**ON-CALL PROFESSIONAL SERVICES**

**MASTER AGREEMENT**

STATE, LPA, AND MPO PROJECTS

NEBRASKA DEPARTMENT OF TRANSPORTATION

CONSULTANT FIRM NAME

(on-call service – ex. Statewide on-call HAZMAT, or On-Call Transportation Planning Services)

**THIS AGREEMENT** is between the State of Nebraska, Department of Transportation ("State"), and Consultant firm name ("Consultant”), and collectively referred to as the “Parties”.

**WITNESSETH**

**WHEREAS,** State used a qualification-based selection process to select Consultant to be one of several on-call consultants for a <# of years> year time period, to provide On-Call Transportation Planning Services (“Services”) for use by State, LPA, or MPO, and

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

**WHEREAS,** State will, upon execution of this Master Agreement, place Consultant’s name on the list of qualified on-call consultants from which State, LPA, or MPO may select a consultant to perform Services for a project, and

**WHEREAS,** this contract will not guarantee a minimum amount of fees to Consultant for Services provided under Task Order(s); the actual dollar amount of fees paid will depend on the need, funding availability and other circumstances, and

**[USE WHEN WE MAY BE EXTENDING: REFER TO RFQ]WHEREAS,** prior to the expiration of this Master Agreement, State, in its discretion, may extend this Master Agreement up to <# of years or months> years or months, and END USE

**WHEREAS,** when Consultant is selected to provide Services under this Master Agreement, a task order agreement (“Task Order”) between Consultant and either State, LPA, or MPO will be prepared, and

**WHEREAS,** Consultant is willing to perform Services in accordance with the terms hereinafter provided, agrees to comply with all federal, state, and local laws and ordinances applicable to this Master Agreement, and agrees to comply with all applicable Federal-aid transportation project related program requirements, so that Consultant’s costs of Services provided under a Task Order will be eligible for federal reimbursement, and

 **WHEREAS,** for any project under this Agreement, State, LPA, MPO and Consultant intend that Consultant’s Services be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual (See definition in Section 1), and

**WHEREAS,** Consultant’s primary contact for State’s project is State’s Project Coordinator, and

**WHEREAS,** Consultant’s primary contact for LPA’s project is LPA’s Responsible Charge when LPA is managing the project, and

**WHEREAS,** Consultant’s primary contact for LPA’s project is State’s Project Coordinator when State is managing the project on behalf of LPA.

**WHEREAS,** Consultant’s primary contact for MPO’s project is the MPO’s Responsible Charge unless otherwise specified in the Task Order Agreement.

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

**SECTION 1. DEFINITIONS**

**WHEREVER** in this Master Agreement the following terms are used, they mean the following:

**“CONSULTANT”** means the firm of <FIRM NAME> and any employees thereof, whose business and mailing address is <FIRM ADDRESS>, and NDOT Contractor/Vendor number is xxxx, and

**<USE WHEN THERE IS A SUBCONSULTANT>**

**“SUBCONSULTANT/SUBCONTRACTOR”** means the firm of <FIRM NAME> and any employees thereof, whose business and mailing address is <FIRM ADDRESS>, and NDOT Contractor/Vendor number is xxxx.

 **“LPA”** means the Local Public Agency that has jurisdictional responsibility over the transportation facility that will be the subject of a Task Order with Consultant. LPA may also be used to refer to all Local Public Agencies, collectively. Local Public Agencies include, but are not necessarily limited to; Nebraska Cities, Villages, Counties, Political Subdivisions, Native American Tribes, and other entities or organizations found to be eligible sub recipients of federal funds for transportation projects, and

 **“LPA MANUAL”** means the Nebraska Department of Transportation’s LPA Guidelines Manual for Federal-Aid Projects. The LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address: <http://dot.nebraska.gov/media/6319/lpa-guidelines.pdf>, and

**"STATE"** means the Nebraska Department of Transportation, its Director, or authorized representative. State is solely a funding liaison between LPA and the United States Department of Transportation for LPA federally funded transportation project when LPA is managing the project. State will act as an agent of an LPA and will represent the interests of the United States Department of Transportation in the development and construction of such LPA’s Federal-aid project when State is managing the project on behalf of the LPA, and

**“MPO”** means a Metropolitan Planning Organization, a policy board designated for each urbanized area with a population of more than 50,000 individuals, which develops long-range transportation plans and transportation improvement programs in cooperation with the State and public transportation operators.

**"FHWA**" means the Federal Highway Administration, United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives, and

A **“TASK ORDER”** is a separate agreement between State, LPA, MPO and Consultant for Services on a specific project.

**SECTION 2. SELECTION PROCESS**

USE FOR MULTIPLE FIRMS ON ON-CALL LIST When the need for consultant services arise, State, LPA, State on LPA’s behalf, or MPO will select a Consultant from the on-call consultant list using a set of criteria. The criteria would include such items as: equity, specialized expertise, technical competence in the type of work required, past performance, and capacity to accomplish the work. USE WHEN ONLY ONE FIRM ON ON-CALL LIST *This section intentionally left blank.*

**SECTION 3. PROJECT TASK ORDER**

LPA or MPO must obtain written pre-approval from the State before entering into a Task Order Agreement with a Consultant under the terms of this Master Agreement. The terms and conditions of this Master Agreement apply to each project for which Consultant is selected by State, LPA, State on LPA’s behalf, or MPO, to provide Services. Consultant will provide Services for individual State <Recreation Road> LPA or MPO projects under this Master Agreement via a Task Order Agreement between State, LPA, MPO and Consultant. The Task Order will include provisions substantially similar to this Master Agreement, with any necessary amendments or additions thereto, and will describe and establish the fee for the specific project to be completed. New Task Orders may only be issued until the expiration of the term of this Master Agreement. The Master Agreement will remain in full force and effect for the duration of any Task Order issued under this Master Agreement. It is expected that the Task Orders will include, but not be limited to, the identical or similar language as included in Exhibit “<T-EXH-4-TO> use the correct example TO”, which is attached and incorporated herein by this reference.

**SECTION 4. AUTHORITY TO ISSUE PROJECT TASK ORDERS**

This Master Agreement authorizes State, LPA, State on LPA’s behalf, or MPO to issue Task Orders related to these services beginning on the Effective Date and continuing until the latest of the following events occurs: the expiration of the Initial Duration, the expiration of any extension of the Master Agreement, and the expiration of the last exercised Renewal Option, if any.

**SECTION 5. DURATION OF THIS MASTER AGREEMENT (Calendar Dates MA)**

5.1 *Effective Date* – This Agreement is effective when executed by the Parties.

5.2 *Expiration Date* – This Agreement will expire when the last of the following events is completed: The expiration of the initial duration, the expiration of any Extension of the Agreement, the expiration of the last exercised Renewal Option, if any, and the waiver or completion of the project financial audit and cost settlement of all Task Orders issued under this Master Agreement.

5.3 *Initial Duration* – The initial duration of this Master Agreement will begin on the Effective Date and continue for approximately two (2) years ending on <month, ##, 20##>.

5.4 *Extension of the Agreement* - State may, in its sole discretion, extend the duration of this Agreement in writing, for an additional (x months-match what is in the RFQ). This time extension may be added to the end of the initial duration<Use if master has renewals> or the end of a renewal period <End>. State will notify Consultant of the State’s exercise of its right to extend this Agreement approximately one month prior to the expiration of the initial duration.<Use if master has renewals> or the end of any renewal option.

5.5 *Renewal Options*. State may, in its sole discretion, renew this Agreement for up to one additional 2-year renewal period. State will notify Consultant of the renewal of this Agreement approximately one month prior to the expiration of the initial duration, or any extension thereof. <End>

<Delete if master has renewals> 5.5 *Renewal Options*. N/A <End>.

5.6 *Identifying Date* – This Agreement may be identified by the date State signed the agreement.

5.7 *Termination or suspension* – State reserves the right to terminate or suspend this Agreement at any time for any of the reasons provided herein.

**SECTION 6. SCOPE OF SERVICES**

The purpose of this Master Agreement is to contract with Consultant to complete <on-call service> Services under Task Orders issued by State, LPA, State on LPA’s behalf, or MPO. The Scope of Services for this Master Agreement are set out on Exhibit “SCOPE OF SERVICES”, attached and incorporated herein by this reference. Each Task Order will include a section titled “Task Order Scope of Services” and an exhibit titled “Scope of Services” or “Scope of Services and Fee Proposal” (collectively termed “Task Order Scope of Services”). For each Task Order, Consultant will agree to complete the Task Order Scope of Services and the Scope of Services of this Master Agreement. The Task Order Scope of Services will govern over any contrary language in the Scope of Services of this Master Agreement.

**SECTION 7. STAFFING PLAN**

Each Task Order will include a section related to Consultant’s staffing plan and changes to personnel who will be responsible for the work under the Task Order. This language is expected to be identical or similar to the Staffing Plan Section found in Exhibit “<T-EXH-A PE MA>”.

**SECTION 8. STATE'S SOVEREIGN IMMUNITY**

Notwithstanding any other provision of this Agreement, Consultant understands and agrees that (1) the State of Nebraska is a sovereign State and its authority to contract is therefore subject to limitations by constitution, statute and common law, (2) this Agreement will be interpreted under the laws of the State of Nebraska and it is enforceable only to the extent that it does not violate the constitution and the laws of the State of Nebraska, (3) any action to enforce the provisions of this Agreement must be brought in the State of Nebraska, (4) the person signing this Agreement on behalf of State has neither the authority, nor the intention, to waive State’s sovereign immunity.

**SECTION 9. NEW EMPLOYEE WORK ELIGIBILITY STATUS**

9.1 Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Consultant agrees to contractually require any subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

9.2 The undersigned duly authorized representative of Consultant, by signing this Agreement, hereby attests to the truth of the following certifications, and agrees as follows:

Neb. Rev. Stat. § 4-114. I certify compliance with the provisions of Section 4-114 and, hereby certify that this Consultant shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all subconsultants, by contractual agreement, to require the same registration and verification process.

9.3 If Consultant is an individual or sole proprietorship, the following applies:

a. Consultant must complete the United States Citizenship Attestation form and attach it to this Agreement. This form is available on the Department of Transportation’s website at <http://dot.nebraska.gov/media/2802/dr289.pdf>.

b. If Consultant indicates on such Attestation form that he or she is a qualified alien, Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

c. Consultant understands and agrees that lawful presence in the United States is required and Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**SECTION 10. FEES AND PAYMENTS**

10.1 The total dollar amount of all Task Orders (including Task Order supplements) issued under this Master Agreement will not exceed $<Maximum Value>. <Use if master has renewals> If Master Agreement is supplemented to renew for a second term, the total dollar amount for all Task Orders (including Task Order supplements) issued under that supplement will not exceed $<Maximum Value>.<End> Typical Task Orders that will be awarded under this Agreement will range from <Range of fees e.g. $XX to $XX>.

10.2 For each Task Order, State, LPA, State on LPA’s behalf, or MPO will specify which of the following payment methods will be used: Cost Plus Fixed Fee, Lump Sum, or Specific Rates of Compensation.

10.3 The Fees and Payments language in each Task Order is expected to be identical or similar to the Fees and Payments section found in Exhibit “<T-EXH-A PE MA>”.

**SECTION 11. CONSULTANTS PERFORMANCE** (State/LPA/MPO MA)

11.1 Standard of Performance

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

11.2 Quality of Service

 Consultant agrees to perform all Services hereunder using qualified personnel consistent with good professional practice in the state of the art involved, and that performance of its personnel will reflect their best professional knowledge, skill, and judgment. Consultant agrees to permit State, LPA, State on LPA’s behalf, or MPO access at all times to the work product for purposes of reviewing same and determining that the Services are being performed in accordance with the terms of each Task Order.

11.3 Performance Evaluation

11.3.1 State, LPA, State on LPA’s behalf, or MPO retains the discretion to conduct an evaluation of Consultant's performance at any time. Consultant's performance may be subject to an evaluation in the following performance categories: (1) Communication, Cooperation, and Project Management; (2) Schedule; (3) Scope and Budget; and (4) Quality and Technical Performance. Consultant understands that if State, LPA, State on LPA’s behalf, or MPO determines that Consultant's performance is not meeting, has not met, or is at risk of not meeting the Standard of Performance set out herein, State, LPA, State on LPA’s behalf, or MPO may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If State, LPA, State on LPA’s behalf, or MPO chooses to conduct a Consultant Performance Evaluation, State, LPA, State on LPA’s behalf, or MPO will notify Consultant of the evaluation including necessary instructions and procedures for complying with the evaluation.

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

11.4 State's, LPA’s or MPO’s Remedies for Substandard Performance

Upon notice of substandard performance of Services revealed during or after the construction of the project, Consultant shall re-perform the Services at no cost to State, LPA or MPO. Further, Consultant shall reimburse State, LPA or MPO for any costs incurred by State, LPA or MPO for necessary remedial work. Consultant shall respond to State's, LPA’s or MPO’s notice of any errors, omissions, or negligence within three (3) business days and give immediate attention to necessary corrections to minimize any delays to the project. This may involve visits by Consultant to the project site, if directed by State, LPA, State on LPA’s behalf, or MPO. If Consultant discovers errors, omissions, or negligence in its Services, Consultant shall notify State, LPA and State, or MPO of the errors within one (1) calendar week. Failure of Consultant to notify State, LPA and State, or MPO will constitute a breach of the Task Order.

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

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

**SECTION 12. CONSULTANT’S ACCOUNTABILITY FOR ITS SERVICES** (State/LPA/MPO PE MA)

12.1 Consultant agrees that State, LPA and MPO will rely on the professional training, experience, performance and ability of Consultant. Consultant agrees that examination by State, LPA, MPO or FHWA, approval, acceptance, use of, or acquiescence in Consultant’s Services, will not be considered a full and comprehensive examination and will not be considered approval of Consultant’s Services that would relieve Consultant from liability or expense connected with Consultant's sole responsibility for the propriety and integrity of Consultant’s Services pursuant to each Task Order. Consultant agrees that State’s, LPA's, or MPO’s declining to approve Consultant’s services will not be deemed an acceptance of defective Services or relieve Consultant of its obligations and liabilities with respect to such Services.

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

**SECTION 13. DISPUTES**

13.1 For each Task Order between State and Consultant, any dispute concerning a question of fact in connection with the services not disposed of by this Agreement will be referred for determination to the Director of the Nebraska Department of Transportation or a duly authorized representative, whose decision in the matter will be final and conclusive on the Parties to this Agreement, using the process set out on Exhibit “DISPUTE RESOLUTION EXHIBIT”, attached and incorporated herein by this reference.

13.2 For each Task Order between the LPA or MPO and Consultant, any dispute concerning a question of fact in connection with the Services not disposed of by this Master Agreement will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE RESOLUTION.

**SECTION 14. SUSPENSION, ABANDONMENT OR TERMINATION**

14.1 State has the absolute right to suspend, abandon, or terminate the Master Agreement at any time and such action on its part will in no event be deemed a breach of the Master Agreement. State will give Consultant seven days’ written notice of such suspension, abandonment, or termination.

14.2 If State suspends, abandons, or terminates the Master Agreement, Consultant will be removed from the list of selected consultants for work under this contract.

14.3 The Suspension, Abandonment, or Termination language in each Task Order is expected to be identical or similar to the Suspension, Abandonment, or Termination language found in Exhibit “<T-EXH-A PE MA>”.

**SECTION 15. OWNERSHIP OF DOCUMENTS** (State/LPA/MPO MA)

15.1 All surveys, maps, studies, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other project documents prepared or obtained under the terms of any Task Order are the property of State, LPA or MPO. Consultant shall deliver these documents to State, LPA or MPO at the conclusion of the project without restriction or limitation as to further use.

15.2 For each State, LPA and MPO project, State, LPA and MPO acknowledge that such data may not be appropriate for use on an extension of the work covered by this Agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at State’s, LPA’s or MPO’s sole risk and without legal exposure or liability to Consultant.

15.3 Further, Consultant shall keep time sheets and payroll documents in Consultant’s files for at least three years from the completion of final cost settlement by FHWA and project closeout by State.

**SECTION 16. CONFLICT OF INTEREST LAWS** (State/LPA/MPO MA)

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

**SECTION 17. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION** (State/LPA/MPO)

17.1 For any Task Order under this Master Agreement, Consultant shall review materials provided to determine whether the following provision applies.

17.2 Certain information provided by State, LPA or MPO to Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §407. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §407. "Privileged document" means any document pertaining to any file or project maintained by State, LPA or MPO that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between State, LPA or MPO employee and Legal Counsel. This confidential and privileged information is vital and essential to Consultant in order that Consultant adequately design the project at hand on behalf of State, LPA or MPO.

17.3 Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for State, LPA or MPO for the project at hand only. Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. State, LPA or MPO agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information (Approved 11/4/11):

***“CONFIDENTIAL INFORMATION:*** *Federal Law, 23 U.S.C §407, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The State of Nebraska [or LPA] has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”*

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

17.5 Consultant and State, LPA or MPO agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant will create liability on the part of Consultant to State, LPA or MPO for any damages that may occur as a result of the unauthorized dissemination. Consultant agrees to hold harmless, indemnify, and release State, LPA or MPO from any liability that may ensue on the part of State, LPA or MPO for any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant.

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

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

**SECTION 19. GENERAL COMPLIANCE WITH LAWS**

Consultant agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work. If Consultant is found to have been in violation of any applicable federal, state, or local laws and ordinances in the performance of a Task Order, such violation may be the basis for the suspension or termination under this Agreement.

**SECTION 20. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE** (State/LPA/MPO PE MA)

20.1 Consultant agrees to hold harmless State from all claims and liability due to the error, omission, or negligence of Consultant or Consultant's agents or employees in the performance of work under this Master Agreement. Consultant agrees to hold harmless State and, when applicable, LPA or MPO from all claims and liability due to the error, omission or negligence of Consultant or Consultant's agents or employees in the performance of work under each Task Order.

20.2 It is expected that in carrying out the work under these Task Orders, Consultant will make various decisions and judgments and Consultant will determine what actions are required by Consultant and by others to properly complete the work. Nothing in these agreements will be interpreted to relieve Consultant from any liability it would otherwise have to State and, when applicable, LPA or MPO in carrying out the services under each Task Order.

20.3 For the duration of this Master Agreement and any Task Order issued pursuant to this Master Agreement, Consultant shall carry insurance as outlined in Exhibit “INSURANCE EXHIBIT” for State Task Orders and Exhibit “INSURANCE EXHIBIT” for LPA Task Orders, both of which are attached and incorporated herein by this reference. For any work to be performed by a subconsultant/subcontractor or other person/entity, at any tier, for Consultant, Consultant shall require that such subconsultant/subcontractor or other person/entity meet the insurance requirements outlined in Exhibit “<Insurance>”.

20.4 For the duration of this Master Agreement and any Task Order issued pursuant to this Master Agreement for MPO Planning Projects, Consultant shall carry insurance as outlined in the MPO Task Order.

**SECTION 21. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION** (2/1/18)

To the extent of any design work applicable to the Services under this Agreement, the following Coordinating Professional language applies:

21.1 Coordinating Professional State projects:

State has designated its Roadway Design Engineer as the Coordinating Professional (defined in § 81-3408) for this project as required by Neb. Rev. Stat. § 81-3437.02 of the Nebraska Engineers and Architects Regulation Act (Neb. Rev. Stat § 81-3401 et seq.). The Coordinating Professional will apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional will verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. The Coordinating Professional shall also comply with the provisions of the Act, including Neb. Rev. Stat. § 81-3437.02, and the implementing Rules and Regulations, Title 110, NAC section 6.3, and when applicable, will complete the duties of design coordination set out in Neb. Rev. Stat. § 81-3421. Consultant agrees to cooperate with the State’s Coordinating Professional to meet the requirements of state law. Consultant further agrees to contractually require its subconsultants to cooperate with the State’s Coordinating Professional.

21.2 Coordinating Professional LPA or MPO projects:

For any LPA or MPO project that involve more than one licensed professional engineer, LPA or MPO shall designate a Coordinating Professional (defined in Neb. Rev. Stat. § 81-3408) for this project as required by Neb. Rev. Stat. § 81-3437.02, of the Nebraska Engineers and Architects Regulation Act (Neb. Rev. Stat. § 81-3401 et. seq.) as defined in § 81-3408. The Coordinating Professional will apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional will verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. Consultant agrees to contractually require its subconsultants to cooperate with the designated Coordinating Professional.

If Consultant’s engineer has been identified as the Coordinating Professional for this project, and, for whatever reason, the designated Coordinating Professional is no longer assigned to the project, Consultant shall provide LPA or MPO written notice of the name of the replacement within 10 business days.

21.3 Professional Registration

To the extent the work requires engineering services, Consultant will affix and sign the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all applicable documents, plans, specifications, and reports prepared under any Task Orders issued pursuant to this Master Agreement as required by the Nebraska Engineers and Architects Regulations Act.

**SECTION 22. SUCCESSORS AND ASSIGNS**

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

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

Consultant shall have, and comply with, an acceptable and current drug-free workplace policy on file with State, and when applicable, LPA or MPO. Consultant’s employees shall not use illegal drugs or consume alcohol during work hours and while performing Services for State, LPA or MPO under this Agreement.

**SECTION 24. FAIR EMPLOYMENT PRACTICES ACT**

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

**SECTION 25. DISABILITIES ACT**

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

**SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES** (State/LPA/MPO MA)

26.1 Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under each Task Order.

26.2 Consultant shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the award and performance of FHWA-assisted contracts. Failure of Consultant to carry out the requirements set forth above will constitute a breach of this Agreement and, after the notification of the FHWA, may result in termination of this Agreement by State, or a Task Order by an LPA or MPO, or such remedy as State deems appropriate.

**SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES** *(2023 NDOT Title VI Implementation Plan)*

27.1 Appendix A - During the performance of this contract, the Contractor, Consultant, or when applicable LPA, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

27.1.1 Compliance with Regulations

The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

27.1.2 Nondiscrimination

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR 21.

27.1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of contractor’s obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

27.1.4 Information and Reports

The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contactor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

27.1.5 Sanctions for Noncompliance

In the event of contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

27.1.5.1 withholding payments to the contractor under the contract until the contractor complies; and/or

27.1.5.2 cancelling, terminating, or suspending a contract, in whole or in part.

27.1.6 Incorporation of Provisions

The contractor will include the provisions of paragraphs 27.1.1 through 27.1.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

27.2 Appendix E – During the performance of this contract, the Contractor, Consultant, or when applicable LPA, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

27.2.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

27.2.2 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

27.2.3 Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

27.2.4 Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

27.2.5 The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

27.2.6 Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

27.2.7 The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

27.2.8 Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

27.2.9 The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

27.2.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

27.2.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

27.2.12 Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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

**>USE FOR SUBCONSULTANT PROVIDED SERVICES<**

28.1 The Subconsultant will provide **<description of subconsultant services>**.

28.2 Any other subletting, assignment, or transfer of any professional services to be performed by Consultant is hereby prohibited unless prior written consent of State, on LPA’s or MPO’s behalf, is obtained.

28.3 At LPA’s, State’s or MPO’s discretion, Consultant may enter into an agreement with any subconsultants/subcontractors (including allowing subconsultants/subcontractors at lower tiers) for work covered under this Agreement. All subconsultant/subcontractor agreements, at any tier, for work covered under this Agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against LPA, MPO or State will accrue to any subconsultant/subcontractor by reason of this Agreement.

28.4 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

**>USE WHEN NO SUBCONSULTANTS<**

28.1 Any subletting, assignment, or transfer of any professional services to be performed by Consultant is hereby prohibited unless prior written consent of State, on LPA’s or MPO’s behalf, is obtained.

28.2 At LPA’s, MPO’s or State’s discretion, Consultant may enter into an agreement with any subconsultants/subcontractors for work covered under this agreement. All subconsultant/subcontractor agreements for work covered under this agreement must contain identical or substantially similar provisions to those in this agreement. No right-of-action against LPA, MPO or State will accrue to any subconsultant/subcontractor by reason of this Agreement.

28.3 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise

**SECTION 29. CONSULTANT CERTIFICATIONS** (State MA)

The undersigned duly authorized representative of Consultant, by signing this Master Agreement, and any Task Order issued under this Master Agreement, hereby swears, under the penalty of law, to the best of my knowledge and belief, the truth of the following certifications, and agrees as follows:

29.1 Neb. Rev. Stat. § 81-1715(1). I certify compliance with the provisions of Section 81-1715 and, to the extent that these agreements are a lump sum, specific rates of compensation, or actual cost-plus-fixed-fee type professional services agreement, I hereby certify that wage rates and other factual unit costs supporting the fees issued under this Agreement are accurate, complete, and current as of the date of this Agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which State determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

29.2 Neb. Rev. Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:

1. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement, or
2. Has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out this Agreement, or
3. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this Agreement, except as here expressly stated (if any).

29.3 Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.Subsection 29.3a below contains 10 instructions that consultant agrees to follow in making the certifications contained in subsection 29.3b.

# a. Instructions for Certification

1. By signing this Agreement, Consultant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with State's determination whether to enter into this Agreement. However, failure of Consultant to furnish a certification or an explanation will disqualify Consultant from participation in this Agreement.
3. The certification in this clause is a material representation of fact upon which reliance was placed when State determined to enter into this Agreement. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, State may terminate this Agreement for cause or default.
4. Consultant shall provide immediate written notice to State if at any time Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 – Debarment and suspension. Exec. Order No. 12,549, 51 Fed. Reg. 6370 (1986).
6. Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by State before entering into this Agreement.
7. Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. Consultant in a covered transaction may rely upon a certification of a prospective subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph a.6. of these instructions, if Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, State may terminate this Agreement for cause or default.

b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

* 1. By signing this Agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
		1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
		2. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
		3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b) above; and
		4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
	2. Where Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this Agreement. I acknowledge that this certification is to be furnished to State and the FHWA in connection with this Agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.

**SECTION 30. NEBRASKA DEPARTMENT OF TRANSPORTATION CERTIFICATION**

30.1 By signing this Master Agreement, I do hereby certify that, to the best of my knowledge, Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Master Agreement to:

a. employ or retain, or agree to employ or retain, any firm or person, or

b. pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

30.2 I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this Master Agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

**SECTION 31. AGREEMENT SIGNING PROCESS**

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

**SECTION 32. SEVERABILITY**

The invalidity or unenforceability of any such clause, provision, section, or part shall not affect the validity or enforceability of the balance of the Agreement, which shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable clause, provision, section or part.

**SECTION 33. COMPLETENESS**

This Agreement is the complete and exclusive statement of the arrangement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the Parties hereto.

**SECTION 34. FEDERAL AID REQUIRED CLAUSES**

The contract clauses set out on Exhibit <2-cfr-200 clauses>, to the extent applicable, are attached and incorporated herein by this reference. Consultant shall attach and incorporate Exhibit <2-cfr-200 clauses> in any subconsultant agreements for work under this agreement.

**IN WITNESS WHEREOF**, the Parties hereby execute this Master Agreement pursuant to lawful authority as of the date signed by each party. Further, the Parties, by signing this Master Agreement, attest and affirm the truth of each and every certification and representation set out herein.

USE FOR ELECTRONIC SIGNATURES

 **EXECUTED** by the Consultant on:

 CONSULTANT FIRM NAME

 Consultant Signatory Name

 Consultant Signatory Title

 **EXECUTED** by the State on:

NEBRASKA DEPARTMENT OF TRANSPORTATION

 NDOT Signatory Name

 NDOT Signatory Title

USE FOR WET INK SIGNATURES

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

 CONSULTANT FIRM NAME

 Consultant Signatory Name

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Consultant Signatory Title

STATE OF ?? )

 )ss.

?? COUNTY )

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

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

NEBRASKA DEPARTMENT OF TRANSPORTATION

 NDOT Signatory Name

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 NDOT Signatory Title