantial Completion	A letter issued by the Department notifying the Contractor that all the conditions for Substantial Completion pursuant to <u>Specification Section 105.13 (Substantial Completion of Portions of the Project)</u> have been met.
Notice of Tentative Final Acceptance	A letter issued by the Department notifying the Contractor that all the conditions for Final Acceptance pursuant to <u>Specification Section 105.14 (Final Acceptance of Portions of the Project)</u> have been met.
Notice of Termination	The meaning set forth in <u>CM/GC Master Contract, Section 11 (Termination)</u> .
Open Book Basis	Allowing the Department to review all underlying assumptions, information, documents, and data associated with the issue in question, including assumptions as to costs of the Work, delay costs, changes in cost, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, quotes, estimates, proposals, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, gross commercial revenues, insurance rates, insurance proceeds, credits and refunds, letter of credit fees, overhead, profit, and other items reasonably required by the Department to satisfy itself as to the reasonableness and accuracy of any amount.
Opinion of Probable Construction Cost	An estimate of the Project's Total Construction GMP or a specific Construction Services Amendment's GMP at the Baseline, Intermediate, and Final Pricing Milestones using the principles described in <u>Exhibit A Attachment 1 Section H (Preconstruction Services Amendment – Cost Estimating)</u>
Parties	The Department and the Contractor, as the context may require.
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.
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Entity, including the Department.
Point of Delivery	A place, determined by the Contract or the Department, 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.
Punch List	Minor incidental items of Work necessary to correct imperfections that have no adverse affect on the safety or operability of the Project and will not require lane closures.

Preconstruction Compensation Cap	The maximum amount payable to the Contractor for Preconstruction Services.
Preconstruction Multiplier	The amount applied to the Contractor's certified payroll rates to determine the Specific Rate of Compensation for Preconstruction Services.
Preconstruction Phase	The Project phase beginning and ending as set forth in <u>CM/GC Master Agreement Section 2.1 (Preconstruction Phase)</u> during which Preconstruction Services will be performed.
Preconstruction Services	All Work necessary in connection with the preparation and finalization of the Construction Services Amendment, including any such Work described in the Preconstruction Services Amendment.
Preconstruction Services Amendment	Refers to the amendment described in <u>CM/GC Master Agreement Section 2.1 (Preconstruction Phase)</u> or an amendment to such Contract document affording additional or modified Preconstruction Services, extending duration of the Preconstruction Phase, or increasing Preconstruction Compensation Cap.
Preconstruction Services Schedule	The schedule for Preconstruction Services described in <u>Exhibit A Attachment 1 Section I (Preconstruction Services Amendment – Schedule Development)</u>
Prequalified	Requirements set forth by the Department regarding the amount of Work that can be performed by the Contractor based on their financial status and experience of personnel.
Privileged Document	The meaning set for in <u>Exhibit A Section 12.1 (Use and/or Release of Privileged or Confidential Information)</u>
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 [Project Name] identified in the CM/GC Master Agreement and further described in the Contract.
Project Phase	Either the Preconstruction Phase or Construction Phase, depending on the context.
Project Scoping Workshop	The meaning set forth in <u>Exhibit A, Attachment 1 Section B (Preconstruction Services Amendment – Introduction)</u>
Proprietary Intellectual Property	Intellectual Property created, used, applied, or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent or copyright Laws.
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.
Relief Event Notice	The meaning described in <u>Specification Section 108.03 (Relief and Compensation)</u> .
Request for Change Order	The meaning described in <u>Specification Section 108.03 (Relief and Compensation)</u> .
Request for Information	The meaning described in <u>Specification Section 108.03 (Relief and Compensation)</u> .
Request for Monthly Progress Payment	The process described in <u>Exhibit B Section 5.2 (Progress, Payment, and Invoicing)</u> that describes the requirements for the Contractor to be compensated for Construction Services.
Right-of-Way (ROW)	Land, property, or interest (including easements) held by Department.
Risk Register	The meaning set forth in the <u>CM/GC Master Contract Section 2.3 (Risk Register)</u> .
Risk Register Event	The meaning set forth in the <u>CM/GC Master Contract Section 2.3 (Risk Register)</u> .

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, including shoulders, for vehicular use. A divided highway has two or more roadways.
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.
Schedule of Values	A detailed schedule apportioning a Construction Services Amendment GMP among activities associated with the Work of the applicable Construction Services Amendment and any Risk Register Event (in the latter case, as may be allocable).
Services	Depending on the context, either Preconstruction Services or Construction Services, or both.
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.
Site	The parcels of ROW upon which the Project is to be constructed and installed as well as all other areas in the vicinity used by the Contractor for Construction Services.
Soil	Those materials listed in the Bureau of Reclamation and Corps of Engineers Unified Soil Classification System.
Special Provisions	Additional requirements not contained in the Specifications that are applicable to Construction Services.
Specifications	The Nebraska Department of Transportation Specifications for Highway Construction, as identified in 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.
Staffing Plan	A document that identifies the Key Personnel and employees of the Contractor that will be providing Preconstruction Services.
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. The distance between full stations is 100 feet. 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.

Subcontract	Any subcontract to perform any part of the Work or provide any materials, equipment, or supplies for any part of the Work between the Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier, including in each case as such subcontract may be amended or supplemented.
Subcontractor(s)	Any Person with whom the Contractor has entered into any Subcontract, and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Subgrade	The upper portion of the roadbed, upon which the pavement structure and shoulders are constructed. Usually, the subgrade depth is 6-inches.
Submittal	Any document, concurrence, approval, review, or other item required to be submitted to the Department pursuant to the Contract.
Substantial Completion	The occurrence of all of the events and satisfaction of all of the conditions set forth in <u>Specification Section 105.13</u> (<i>Substantial Completion of Portions of the Project</i>) as and when confirmed by the Department's issuance of a Notice of Substantial Completion.
Substructure	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. 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 Agreements	Written agreements executed by the Contractor and the Department or other contracting agency, subsequent to having entered into the contract, covering alterations in the Contract or unforeseen items of construction.
Supplemental Specifications	Specifications adopted subsequent to the current edition of the Specifications. Supplemental Specifications shall prevail over those published in the Specifications whenever in conflict therewith.
Supplier	Any Person other than employees of the Contractor not performing Work at the Site that supplies machinery, equipment, materials, or systems to the Contractor or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	An individual, partnership, corporation, or other legal entity (not the Contractor), licensed in the State of Nebraska, executing a Contract Bond provided by the Contractor.
Tentative Final Acceptance	The Project milestone achieved upon completion of requirements for Final Acceptance as defined in <u>Specification Section 105.14</u> (<i>Final Acceptance of Portions of the Project</i>)
Term	The meaning set forth in the <u>CM/GC Master Contract Section 1.2</u> (<i>Term</i>).
Total Construction GMP	The total amount of all Construction Services Amendment GMPs.
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.

Utility	A privately, publicly, or cooperatively owned line, facility and/or system for producing, transmitting, or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other products that directly or indirectly serve the public. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any service line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.
Utility Owners	The owner or operator of any Utility.
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	Depending upon the placement and context of its use, Work shall mean one or more of the Preconstruction Services, Construction Services, or all or any combination of the foregoing. In general, Work shall include, in totality and in each of the Preconstruction Phase, and Construction Phase, as applicable, all duties, services, and items to be furnished and provided by Contractor as required by the Contract. In certain cases the term is also used to mean the products of the Work.
Work Breakdown Structure (WBS)	A hierarchical structure that breaks down the total project scope of the Construction Services Work into levels of increasingly detailed scope activities, with distinct identification and characteristics, and with clearly identifiable linkage between the WBS and activities shown on the Construction Schedule. The WBS numbering convention shall be compatible with Construction Schedule coding.
Work Order	A written order directing the performance of Work or furnishing of materials not included in the original contract.
Working Day	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. 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. 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.
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 Department.

SECTION 102 -- RESERVED

SECTION 103 -- RESERVED

SECTION 104 -- SCOPE OF WORK

104.01 -- Intent of Contract

1. The Contractor shall furnish all labor, materials, equipment, and other resources required to complete the Work.

104.02 -- RESERVED

104.03 -- RESERVED

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

1. The Contractor shall at all times, to the extent practicable, provide private dwellings, commercial properties, businesses, and public facilities access to and from the nearest intersecting public road or street. Accommodations shall be made to ensure local traffic which has its origin or destination within the limits of the project has access to all private dwellings, commercial properties, businesses, and public facilities. Shooflies or temporary, accesses constructed for public use shown in the Contract or as directed by the Department shall be maintained by the Contractor.
2.
 - a. The Contractor shall not close any road without the permission of the Department.
 - b. It is understood that although a road is closed, limited access must be maintained for authorized local traffic.
3. When the Contract requires a "DETOUR", it will be routed, marked, and maintained by the Department, county, or city.
4.
 - a. When the Contract requires the Contractor to build "shooflies" or "temporary accesses", the Contractor shall be responsible for their maintenance.
 - b. The "Equipment Rental" payments as described in Specification Section 919 for maintenance of shooflies and temporary accesses shall be included in the GMP Workbook. The Contractor shall also include all materials used in the maintenance of shooflies and temporary accesses in the GMP Workbook.
 - c. The Contractor shall maintain all shoofly or access roadways to the as built condition as shown in the Contract throughout its use.
 - d. If the Contractor fails to perform required shoofly and temporary access maintenance and it becomes necessary for the Department to perform the maintenance, the cost of labor, equipment, and material required to perform the maintenance (calculated in accordance with the methods described in Specification Section 109.05 (Force Account)) will be deducted from money due the Contractor.

104.05 -- Removal and Disposal of Unforeseen Structures and Obstructions

1.
 - a. The Contractor shall remove any obstructions or structures that conflict with the Work.

- b. Unless expressly required otherwise in the Contract, structures shall not be removed until replacement structures are operational.

104.06 -- Rights In and Use of Materials

1.
 - a. The Department may authorize the use of soils found in the excavation that are suitable for completing other elements of the Work. The Contractor will be paid for both the removal of the soils according to the GMP Workbook and for the elements of Work for which the removed soils are used. No charge for the soils used will be made against the Contractor.
 - b. If the Contractor 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 Contractor shall not excavate or remove any soils from within the Right-of-Way limits that are not within the excavation limits established in the field.
2. 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 Contractor shall remove all rubbish or litter that the Contractor generated, 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 Contract.
2. Final cleanup by the Contractor shall be at no additional cost to the Department.

104.08 -- Removal of Hazardous Materials and Contaminated Soil

1. Should the Contractor encounter Hazardous Materials or Contaminated Soils, the Department shall be immediately notified. The Contractor shall immediately suspend operations in the area involved until such time that the Department provides the Contractor with direction and permission to proceed.
2. The Contractor 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. The quality and acceptability of materials furnished.
 - b. The Work performed.
 - c. The manner of performance and progress of the Work.
 - d. Interpretation of the Contract.
 - e. Fulfillment of the Contract by the Contractor.
 - f. Compensation.

- g. Disputes pertaining to mutual rights between Contractors.
- h. Request for Information after Project award for requests that do not already have a defined process.
 - (1) A Request for Information (RFI) shall be submitted in writing to the Department Project Manager, after the Department Project Manager and Contractor coordinate the request and have conducted a review of the Contract for the information requested, if:
 - (i) Ambiguity, inconsistency, or discrepancy in the Contract is discovered or clarification is needed on an aspect of the Contract. (Clarification)
 - (ii) It appears that there is information missing from the Contract. (Missing Information)
 - (iii) Repairs or correction of the Work is required. (Construction Deficiency/Repair Procedure)
 - (iv) The Contract indicates information will be provided at a later time and Project status requires such information be provided. (Project Supplied Information)
 - (v) A substitution for a material is being requested. Requests should detail why a material change is being requested. (Material Substitution)
 - (vi) Change to the Contract requirements for a reason not described above. (Other)
 - (2) The RFI shall be submitted by the Contractor using the Department's RFI form or an equivalent PDF form including:
 - (i) A unique, sequential number per project starting with RFI# 1.
 - (ii) A requested reasonable response time in relation to the scope of the RFI.
 - (iii) Project information, detailed description of the issue or question, and relevant supporting documents or drawings.
 - (iv) Document naming convention with the following format: Control Number_RFI#Number_Brief Description_Date.pdf
For example: 12345_RFI#1_Girder Camber_10Sep2023
 - (v) RFIs will only be accepted from the Contractor.
 - (3) The Department Project Manager will acknowledge receipt of the RFI and forward on to the ndot.shopdrawing@nebraska.gov mailbox.
 - (4) The Department will make every effort to respond to the RFI within a reasonable time. If insufficient information was provided on the RFI form to give an adequate response, the Department may ask for additional information or return the RFI unanswered.
 - (5) The Department will notify the Contractor in writing the response to the RFI.
 - (6) All Contract changes due to the RFI response shall be coordinated with the Department Project Manager.
 - (7) If the RFI response requires a revision and/or Change Order, Work as described in the RFI response shall not begin until a Change Order has been executed.
- 2. The Department shall have authority to enforce those decisions and orders which the Contractor fails to carry out promptly.
- 3.
 - a. The Department will have the authority, but not the duty, to suspend the Work either wholly or partially if the Contractor fails to:

- (1) Correct conditions unsafe to Department personnel or the traveling public.
- (2) Carry out provisions of the Contract.
- (3) Carry out Contract related decisions of the Department.
- (4) Follow the Design Plans and Specifications.
- (5) Comply with any governing Federal, State or Local environmental quality regulation.
- b. Work may also be suspended by the Department to protect the State's interest and for conditions considered unsuitable for prosecution of the Work.
- c. While the Department may initially notify the Contractor verbally, the Department will notify the Contractor in writing of all suspensions.
4. The Contractor is solely responsible for Site safety for employees of Contractor or any lower tier Subcontractor or Supplier, and Contractor understands that Department has no duty concerning Site safety to Contractor, Contractor's Subcontractors at any tier, or to employees of Contractor or any Subcontractor or Supplier.

105.02 -- Plans and Working Drawings

1. The Department and the Contractor have each reviewed the Design Plans produced during the Preconstruction Phase (under the associated Preconstruction Services Amendment). Any changes or alterations to the Design Plans after the Construction Services Amendment is executed deemed necessary by Contractor shall be provided in writing and reviewed by the Department. Any such changes or alterations shall be at Contractor's sole cost and responsibility.
2. The Plans will be supplemented by the Contractor-provided Working Drawings (Shop Plans) as are necessary to adequately control the Work. It is mutually agreed that all authorized alterations affecting the requirements and information given in the Design Plans shall be in writing and reviewed by the Department.
3. Working Drawings shall consist of such detail as may be required of the Contractor for the prosecution of the Work. They shall include but are not necessarily limited to shop details. The Contractor shall not perform any fabrication Work until the shop details have been reviewed by the Department. Erection plans, masonry layout diagrams, and plans for cribs, cofferdams, falsework, and form work, as well as any other Working Drawings not previously mentioned, may be required of the Contractor and may be subject to the Department's review.
4. No changes shall be made to any Working Drawing after it has been reviewed except by a written acknowledgement from the Department.
5. Department review is solely for the Department's purposes and the Department has no duty to review the Working Drawings for compliance with the terms of the Contract or Applicable Standards. It is expressly understood that the Department's review will not relieve the Contractor of its sole responsibility for all aspects of the Working Drawings. In no event shall the Department be responsible for any aspects of the Contractor's Working Drawings.
6. The GMP Workbook shall include the cost of furnishing all Working Drawings.
7.
 - a. The Contractor 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.
- 8. No electronic Working Drawings shall be submitted to the Department unless they have been checked by the Contractor. The electronic submittal shall be accompanied by a Contractor'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 Contractor is responsible for any errors on the Working Drawings.
- 9.
 - a. Electronic submittals shall be submitted by email to the following address:
DOR.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 Contractor.
- 10. Any reference to hard copy Working Drawings in the Contract 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 Contract or indicated in the Specifications.
- 2.
 - a. The Department has the sole authority to totally reject nonconforming materials or Work or to accept them at a reduced cost.
 - b. If the nonconforming materials or Work are allowed to remain in place at a reduced cost, the Department will provide written notice to the Contractor of the monetary deduction that will be imposed.
 - c. If the nonconforming materials and/or Work are rejected, the Contractor shall remove and replace or otherwise correct the Work and materials at no additional cost to the Department.
 - d. The Department reserves the right to waive the cost reduction on nonconforming materials or Work if the deduction is less than the Department's cost for assessing the deduction.

105.04 -- RESERVED

105.05 -- Cooperation of Contractor

- 1. The Contractor shall keep one complete set of the Design Plans and Specifications on the Site at all times.

2. The Contractor shall cooperate with the Department, inspectors, and other contractors in every way possible.
3.
 - a. The Contractor shall designate a Superintendent who will be on the Site at all times when Work is being performed. The designated Superintendent may be an employee of an approved Subcontractor.
 - b. The designated Superintendent shall be:
 - (1) Capable of reading and thoroughly understanding the Design Plans and Specifications.
 - (2) Experienced in the type of Work being performed.
 - (3) Authorized to act as the Contractor'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 proposed Construction Services are to be moved by the Utility Owners at no expense to the Contractor, except as otherwise provided for in the Contract.
3. It is understood and agreed that the Contractor has considered in the GMP Workbook all of the permanent and temporary Utilities in their present or relocated positions as shown in the Contract and that no additional compensation will be allowed for any delays, inconvenience, or damages sustained due to any interference from the said Utilities or the operation of moving them.

105.07 -- Cooperation Between the Contractor 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 Contract.
2.
 - a. In the event more than one contractor is performing work within the limits of the Project, each of the contractors shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors.
 - b. The Contractor shall cooperate with the Department's other contractors working within the Project's limits. In case of a dispute, the Department shall intervene; and his/her decision shall be final and binding on all Parties.
3. The Contractor hereby assumes all liability, financial or otherwise, in connection with the Contract 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 Contractor 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.

4. The Contractor 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.
5. The Contractor shall coordinate the Work with the other contractors.

105.08 -- Authority and Duty of the Inspector

1. 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 Contract or act as a supervisor for the Contractor. The Inspector is not authorized to accept Work performed or materials furnished.

105.09 -- Inspection

1.
 - a. All materials and each part or detail of the Work shall be subject to inspection by the Department. The Contractor 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 for certain construction activities which require inspection by the Department. At each Hold Point, the Contractor 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.
 - b. At any time prior to Final Acceptance of the Work, the Contractor shall remove, uncover, or provide other means for examination of portions of the finished Work if directed to do so. After the examination, the Contractor shall restore the Work to the standard required by the Contract. The Department may stipulate that the Contractor not proceed in restoring the Work until the Department deems necessary. Any Work performed prior to receiving Approval from the Department shall not be compensable.
 - c. Should the same Work prove compliant, the Work of examining, uncovering and covering, removing and replacing, or making good the parts removed shall constitute a Relief Event under Specification Section 108.03 and the Contractor shall be entitled to seek a Change Order. Should the Work prove noncompliant, even though it may be determined to be acceptable, those same items of Work shall be done at no additional cost and without additional time to complete the Project.
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 Contract requirements.

105.10 -- Removal of Noncompliant and Unauthorized Work

1. Work which does not conform to the Contract requirements will be considered noncompliant unless found to be acceptable under the provisions of Subsection 105.03.
2. The Contractor shall not advance the Work, or proceed at risk, beyond an established Hold Point until the Contractor has proposed a resolution to the noncompliant Work and the resolution has been accepted by the Department, or if the Work will become inaccessible for inspection by the Department. If the Contractor proceeds to advance beyond a Hold Point without the Department inspecting the Work and the Work is found to be noncompliant or the Department is unable to inspect the Work, then the Contractor is responsible to uncover such Work for inspection and is responsible for all associated costs.
3. Noncompliant Work found to exist before the Final Acceptance of the Work shall be removed immediately and replaced at no additional cost to the Department.
4. Work done contrary to the instructions of the Department, Work done contrary to the lines or limits shown in the Contract or any other Work done without proper authority will be considered unauthorized; and no payment is authorized for this Work. The Department may require unauthorized Work to be removed or replaced at no additional cost to the Department.
5. If the Contractor fails to comply with directions given by the Department, as provided in Paragraphs 2. and 3. of this Subsection, the Department shall engage another Person or use other appropriate means to remedy, remove, and/or replace noncompliant or unauthorized Work and collect money for the costs from the Contractor or the Surety.

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 Contractor 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 Contractor 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 Contractor 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.
12. 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 contractor 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 Contractor 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 Contractor must have consent of the owners. The Contractor shall be solely responsible for negotiating the terms for use and access.

105.13 – Substantial Completion of Portions of the Project

1. As a pre-requisite to achievement of Substantial Completion of a Construction Services Amendment, the Contractor shall provide a written certificate to the Department that the following have occurred, with such supporting documents as the Contractor determines as appropriate or otherwise as may be required by the Department:
 - a. the Department and the Contractor have agreed upon a Punch List of items, as to such Construction Services Amendment, to be completed for Final Acceptance;
 - b. the Contractor has completed all Work within the Construction Services Amendment (excepting only for Punch List items), and the Contractor represents that the Construction Services Amendment has been performed in accordance with the requirements of the Contract;
 - c. if completion of a Construction Services Amendment affords use of that portion of the Project by the Department, then, in writing, the Contractor certifies that such portion

- of 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;
- d. all commitments related to the Construction Services Amendment as required pursuant to the NEPA document and associated permits have been completed in accordance therewith and the Contract;
 - e. the Contractor has satisfied all requirements under all other applicable Governmental Approvals required for Substantial Completion of a Construction Services Amendment;
 - f. all Submittals required by the Contract Documents to be submitted to the Department as a condition to Substantial Completion of a Construction Services Amendment (including all supporting information) have been submitted to and accepted by the Department;
 - g. the Contractor has achieved or completed all other conditions identified in the Contract as a condition to Substantial Completion of a Construction Services Amendment, if any;
 - h. the Contractor has paid in full all amounts due and owing to the Department pursuant to the Contract that are not in dispute;
 - i. there exist no uncured breaches that with the giving of notice or passage of time, or both, could become a Contractor Default (except any Contractor Default for which Final Acceptance will affect its cure); and
 - j. the Contractor has certified to the Department in writing that no overdue amounts owing to any Subcontractor remain unpaid (except for amounts relating to good faith disputes).
2. Within ten (10) Business Days following receipt of the Contractor's certificate under Specification Section 105.13(1), the Department will either:
- a. issue a Notice of Substantial Completion of a Construction Services Amendment; or
 - b. notify the Contractor of any prerequisites to Substantial Completion of a Construction Services Amendment that have yet to be corrected or satisfied.

If the Department notifies the Contractor under Subsection 2, then the Contractor shall resubmit its Certificate of Substantial Completion of a Construction Services Amendment upon correction or satisfaction of outstanding prerequisites.

105.14 -- Final Acceptance of Portions of the Project

1. As a pre-requisite to achievement of Final Acceptance of the Project, the Contractor shall provide a written certificate to the Department that the following have occurred, with such supporting documents as the Contractor determines as appropriate or otherwise as may be required by the Department (the Certificate of Final Acceptance):
- a. all Work has been performed in accordance with the requirements of the Contract, and specifically all requirements for Substantial Completion of all Construction Services Amendments 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 all Construction Services Amendments have been completed in accordance with their respective Construction Services Amendment and the Contract;

- d. all Contractor and Subcontractor personnel, supplies, equipment, waste materials, rubbish, and temporary facilities not incorporated into the Work have been removed from the Site, the Contractor 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 Working Drawings in form and substance required by the Contract, 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 Contractor obligations under the Contract (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 Contractor has resolved all, and there are no outstanding claims; actual, pending, or threatened claims against the Contract Bond; Liens on any materials, supplies, or equipment; or stop notices relating to the Project, including claims by Utility Owners;
 - i. the Contractor has no reason to believe that any other Person has a valid claim against the Contractor, the Department, or the Project which has not been communicated in writing by the Contractor to the Department as of the date of the certificate;
 - j. the Contractor has paid in full all amounts due and owing to the Department pursuant to the Contract;
 - k. there exist no uncured breaches that with the giving of notice or passage of time, or both, could become Contractor Defaults; and
 - l. all guarantees, warranties, and the Contract Bond are in full force and effect.
2. Within ten (10) Business Days following receipt of an acceptable Certificate of Final Acceptance, the Department will issue a Notice of Tentative Final Acceptance. The Department will notify the Contractor of any outstanding prerequisites for Final Acceptance, then the Contractor shall have ten (10) Business Days to provide documentation of the correction or satisfaction of the outstanding prerequisites. After all Work has been completed to the Department's satisfaction, the Department shall issue Notice of Final Acceptance.
 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 Contract.

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 Subsection 105.03.

2. In order to expedite the inspection and testing of materials, the Contractor shall advise the Department at least two weeks before delivery of materials.
3. Subject to the approval of all regulatory agencies, the Contractor will be allowed to drill wells within the Right-of-Way limits for the purpose of securing water for the Construction Services. The Contractor shall comply with Nebraska State Title 178, Chapters 10 and 12. The water well driller/Contractor 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 Contractor's risk subject to the conditions in Subsection 105.03.
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 Contractor as specified.
4. Upon request, copies of all test results will be furnished to the Contractor. 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 Contract, 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 Services Amendment execution. If there is a difference in the test methods, the order of precedence will be as follows:

<u>Precedent Order</u>	
Tests	- Department's Standard Method of
	- 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 Services Amendment 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 Services Amendment 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 Contractor 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 Contractor 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. All materials shall be handled and stored to preserve their quality and fitness for the Work. During the handling of all aggregates or other construction materials, special care shall be taken to prevent contamination. Furthermore, aggregates shall be handled in such a manner as to prevent segregation.
2. Vehicles, including railway cars and barges used in transporting construction materials, must be kept clean, free from contamination, in proper working condition, and capable of preventing the loss of materials during transportation.
3.
 - a. The Department may require that materials be stored above ground, covered, or similarly protected in weatherproof buildings.
 - b. Stored materials are subject to initial or additional inspection before their ultimate incorporation in the Work and shall be located to facilitate that inspection.
 - c. Any space needed for storage purposes and for the placing of plant and equipment shall be provided by the Contractor at no additional cost to the Department. The Contractor may be allowed to store material and equipment within the Right-of-Way at locations approved by the Department, but shall be responsible for the restoration and repair of any damage to turf or other plant life resulting from such operations.

4. The Contractor shall include the cost of handling, transporting, and placing materials in the GMP Workbook for the relevant item.

106.05 -- Unacceptable Materials

1. All materials not conforming to the requirements of the Contract shall be considered unacceptable unless approved under the provisions of Subsection 105.03.
2. Materials not meeting the requirements of the Contract will be rejected and shall be immediately removed from the Project unless the defects are corrected and approved by the Department. If the Contractor 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 Contractor or the Surety.

106.06 -- State-Furnished Materials

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

106.07 -- Buy America

1. The Buy America rule requires that steel or iron materials be produced domestically, and only those products which are brought to the construction site and permanently incorporated into the completed Project are covered. Construction materials, forms, etc., which remain in place at the Contractor's convenience, but are not required by the Contract, are not covered.
2. To further define the coverage, a domestic product is a manufactured steel construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.
3. All manufacturing processes to produce steel or iron materials (i.e., smelting, and any subsequent process which alters the steel or iron material's physical form or shape, or changes its chemical composition) must occur within one of the 50 states, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States, to be considered of domestic origin. This includes processes such as casting, rolling, extruding, machining, bending, grinding, drilling, and coating. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the material. The manufacturer shall include a statement on the material test report or

certification that all material described above except the coating material is a domestic product.

4. Raw materials used in the steel or iron materials may be imported. All manufacturing processes to produce steel or iron materials must occur domestically. Raw materials are materials such as iron ore, limestone, waste products, etc., which are used in the manufacturing process to produce the steel or iron products. Waste products would include scrap; i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks and the like. Also, steel trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw materials which is customary to prepare them for transporting are exempt from Buy America. The use of pig iron and processed, pelletized, and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for steel or iron materials.
5. Notwithstanding this requirement, a minimum of foreign steel or iron materials will be permitted if its value is less than 1/10% of the Construction Services Amendment GMP or \$2,500, whichever is greater.
6. Upon completion of all Work utilizing steel or iron products, the Contractor shall furnish a letter to the Department on company letterhead and signed by an officer of the company stating that documentation is on file certifying that all steel or iron materials brought to the construction site and permanently incorporated in the Project will comply in all respects with the Buy America requirements.

SECTION 107 -- LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 -- Laws to be Observed

1.
 - a. The Contractor 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 Contractor has erected all safety devices required by Federal, State, or local ordinances or Laws.
 - (2) The Contractor'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 Contractor's failure to provide and maintain the required safety devices will not be considered a Relief Event under Specification Section 108.03.
7. The Contractor shall perform all excavations in accordance with the requirements in the One-Call Notification System Act.
8. Environmental Quality Compliance:
 - a. Migratory Birds
 - (1) The Department will, to the extent practicable, coordinate with the Contractor 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.

- (2) The Contractor 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 Contractor, and assisted by the Department Project Manager, 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 Contractor shall not be entitled to a Relief Event pursuant to Specification Section 108.03.
- (3) The following guidance is provided for compliance with the Migratory Bird Treaty Act for the Project:
 - (i) Prior to beginning Construction Services, the Contractor 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 Services, the Contractor must submit a temporary erosion control plan tailored to fit the plan for clearing and grubbing.
 - (iii) If Construction Services results in unavoidable conflict with nesting migratory bird's eggs or young, which will result in "taking" nests and their contents, the Contractor should notify the Department Project Manager. The Department Project Manager 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 Contractor 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 Services cannot be rescheduled to allow the birds to fledge, and it is determined as an unavoidable "take" circumstance, the Contractor 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 Contractor'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 Contractor 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. It is understood and agreed that the Contractor has considered all of the pertinent requirements concerning migratory birds (including endangered species) in the GMP Workbook.

- b. Delays incurred as a result of the Contractor'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 Contractor.
- c. The Contractor shall perform washout of concrete mixers, delivery trucks, and other delivery systems in designated areas only.

107.02 -- Permits, Licenses, and Taxes

- 1. The Contractor shall procure all Governmental Approvals, pay all charges, fees, and taxes, and give all notices necessary and incidental to the lawful prosecution of the Work. These costs shall be included in the GMP Workbook.
- 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 Contractor 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 Contractor or Subcontractor when making purchases as a purchasing agent of the Department.
 - c. The "Exempt Sale Certificate" is to be used by the Contractor (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 Contractor 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 Contractor shall notify the appropriate county officials to ensure equipment is assessed.
- 4. Contractor Site Use Approval:
 - a.
 - (1) When a Contractor intends to obtain borrow and/or dispose of excess excavation at a site (or sites) not shown or otherwise designated in the Contract the Contractor shall submit a completed NDOT Form 119 "*Contractor Site Use Request Identification and Evaluation*" to ndot.mssrequest@nebraska.gov for processing and approval.

- (2) When a Contractor 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 Contract the Contractor 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 Contractor Site Request form(s)") can be found on the NDOT website. Each Contractor 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 Contractor shall contact the Nebraska Department of Environment and Energy (NDEE) to determine if it is necessary for the Contractor to obtain a NPDES permit. The Contractor shall also be responsible for obtaining any and all other permits required.
- c. The Contractor shall not begin Work at any borrow, waste, debris, stockpile, or plant site until receiving written approval for the submitted Contractor Site Request form(s) from NDOT, before obtaining a NPDES permit (if required), or any other permits required.
- d. When the Contractor intends to (i) obtain borrow and/or dispose of excess excavation, (ii) dispose of construction debris, (iii) stockpile materials, (iv) install and operate a mobile production plant at a site (or sites) within the boundaries of the Santee Sioux Nation Reservation or the Winnebago Tribe of Nebraska Reservation, the Contractor shall contact the Tribal Historic Preservation Officer. The Contractor may be required to obtain a site permit from the Tribal authorities as well as to pay for monitoring by the tribal authorities during the performance of the Work on the Site. The specifics of these charges may be obtained from the Tribal Historic Preservation Officer. The Contractor is solely responsible for the costs associated with these Tribal requirements.

Santee Sioux Nation
425 Frazier Ave N, Ste 2
Niobrara NE 68760
Phone: 402-857-3568

Winnebago Tribe of Nebraska
PO Box 687
Winnebago NE 68071
Phone: 402-922-2631

- e. 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 Contractor's control.
- 5. The Contractor 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 Contractor, 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. Contractors 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. Contractors 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 Contractor 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 Contractor 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 Contractor 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. Without exception, the GMP Workbook will include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material, or process covered by letters, patent, or copyright, the Contractor 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 Contractor 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 Contract.

3. The Contractor 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 Contractor 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 Contractor to make repairs to openings made by Third Parties. Any repairs ordered by the Department will be considered a Department-Ordered 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 Contract and will in no way interfere with the rights of either party hereunder.
2. Federal Projects of Division Interest (PoDI) are designated in the Contract. These projects are subject to routine inspections by the Federal Government. The Federal Government may be involved in the approval of changes to the Contract.

107.06 -- Sanitary Provisions

1. The Contractor 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 Contractor shall always ensure the orderly movement of traffic through or around the Work. The Contractor may not close any roads unless required by the Design Plans. Temporary traffic control devices and layouts shall conform to the Contract, 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 30 feet zone specified above.
 - b. Equipment not actively engaged in Construction Services 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.
- b. 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.
4. 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.
5.
 - a. The Contractor 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 ensure 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 fifteen (15) minutes, even though the individual activity is of less than fifteen (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 GMP Workbook.
6.
 - 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 Contractor 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.
- 7.

- a. The Contractor shall conduct all operations to minimize any drop-offs (abrupt changes in roadway elevation) exposed to traffic.
 - b.
 - (1) Unless otherwise specified in the Contract, 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 one (1) vertical to three (3) horizontal or flatter). An edge line 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 two (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 eighteen (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.
- 8. When so provided in the Contract, surfacing and base courses shall be constructed with one or more lanes of the roadway open and maintained for traffic. The Contractor shall regulate traffic flow in accordance with the Department's direction.
 - 9. When the road is accessible to vehicles, even if closed to the traveling public, the Contractor shall use traffic control devices such as Type II barricades, or object markers to locate and mark hazards within the project limits.
 - 10. When the Project is open to public vehicular traffic and the plans call for a culvert extension with excavation less than fifteen (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 one hundred (100) feet in advance of the excavation.
 - 11. If a hazard exists and barricades, warning signs, or other devices are in place, then even when the Contract is complete, these warning devices may not be removed until the Department has replaced the devices.

107.08 -- Use of Explosives

- 1. When the use of explosives is necessary for the prosecution of the Work, the Contractor 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 Contractor. The Contractor shall be liable for property damage, injury, or death resulting from the use of explosives.
- 2. The Contractor 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 Contractor 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 Contract or not.
2. The Contractor 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 Contractor 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 Contractor 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

1. Should the Contractor encounter any fossils, meteorites, Native American relics, or other articles of historical or geological interest, such articles shall become the property of the State. The Department shall be immediately notified when any such articles are uncovered, and the Contractor shall immediately suspend operations in the area involved until such time that arrangements are made for their removal and preservation. Discovery of such articles shall be considered a Relief Event pursuant to Specification Section 108.03.

107.11 -- Hazardous Materials Discoveries

1. Should the Contractor encounter any previously unidentified suspected hazardous materials, the Department shall be immediately notified. The Contractor shall immediately suspend operations in the area involved until such time that arrangements are made for their proper treatment or removal. Discovery of Hazardous Materials shall be considered a Relief Event pursuant to Specification Section 108.03.

107.12 -- Invasive Species Control

1. The Contractor shall prevent the transfer of invasive plant and animal species. The Contractor shall wash equipment at the Contractor's storage facility prior to entering the Site. The Contractor shall inspect all construction equipment and remove all attached vegetation and animals prior to leaving the Site.

107.13 -- Right-of-Way

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

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

1. [RESERVED]
2. [RESERVED]
3. Prior to beginning any Work, the Contractor is required to meet with all involved local Governmental Entities and advise them of any intentions to use their local roads. The Contractor shall be responsible for resolving claims concerning damage to local roads caused by his/her operation.

107.15 – Suspension and Debarment Policy and Procedures

1. Suspension: When circumstances warrant, the Department may “suspend” or exclude persons and/or companies considered for debarment. Causes for suspension include adequate evidence that:
 - a. A cause for debarment exists, and
 - b. Immediate action is necessary to protect the public interest. An indictment for a debarment offense will constitute adequate evidence for a suspension action.
2. Debarment
 - a. The Department may, in its sole discretion, debar an individual, proposer, or its affiliates from bidding, subcontracting, or supplying materials on Department contracts for any illegal activity involving bidding evidenced by any of the following:
 - (1) An indictment or conviction of a bidding crime; any plea of guilty or nolo contendere to a charge of a bidding crime; any public admission of a bidding crime; any presentation of an unindicted co-conspirator; or any testimony protected by a grant of immunity of any proposer in any jurisdiction indicating involvement in a bidding crime.
 - (2) Conviction of any offense indicating a lack of moral or ethical integrity may reasonably be perceived to relate to or reflect upon the business practices of the bidders.
 - (3) Debarment by any other State or Federal agency for substantially any of the reasons listed above.
 - (4) Any other activities of an individual, proposer, or its affiliates of a serious or compelling nature that are reasonably perceived to relate to their work as a Contractor.
 - (5) Making materially false statements on a proposal.
 - b. An individual or a proposer shall be given a debarment hearing if either so requests before or after debarment. The determination as to whether the debarment hearing will be held before or after debarment shall be at the sole discretion of the Department.
 - (1) The written request for a debarment hearing must be received by the Department no later than ten (10) days after the receipt of the written notice from the Department. Unless otherwise mutually agreed in writing, the debarment hearing shall be held no later than fourteen (14) days after receipt of the individual’s or proposer’s request for a debarment hearing.
 - (2) Debarment after hearing. In those situations where the Department decides to hold a debarment hearing prior to deciding whether debarment is proper, it shall send written notice to the affected individual, proposer, or their agents by certified or registered mail stating:
 - (i) That debarment is being considered.
 - (ii) The general reasons that suggest the debarment
 - (iii) That the proposer will be afforded and opportunity for a debarment hearing if requested.
 - (3) Debarment before hearing. In those situations where the Department determines that debarment is appropriate prior to a debarment hearing, it shall send written notice to the affected individual, proposer, or their agents by certified or registered mail stating:

- (i) That the proposer or individual has been debarred.
 - (ii) The general reasons for debarment.
 - (iii) That the proposer or individual shall be accorded the opportunity for a debarment hearing if they so request in writing within ten (10) days of the receipt of the written notice of debarment.
- (4) If the proposer or individual notifies the Department that he/she desires a hearing, the debarment hearing will be held no later than fourteen (14) days after receipt of the individual's or proposer's request unless mutually agreed otherwise in writing. The Department shall determine in writing whether the individual or proposer will be reinstated.
- c. The Department shall appoint a Hearing Examiner to conduct all debarment hearings. The Hearing Examiner shall make a recommendation to the Department, and such recommendation shall include findings of fact and conclusions of law.
- d. Except as modified by the Rules and Regulations of the Department, debarment hearings before the Hearing Examiner shall conform to the Code of Civil Procedure applicable to the District Courts of the State. Practice before the Hearing Examiner shall be governed by the Department's Rules and Regulations, Title 407.
- e. Debarment shall be for a period of thirty-six months or, in the case of a reciprocal debarment as provided for under Paragraph 2.a.(3) of Subsection 107.15, the term of the debarment shall be for the same period as the debarment imposed by the other State or the Federal government.
- f. The Department may suspend a debarment at any time it determines it is in the public interest to do so. Mitigating circumstances may be considered in the decision to lift or suspend a debarment and may include, but shall not be limited to:
 - (1) The degree of culpability of the debarred individual or proposer.
 - (2) Restitution by the debarred individual or proposer to the State for any perceived overcharges or damages resulting from the actions of the debarred individual or proposer.
 - (3) Cooperation by the debarred individual or proposer with the State, the United States, and/or any other political governmental subdivision in the investigation of bidding crimes, including a full and complete account of the individual's or proposer's particular involvement therein.
 - (4) Disassociation with individuals and firms that have been involved in a bidding crime.
- g. The Department, at its discretion, may hold a hearing, no later than fifteen (15) days prior to the last day of the debarment, and require the debarred individual or proposer to show cause why the debarment should not continue. If the Department, in its sole discretion, determines that a debarred individual or proposer has failed to become a responsible proposer, then the Department may continue the debarment for up to twelve (12) additional months. The same show cause procedures shall continue for each successive extension of the original debarment until such time as the Department has determined that the debarred individual or proposer meets the criteria of a responsible proposer.
- h. For purposes of debarment, the conduct of a proposer or an individual shall be fully imputed to:
 - (1) Business firms with which they are or were associated.
 - (2) Business firms by whom the individual was or is employed.

- (3) Parent or subsidiary companies of the proposer.
- (4) Business firms in which the individual or proposer has a controlling interest hearing.
- i. Debarment of a proposer shall in no way affect the obligations of the proposer to the State for services to the Department already under contract.
- j. Every proposer currently qualified by the Department to bid on its contracts shall have a duty to notify the Department if it, any of its employees, officers, board members, or associates are indicted or convicted of a bidding crime within thirty (30) days of the indictment or conviction. Failure to do so is a serious and compelling offense sufficient to result in debarment.
- k. Every proposer qualified by the Department to bid on its contracts shall have a duty to notify the Department if the proposer, any of its employees, officers, board members, or associates are contacted by any person with the purpose of engaging in any illegal activities in connection with bidding on contracts let by the Department or contracts involving federal aid. Notice shall include the name of the person making such overture or bid proposal, the time and place thereof, and the specific nature of the overture or bid proposal.
- l. A copy of Section 004 of the Department's Rules and Regulations shall be mailed to each proposer heretofore debarred or suspended.
- 3. Procedures for Certification Regarding Debarment
 - a. Unless the proposer submits an explanation of exceptions to the following, by signing and submitting a bid, the proposer swears, to the best of his/her knowledge and belief, that he/she and the principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.
 - (2) Have not within a 3-year period preceding this bid been convicted of or had a civil judgment rendered against them for:
 - (i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction.
 - (ii) Violation of Federal or State antitrust statutes.
 - (iii) Commission of embezzlement, theft, forgery, bribery, or falsification or destruction of records.
 - (iv) Making false statements.
 - (v) Receiving stolen property.
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph 3.a.(2) of Subsection 107.15 of this Specification.
 - (4) Have not within a three (3) year period preceding this bid had one or more public transactions (Federal, State, or local) terminated for cause or default.
 - b. The inability of a person to provide the certification required above will not necessarily result in denial of participation in a contract. The proposer shall submit an explanation of why it cannot provide certification. The certification or explanation will be considered in connection with the Department's or agency's determination

whether to enter into this transaction. However, failure of the proposer to furnish a certification or an explanation shall disqualify the proposal.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.
- d. The proposer shall provide immediate written notice to the Department if at any time the proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “bid proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. The Department may be contacted for assistance in obtaining a copy of those regulations.
- f. The proposer agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the Department.
- g. The proposer further agrees by submitting this bid that he/she will include this Subsection (107.15), without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A proposer in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction unless it knows that the certification is erroneous. A proposer may decide the method and frequency by which it determines the eligibility of its principals.
- i. Except for transactions authorized under Paragraph 3.f. of Subsection 107.15 of these Specifications, if a proposer in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this contract, in addition to other remedies available to the Federal Government, the Department may terminate this contract for cause or default, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

107.16 -- Opening of Sections of the Project to Traffic

- 1. 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 completion of Construction Services and before Final Acceptance of the Work. Opening such sections will not constitute Final Acceptance of the Work or a waiver of any Contract 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 Contractor 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 Contractor.
 - (2) If the traveling public should cause damage to the roadway, the Contractor shall assist the Department in identifying the responsible party. The Contractor 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 Contractor shall remain responsible for any damages which are due to or caused by defective Work or because of noncompliance with the Contract.
- 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 Contractor.
 - (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 Contractor shall not be relieved of any responsibility or liability for maintaining the Work. Furthermore, the Contractor shall conduct the remaining Construction Services 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 Contractor cease to maintain warning signs, barricades, warning lights, and all other traffic control devices regardless of whether the Contractor 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 Contractor of public liability in areas where the Contractor has, with the Department's approval, removed his/her equipment from the Right-of-Way and completed all Work.

107.17 -- Contractor's Responsibility for Work

- 1.
 - a. Until Tentative Final Acceptance of the Construction Services Amendment by the Department, the Contractor shall be responsible for the protection, care, and upkeep of the Work, all associated storage sites, and other areas used to execute the Contract. The Contractor shall take every precaution against injury or damage to the Work due to the weather or from any other cause.
 - b. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to the Work due to any cause before Tentative Final Acceptance at no additional cost to the Department except as follows:
 - (1)

- (vi) The Contractor shall not bear the expense for damage to the Work resulting from natural phenomena like the weather when these phenomena are of such magnitude that they result in the Governor issuing a Disaster Declaration.
- (vii) Evacuation and remobilization of equipment, repair of Contractor's equipment, or repair and replacement of Contractor's material are not a Relief Event pursuant to Specification Section 108.03. The Contractor 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 Contractor fails to take reasonable precautions to protect material.
- (2) The Contractor will not be liable for damage or injuries caused by acts of war or Governmental Entities.
- (3) The Contractor 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 Contractor.
- 2. In case of suspension of the Work, the Contractor 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 Contract.
 - f. Protect new trees and other important vegetative growth against injury.
- 3. The Contractor must at all times have in place and maintain adequate erosion control measures as described in the Contract.
- 4. If the traveling public should cause damage to the roadway, the Contractor will not be held responsible and shall assist the State in identifying the responsible party. The Contractor 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 -- Contractor'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 Contractor must verify all such information.
- 2. The Contractor 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 Contractor shall determine the actual locations of all underground and above ground facilities before starting any Work that may cause damage to such utilities. The Contractor must protect and keep operational all encountered utility facilities. The Contractor 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 Contractor and the Contractor has explained the arrangements to the Department.

5.
 - a. The Contractor shall cooperate with any affected utility owner to ensure 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 Contractor shall promptly notify the utility owner and the Department. The Contractor 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 fifteen (15) feet of any fire hydrant.
7. The Contractor 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 Contractor shall coordinate efforts with the utility owner to provide the utility owner adequate time to plan and complete its work.
8. The Contractor 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 Contractor 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 Contract, utility facilities shall be moved by their owners when necessary to preclude damage during construction.

107.19 – State Owner Utilities

1. This Specification Section applies to the operating procedures of marking the State owned utilities on State Highway Right-of-Way.
2. The Contractor shall notify the Department of an intent to excavate a minimum of three (3) Business Days prior to the day the Work is to begin. The Contractor 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 Contractor shall mark the intended excavation area with white paint, flags or other suitable markings three (3) 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 (3) Business Days after the date on which the ticket was transmitted to the Department.
5.
 - a. If a Contractor 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 (14) Calendar Days after the Utilities have been located and marked. The Department will locate the State owned utilities within two (2) Business Days prior to the "Tentative Start Date For Excavation Work" as indicated by the Contractor on the Locate Request Form.
 - c. The Department will locate the Utilities in the area identified once. The Contractor 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 Contract.
 - b. Showing the true character of the materials furnished or Work performed and determining their conformance to the Contract.
 - c. Recovering from the Contractor or his/her Surety, or both, such damage as it may sustain by reason of the Contractor's failure to comply with the Contract.
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 Contract.
 - b. Any power herein reserved.
 - c. Any right to damages.
3. A waiver of any breach of Contract 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 Contract for Hauling

1.
 - a.
 - (1) For Davis Bacon (DBRA)-covered projects and Non-DBRA-covered projects, a Contractor 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 Contractor or Subcontractor by entering into a lease agreement for the trucks and showing the driver (or drivers) from the supplemental company on the Contractor's or Subcontractor's payrolls in the manner described below.
 - (3) Payrolls will only be accepted from the Contractor or approved Subcontractors.
 - b.
 - (1) If the decision is made to subcontract the hauling, the Contractor 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 Contractor must submit payrolls for all Subcontractors --- at any tier.

- c.
 - (1) Owner/Operators of trucks hired by a Contractor 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 Contractor 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 Contractor 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 Contractor'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 Contractor'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 Contractor 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 Contract. It shall be the duty of the Contractor to ensure that the supplemental truckers have such coverage in effect. Evidence of proper insurance must be presented for verification on demand.

108.02 -- Construction Schedule

- 1.
 - a. The Contractor agrees to perform the Construction Services as described in the Construction Services Amendment so as to construct the entire Project while meeting Completion Deadlines set forth in the Contract.
 - b. Time is of the essence with respect to:
 - (1) the time periods pertaining to notices and Submittals;
 - (2) the time periods and milestones in each Construction Schedule; and
 - (3) all other time periods identified in the Contract.
- 2.
 - a. The Contractor shall achieve Substantial Completion by the Substantial Completion Deadline and shall achieve Tentative Final Acceptance within ninety (90) Calendar Days of receiving the Notice of Substantial Completion from the Department.
 - b. Except as identified in Specification Section 108.04, the Department shall have no obligation to extend any Completion Deadline.

- c. All Float contained in each Construction Schedule shall be considered a jointly owned and shared resource by the Contractor and the Department, available to the Project, and shall not be considered as time for the exclusive use or benefit of either Party. All Float shall be shown as such in each Construction Schedule on each affected schedule path. The Contractor shall monitor and account for Float in accordance with the Critical Path Method.
- d. The Contractor shall submit a monthly update for each Construction Schedule for Approval with each Request for Monthly Progress Payment Request.
- e. The Department's Approval of any Construction Schedule shall not be construed to bind the Department to any intentional or unintentional manipulation of a Construction Schedule or improper logic, improper activity durations, or errors in the expression of the Critical Path or otherwise be used as a defense by or on behalf of the Contractor in any dispute hereunder. Without limiting the Contractor's other obligations under the Contract, the Contractor shall correct any improper logic, improper activity durations, or errors in a Construction Schedule.
- f. The most recently Approved Construction Schedule shall be used as the unimpacted schedule to measure the duration of any delay as part of a time impact analysis, weather analysis, or other analysis described in the Contract.

108.03 – Relief and Compensation

- 1. The occurrence of any of the following events during the Construction Phase shall constitute a Relief Event for which the Contractor shall be entitled to seek adjustments to an applicable Completion Deadline or the applicable Construction Services Amendment GMP, as may be allowed under the Risk Register or otherwise pursuant to this Specification Section 108.03 and Specification Section 108.04:
 - a. the occurrence of a Risk Register Event that is identified as a Department Risk;
 - b. a Change in Law;
 - c. a Department-Directed Change
 - d. a Department-Caused Delay;
 - e. unavoidable delays arising from a suspension order pursuant to Specification Section 108.08;
 - f. uncovering, removing, and restoring Work, to the extent additional costs or time are provided for in Specification Section 105.09;
 - g. discovery at, on, or under the Right-of-Way (after acquired) of any Differing Site Conditions (1) not known to the Contractor prior to the effective date of the Construction Services Amendment where the scope of the Work includes the affected portion of the Right-of-Way or (2) that would not have become known to the Contractor by undertaking a reasonable investigation;
 - h. discovery at, on, or under the Right-of-Way (after acquired) of any Item of Archaeological or Biological Significance (1) not known to the Contractor prior to the effective date of the Construction Services Amendment where the scope of the Work includes the affected portion of the Right-of-Way or (2) that would not have become known to the Contractor by undertaking a reasonable investigation; or
 - i. discovery at, on, or under the Right-of-Way (after acquired) of any Hazardous Materials not constituting a release of Hazardous Materials by the Contractor or any of its Subcontractors (1) not known to the Contractor prior to the effective date of the Construction Services Amendment where the scope of the Work includes the

- affected portion of the ROW or (2) that would not have become known to the Contractor by undertaking a reasonable investigation. ;
2. To utilize Specification 108.03(1)(i) as a Relief Event, the Contractor must comply with all requirements in the NDOT Unexpected Waste Action Plan, which may be provided upon request, or publicly available on the Department's website.
 3. None of the foregoing events described in Specification Section 108.03(1) shall be deemed a Relief Event to the extent that performance of the Work would have been suspended, delayed, or interrupted by any other cause, including the negligence, reckless or willful misconduct, act or omission, or breach or violation of applicable Law, Governmental Approval, or contract (including this Contract) by the Contractor or any Contractor-Related Entity on any part of the Project.
 4. For those Relief Events for which the Contractor 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 Construction Schedule.
 5. For those Relief Events for which the Contractor is afforded an increase in a Construction Services Amendment GMP, the amount of the additional compensation shall equal the increased actual costs incurred by and necessary for Contractor's performance in accordance with the Contract, or actual time or quantities under unit prices for the same, if so identified.
 6. Relief Events shall be limited to the extent that the adverse effects of the Relief Event could have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Contractor or any Contractor-Related Entity acting with the degree of skill, care, and diligence consistent with the applicable professional standards recognized by such profession and observed by national firms performing services of a similar manner.
 7. The Contractor shall provide notice to the Department within fourteen (14) Calendar Days after the date on which the Contractor first knew or should have known that a Relief Event occurred or is imminent (the Relief Event Notice). The Relief Event Notice shall include a reasonably detailed description of the Relief Event, relevant circumstances, an initial estimate of the approximate number of Days of delay to the Critical Path of affected Construction Schedules, if any, and the approximate additional costs the Contractor will incur as a result of the Relief Event. The Relief Event Notice shall also describe the efforts of the Contractor that have been (or are going to be) undertaken to overcome, remove the Relief Event, or to mitigate the adverse effects of the Relief Event. If the Contractor fails to deliver the Relief Event Notice within such fourteen (14) Calendar Days, then the Contractor shall have irrevocably and forever waived and released the portion of 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.
 8. The Contractor shall submit to the Department a Request for Change Order (RCO) within thirty (30) 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.
 - b. Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made, acceptable to the Department, consistent with the cost estimating principles described in the Preconstruction Services Amendment, Attachment 1, Section H (Cost Estimating).

- c. Time Impact Analysis: For Change Orders contemplating Construction Services, if the Contractor claims that such event, situation, or change affects the Critical Path affecting a Completion Deadline, it shall provide a time impact analysis described in the Construction Schedule Coordination Plan.
 - 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.
 - e. Other Supporting Documentation: The Contractor shall provide other supporting documentation including Environmental Commitment status as required by the Department.
- 9. If the Contractor fails to deliver the RCO within such thirty (30) Days, the Contractor 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.
 - 10. The Department and the Contractor may mutually agree to extend the deadline for submission of the RCO.
 - 11. The Department and the Contractor shall use good faith efforts to agree on the extent to which the Contractor 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 Contractor's entitlement to cost relief, they shall enter into a Change Order reflecting their agreement as to the adjustment in the applicable Construction Services Amendment GMP pursuant to Specification Section 108.04.
 - 12. The rights and remedies set forth in this Section shall be the Contractor's sole and exclusive rights and remedies upon the occurrence or due to the effects of a Relief Event, and the Contractor 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.
 - 13. The Contractor 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 Contract, at law, or in equity against the Department, for any losses suffered in connection with the Project, the Work, or the Contract.

108.04 – Change Orders

- 1. The Contractor hereby acknowledges and agrees that the Construction Services Amendment GMP constitutes full compensation for performance of all Construction Services within the Construction Services Amendment, subject only to those exceptions specified in Specification Section 108.03 and this Specification Section 108.04.
- 2. A Change Order shall not be effective for any purpose unless executed by the Department. Change Orders may be issued only for the following purposes (or combination thereof):
 - a. to modify the Work;
 - b. to revise a Completion Deadline; or
 - c. to revise a Construction Services Amendment GMP.
- 3. The Department may reject the Contractor'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 change the Total Construction GMP, adjust any Construction Services Amendment GMP, or extend any Completion Deadline.

4. If the Contractor undertakes any extra or changed 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 Contractor shall be deemed to have performed such Work voluntarily, without right to a Change Order. In addition, the Contractor may be required to remove or otherwise undo any such Work at its sole cost.
5. If the Department desires to evaluate whether to initiate a Change Order, the Department may, at its discretion, issue a Request for Change Proposal. Within seven (7) Days after the Contractor's receipt of a Request for Change Proposal or as otherwise agreed, the Department and the Contractor 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. Within seven (7) Days after the consultation meeting, the Department shall notify the Contractor whether the Department desires the Contractor to prepare a Request for Change Order. The Department may require the Contractor to account for impacts of the Change Order through adjustment of a Completion Deadline. If requested by the Department, the Contractor shall prepare and submit to the Department for Approval a Change Order within twenty-one (21) Days after receipt of the Department's notification seeking a Change Order, complying with all applicable requirements of Specification Section 108.04(3), and incorporating all requests made by the Department. The Contractor shall bear the cost of developing the Change Order form, including any modifications requested by the Department. If the Department and the Contractor agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time, or disagree as to the amount of any change to be made to a Construction Services Amendment GMP or a Completion Deadline, the Department may, in its sole discretion, issue a Department-Directed Change to the Contractor to proceed with the performance of the Work requested.
6. Any increase in a Construction Services Amendment GMP pursuant to Specification Section 108.03 and this Specification Section 108.04 shall exclude:
 - a. costs caused by a breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity;
 - b. costs that could reasonably have been avoided by the Contractor;
 - c. costs for any rejected Work which failed to meet the requirements of the Contract and any necessary remedial Work.
7. Any extension of a Completion Deadline pursuant to Specification Section 108.03 and this Specification Section 108.04 shall exclude:
 - a. impacts that don't affect the Critical Path affecting a Completion Deadline;
 - b. was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity;
 - c. could reasonably have been avoided by the Contractor.
8. The Department and the Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. If compensation amounts or methodologies for compensation for a particular Relief Event is provided for in the Risk Register, then such compensation shall be determined in such amount or by such methodology. If the Risk Register does not address compensation or compensation methodologies for a particular Relief Event, and

the Department and the Contractor cannot agree on the terms of pricing of a Change Order, then compensation, if any, for such Relief Event shall be determined pursuant to the pricing methodologies used to develop the Construction Services Amendment GMP.

9. No extension of time granted hereunder shall release the Contractor's Surety from its obligations. The Department shall not be deemed to have waived any rights under this Contract as the result of any grant of an extension of any Completion Deadline, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to the Contractor after such date.
10. No course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Department has been unjustly enriched shall be the basis for any claim, request for additional compensation, or extension of a Completion Deadline.

108.05 -- Prosecution of Construction Work

1. The Contractor 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 Contractor from beginning Construction Work on the date specified in the written Notice to Proceed, the Contractor may request from the Department a new starting date, in writing, three (3) 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 Contract is amended to address the issue of the delay.

108.06 -- Limitation of Operations

1. The Contractor shall work to minimize interference with traffic. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up Work to the prejudice of Work already started.
2. The Department may require the Contractor to finish a section on which Work is in progress before Work is started on any additional section.
3. Placing right-of-way markers shall be one of the first orders of Work.

108.07 -- Contractor Employees, Methods, and Equipment

1. The Contractor shall employ sufficient labor and equipment for completing all Work required by the Contract.
2. All Contractor 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 Contract, and industry standards.
3. Any Contractor 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 Contractor 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 Contract, 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 Contractor 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 Contractor will be responsible for producing Work that conforms with original Contract requirements.
 - d. If, after trial use of the substituted methods or equipment, the Department determines that the Work produced does not meet Contract requirements, the Department will direct the Contractor to discontinue the use of the substitute methods or equipment and complete the remaining construction with the originally specified methods and equipment. The Contractor 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 Contractor 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 Contract 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 Contractor to use prove to be inadequate, insufficient, or unsatisfactory.

108.08 – [RESERVED]

108.09 – [RESERVED]

108.10 -- Liquidated Damages

1. Liquidated Damages cover additional costs incurred by the Department as a result of the Contractor's failure to complete the project in the allotted time. The Contractor acknowledges and agrees that Liquidated Damages shall have been set based on an evaluation and estimation by the Department of damages that it will incur. The Contractor understands and agrees that any Liquidated Damages payable are not a penalty and that such sums are reasonable under the circumstances.
2. The Department utilizes a Schedule of Liquidated Damages in Table 108.08 to determine liquidated damages when a Contract is not completed on time.

TABLE 108.08

ORIGINAL CONTRACT AMOUNT		LIQUIDATED DAMAGES PER CALENDAR DAY
From More Than	To and Including	
\$0	\$1,000,000	\$400
\$1,000,000	\$5,000,000	\$700
\$5,000,000	\$11,000,000	\$1,100
\$11,000,000	\$30,000,000	\$1,100
\$30,000,000	-	\$1,600

3.
 - a. The Contractor agrees:
 - (1) To pay, according to Table 108.08 in Paragraph 2 of this Subsection, or other such amount as determined by the Parties, Liquidated Damages for each Calendar Day beyond the number of Calendar Days authorized for completion of the Contract, and
 - (2) To authorize the Department to deduct Liquidated Damages from any money due or coming due the Contractor.
 - b. If no monies are due the Contractor, the Department shall have the right to recover Liquidated Damages from the Contractor, from the surety or from both the Contractor and the surety.
4. Liquidated Damages will not be assessed for any Calendar Days covered by an approved time extension. Deductions or payment of Liquidated Damages will not release the Contractor from further obligations and liabilities to complete the entire Contract.
5. Liquidated Damages for certain unapproved lane closures will be applicable as further described in the Construction Services Amendment.

SECTION 109 -- MEASUREMENT AND PAYMENT

109.01 -- Measurement of Quantities

1. Field Measured Quantities
 - a.
 - (1) After the Work is completed and before Final Acceptance of a Construction Services Amendment, the Department will make final measurements, if required, to determine the quantities of various items of Work performed.
 - b. Unless otherwise specified, all longitudinal measurements will not consider the slope of the measured item but will measure the horizontal distance between end points. Deductions will be made for individual fixtures in the roadway having an area greater than 1 square yard (1 m²).

- c. On all transverse measurements for area of base courses and flexible or rigid surface courses, the dimensions to be used in calculating the pay area shall be the neat dimensions shown in the Contract or ordered in writing by the Department.
- d. When requested by the Contractor and approved by the Department, in writing, material specified to be measured by the cubic yard (meter) may be measured by determining the weight on approved scales, the weight then being converted to cubic yards (meters) for material quantity tracking purposes. Factors for conversion from dry weight measurement to volume measurement will be determined by the Department and shall be agreed to by the Contractor before such measurement is used. The weight of any water in the aggregate shall be deducted before using the conversion factor.
- e. When requested by the Contractor and approved by the Department, material specified to be measured by the pound or ton may be measured on scales equipped with an automatic device which signals or stops the flow of material when a predetermined net weight, set on the scales, is reached. This procedure must produce a total net weight for each load at least equal to the predetermined net weight. The quantity to be measured for payment will be the predetermined net weight.
- f. Portable Scales:
 - (1) Scales shall be installed on adequate foundations and in accordance with the manufacturer's recommendations. They shall have sufficient capacity to determine the weight of a fully loaded truck.
 - (2) The Contractor shall calibrate the scales accurate to 0.5% of a fully loaded truck in the Department's presence, or the scale shall have a current Nebraska Department of Agriculture inspection certificate. Documentation showing that scales were calibrated by a scale company service crew during the current season is also acceptable.
 - (3) The scale shall be cross-checked daily for accuracy by comparing its results with a load's gross weight on an approved commercial scale.
 - (4) If the scales are not able to weigh all axles at once, the approaches shall be extended so that the entire hauling unit will be level as each axle is measured.
 - (5) Suitable protection shall be provided against wind currents that may affect the accuracy of the scales. The platform of the scale shall be kept clean and free from accumulations of materials.
- g. When requested by the Contractor and approved by the Department, any material specified to be measured by the cubic yard (meter) in the vehicle at the point of delivery may be struck off to a predetermined height in the truck boxes in lieu of the specified top of boxes. Wood or metal attachments to the truck boxes may be required to delineate the predetermined height and must have sufficient rigidity to remain stable during strike-off procedures.
- h. When requested by the Contractor and approved by the Department, Water to be measured by the 1,000 Gallons (MGAL) [Kiloliter (kL)] may be measured by determining the weight on approved scales, the weight then being converted to 1,000 Gallons (MGAL) [Kiloliter (kL)] for payment purposes. Below are factors for conversion from weight measurement to volume measurement.

To Convert Tons (Mg) to 1,000 Gals (MGAL) [Kiloliter (kL)]	Divide By
Water	4.17 Tons/MGAL (1.00 Mg/kL)

- i. The Contractor shall provide a scale ticket for each load showing the project number, truck number, date, type of material, and net weight. The Contractor shall use a method of calculating the net weight acceptable to the State.
2. Established Quantities
 - a. If the Contract provides that payment is to be made on established quantities, final measurements will not be made unless errors in the Contract are discovered or authorized alterations are made. If no alterations are made, the Contractor will be paid for the established quantities in accordance with the Contract. If alterations are authorized, final measurements will be made over the affected sections or areas of the project in accordance with the Contract.

109.02 -- Scope of Payment

1. Irrespective of the Project phase, the Contractor 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 Contract.
 - 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 -- RESERVED

109.05 -- Force Account

1. If the Parties are unable to agree upon a price for the Work, the Department may direct the Contractor to perform the Work as Force Account Work. Payment for Force Account Work shall be made in accordance with one of the following procedures:
 - a. 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.
 - b. 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.

2. 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.
3. When payment is accomplished according to the procedures shown in Paragraphs 1.b. and 1.c. of this Subsection, the Department and the Contractor shall compare records of labor, equipment, and material used on a daily basis and promptly reconcile any differences between them.
4. The Contractor 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."
5. When Force Account Work is performed by an approved Subcontractor, the Contractor shall receive a negotiated amount not to exceed 5% of the compensation provided to the Subcontractor for completion of the Work.
6.
 - a. For all labor, including the foreperson in direct charge of the Force Account Work, the Contractor shall receive 120% of the amount paid for the following:
 - (1) Wages.
 - (2) Property damage insurance.
 - (3) Liability insurance.
 - (4) Worker's compensation insurance premiums.
 - (5) Unemployment insurance contributions.
 - (6) Social security taxes.
 - (7) Health and welfare benefits.
 - (8) Pension fund benefits.
 - (9) Other benefits.(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.)
 - b. The wages for any foreperson employed on both Force Account Work and other Work shall be prorated between the two classes of work.
7. For all material entering permanently into the Work and for specialty items of work not performed by the Contractor's or Subcontractor's own forces, the Contractor 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.
8.
 - a. 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 Contractor 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.

- b. When it is necessary for the Contractor to rent such equipment, the Contractor shall be allowed 115% of the actual rental price, if reasonable and substantiated by a receipted bill.

9.

- a. In any case where the Contractor feels that additional compensation is due for Force Account Work or material neither clearly covered in the Contract nor ordered in writing by the Department, the Contractor shall give written notice of their intention to make a claim for such additional compensation before the Work begins.
- b. 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 Contractor, the Contractor's claim for such extra compensation will not be allowed.
- c. Notification by the Contractor 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 – [RESERVED]

109.07 -- Partial Payment

1. Stockpiled Material

- a.
 - (1) Upon presentation by the Contractor of receipt of payment, billing invoices, or such other documentation sufficient to satisfy the Department and verify the Contractor'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:
 - (i) delivered in the vicinity of the project or stored in acceptable storage places within Nebraska.
 - (ii) 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 Contractor 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.
 - (2) 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.
 - (3) 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 Subsection 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 Subsection 106.05.
 - f. The Contractor 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.
2. The Department will withhold partial payments if the Contractor or Subcontractor does not submit and maintain the required insurance certificates.
 3. When payrolls must be submitted, the Department may withhold partial payments if the Contractor does not provide all payrolls (including Subcontractor payrolls) within fourteen (14) Calendar Days of each payroll ending date.
 4. Before the Final Acceptance of the Work, the Department will withhold payment for any defective or questionable Work until the defect is corrected.
 5.
 - a. If the Contractor has furnished all known required records and reports to the Department, interest will be paid to the Contractor at the rate provided in Nebraska Statute No. 39-1349 on the amount retained and on final payment due. Commonly required records and reports include, but are not limited to:
 - (1) Certifications of materials incorporated into the project.
 - (2) UI Form 16, "Certification As To Contribution Status" (secured from the State Department of Labor for the most recently completed calendar quarter).
 - (3) Contractor's weekly payroll reports with form WH-348, "Statement of Compliance" (Federally funded projects only).
 - (4) When applicable, a DR Form 441, "Identification of DBE Goal Achievement," and a DR Form 442, "Identification of Work Performed."
 - b. Interest will be computed beginning on the 61st Calendar Day after completion of Work as evidenced by the Department's letter of Tentative Final Acceptance. Should it become necessary for the Contractor to do additional Work after Tentative Final Acceptance, the tentative acceptance date will be adjusted accordingly. The interest period will run continuously until the date final payment is tendered to the Contractor provided that the time interval stated in Paragraph 8.c. of this Subsection is not exceeded.
 - c. The Contractor is allowed fourteen (14) Calendar Days from the date of notice to:
 - (1) Reply to the project manager's written notification of optioned pit material quantities and costs involved in a project (such reply shall be directed to the Department's Right-of-Way Division).

- (2) Provide signed records or documents, such as Change Order-Supplemental Agreements, requested in writing by the Department.
- (3) Provide all required records and reports, such as payrolls, materials certifications, etc., requested in writing by the Department.
- d. In the event the time interval stated in Paragraph 8.c. of this Subsection is exceeded, deductions to the interest time period will be made for the actual number of Calendar Days taken to provide the documentation beyond the first sixty (60) Calendar Days following tentative project acceptance.

SECTION 110 -- WAGES AND CONDITIONS OF EMPLOYMENT

110.01 -- Scope

- 1. This Specification Section 110 shall apply to all Work performed by the Contractor 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 Contractor shall insert in each of their Subcontracts all of the stipulations contained in this Specification 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 Specification Section 110 may be grounds for termination of the Contract.

110.02 -- Labor Laws Cited

- 1. The Contractor 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
 - (4) During the performance of this Contract, the Contractor shall not discriminate against labor from any other state.

b. Nebraska Fair Employment Practices Act

(1) The Contractor shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract with respect to hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability or national origin. The Contractor 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 Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contract shall be permitted to lodge, board and trade where and with whom they elect and the Contractor 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 Contractor to any person employed on the Work.
- h. No individual shall be employed as a laborer on this Contract 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, Contractors shall submit their payrolls electronically, meeting the following requirements:
 - (1) Format – Portable Document Format (PDF)
 - (2) Size of file – Limited to 25 MB

- (3) Signatures – A scanned copy of the original certified payroll or Adobe digitally signed.

Payrolls certified by the Contractor 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 Contract, the Contractor shall comply with all applicable Federal, State and local Laws governing safety, health and sanitation. The Contractor 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 Contract.

5. Disadvantaged Business Enterprises

- a. The Contractor 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 Contract. In this regard, the Contractor 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 Contractor 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 Contractor to carry out the requirements set forth above shall constitute a breach of contract pursuant to CM/GC Master Agreement Section 6.1.1 and, after the notification of the FHWA, may result in termination of the Contract 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor and all subcontractors have registered with and used a Federal Immigration Verification System. The Contractor shall maintain all records of registration and use for a period of three years and make records available upon request. The Contractor 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 Contractor 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 Contractor's Certification shall become part of the final records of the Contract. 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 Contract.
2. The Contractor 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 Contractor elect to move his/her equipment and/or crew to another project site before the Work is complete or if the Contractor 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 item in the GMP Workbook will be limited to an amount not to exceed 10% of the total amount of the Construction Services Amendment GMP, including Mobilization, for the Construction Services Amendment in which the Mobilization occurs. In the event the item for Mobilization exceeds 10%

- of the total Construction Services Amendment GMP, the amount in excess of 10% will not be paid until the Department has made tentative acceptance of the Work.
- b. When it is necessary to delay tentative acceptance because of a required observation period, the entire amount for Mobilization may be paid upon tentative acceptance 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 a Construction Services Amendment, excluding Mobilization, the Department will pay 50% of that Construction Services Amendment's Mobilization amount.
 - b. Upon completion of 10% of a Construction Services Amendment, excluding Mobilization, the Department will pay 100% of that Construction Services Amendment Mobilization amount.

SECTION 113 – RESERVED

SECTION 114 -- CONSTRUCTION STAKING

114.01 -- Description

1. Department and Contractor Responsibilities:
 - a. The Project will have the Construction Staking performed by the Contractor.
2. The Department will provide a set of preliminary surveying control points for the Project:
3. The Contractor shall be responsible for providing construction stakes, lines, and grades:
 - a. All Construction Staking performed by the Contractor shall be incidental to the Work.
 - b. The Contractor 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. Contractor 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 Construction Services and 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:
 - (1)
 - (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 Contract.
 - (ii) All right-of-way monuments and lines shall be established by a registered Land Surveyor under the control of the Contractor.
 - (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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 (30) 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 Contractor shall correct any deficient staking or Construction Services which resulted from inaccuracies in the staking operations or from the Contractor's failure to report inaccuracies in the Contract or survey data furnished by the Department.
- (7) Following a written request by the Contractor, 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 Contractor's compliance with Contract 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 Final Design Information 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 – Contractor 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 Contractor to comply with this section will result in delay to the start of the project and may result in a delay.
 - a. The Contractor 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 Contractor should outline the site on the plan and note that it is privately owned. The Contractor 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 Contractor shall submit to the Department a Spill Prevention and Control Plan.
- c. The Contractor 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 Contractor shall provide information pertaining to other environmental items as defined elsewhere in the Contract.
- 2. The Contractor shall designate an Environmental Representative who will be responsible for ensuring Contractor Compliance of Contract 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 Contractor'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 Contract 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 Contractor's Environmental Representative is encouraged to participate in all Environmental Inspections or meetings. Participation is not required unless requested by the Department.
- c. The Contractor shall provide to the Department the designated Environmental Representative's name and contact information prior to the start of the project.
- d. The Contractor's Environmental Representative shall be certified as an NDOT Erosion and Sediment Control Inspector.
- 3. The Contractor 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 Contractor shall schedule and conduct the Work in a manner that complies with all environmental commitments in the Contract.
- 5. The Contractor'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 Contractor shall notify the Department immediately if the Contractor becomes aware that a construction activity may violate any federal, state, or local environmental quality regulations or laws.
6. The item, 'Environmental Commitments – Contractor 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. Contractor attendance when requested during Environmental Inspections, as described in Subsection 115.05.
 - c. The installation of environmental commitment BMPs required by the Contract for which no direct payment is made.
 7. Delays incurred as a result of the Contractor'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 Contractor.

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 (14) 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. Contractor 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 (24) 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 Contractor's Environmental Representative, or a designee approved by the Department, may be required to participate during an Environmental Inspection or meeting. The Contractor will be notified at least twenty-four (24) 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 Contractor'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 Contractor'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 Contractor shall resolve Corrective Actions within seven (7) 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 (14) 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 Contractor shall begin work to resolve the Immediate Corrective Action. Immediate Corrective Actions must be resolved within forty-eight (48) 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 contractor has completed the item(s) of work to the satisfaction of the Department. The Contractor 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 contractor 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 Subsection 105.01 Paragraph 3 of the Standard Specifications for Highway Construction, 2017 Edition.
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 contractor 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 Contractor's failure to comply with any environmental commitment, whether through the Contractor's action or inaction.
 - b. The Contractor 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 Contractor of their responsibilities under this contract, nor shall it relieve the Surety of its obligation for and concerning any just claim.
 - d. The Contractor shall indemnify and save harmless the Department and all of its representatives from any and all actions or claims brought because of the Contractor's failure to comply with any environmental commitment, whether through the Contractor'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

1. No Work shall be allowed to begin on the project until the Contractor 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 Contract or identified during construction.
 - (i) Immediate containment and remediation of spills are required when water is present.
 - (ii) The Contractor 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 Contractor'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 i.e. 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.
- 2. 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.
- 3. The Contractor 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 twenty-five (25) gallons, or a lesser amount as defined by NDEE Title 126 and will not be considered as a reportable quantity and not entering the Waters of the State.

116.03 -- Construction Methods

- 1. The Contractor 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 Contractor 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 Contractor 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 Contractor shall inspect all equipment for leaks bi-weekly. The contractor 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 contractor shall install secondary containment until the repair and subsequent clean-up operations have been made.
- 6. The Contractor shall ensure that cleanup procedures are posted in a location that is accessible.
- 7. The Contractor 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 Contractor shall implement and maintain a training program regarding hazardous materials management. Training of the Contractor'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 Contractor 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 Contractor shall follow NDEE notification procedures for all spills in excess of a reportable quantity as defined by NDEE Title 126.
12. The Contractor 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.