SAMPLE CONSULTANT AGREEMENT

# FOR FAA PROJECTS

Airport Improvement Program (AIP) Project No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipal Airport

THIS CONTRACT is made and entered into by and between the consulting firm of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called the "Consultant" and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_, Nebraska, hereinafter called the "Sponsor".

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

**SECTION 1: GENERAL**

The Sponsor agrees to employ the Consultant to provide the services described in Sections 2 through \_\_\_ for the following project.

**EXAMPLE:** Extend runway 17/35 by 600 feet

Widen runway 17/35 by 25 feet

Install medium intensity runway lighting (MIRL) system to include an electric vault, etc.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of person) will represent the Consultant as Project Manager in the perfor­mance of this agreement. No one else will be assigned to act in this capacity without the Sponsor's prior written approval. The Project Manager shall be responsible for directing and coordinat­ing all the activities necessary to complete this project.

The Consultant will provide all equipment and personnel necessary to do the tasks listed herein, except as otherwise provided. The Consultant shall be responsible for the quality, accuracy and coordina­tion of the design, drawings, reports, surveys and other items furnished as part of this agreement.

# SECTION 2: PRELIMINARY PHASE

NOTE: This phase may be deleted if covered by a prior contract.

If deleted, insert in place of the following text: "THIS PHASE NOT USED".

Under this phase the consultant agrees to define the scope of the project and establish preliminary requirements. This work will consist of the following major items.

a. Confer with the Sponsor, the NDOT / Division of Aeronautics (Aeronautics) and the Federal Aviation Administration (FAA) in accordance with FAA AIP Sponsor Guide No. 910-Predesign Conference. The Consultant shall prepare a summary of the conference that highlights critical project issues.

b. Prepare documents required to submit a request for aid, including ACIP data sheets. ACIP Data Sheets will be prepared and submitted in accordance with FAA AIP Sponsor Guide No. 610-Requesting Aid: ACIP.

c. Conduct field investigations or engineering studies. *\*\*If used, this item requires additional details and the lab tests etc. will be in Special Services.*

d. Conduct field surveys – as necessary – in accordance with FAA Advisory Circular 150/5300-16,17 &18.

e. Submit a preliminary pavement design report (3 copies) within 30 days from the date of this agreement. The preliminary design report shall include, at a minimum, the following items in accordance with FAA AIP Sponsor Guide No. 920 Engineer’s Report.

* General Scope of Project
* Photographs
* Design Standards
* Airport Operational Safety
* Site Conditions
* Pavement Design
* Drainage Design
* Material Available
* Pavement Marking
* Lighting
* Signage
* Navigational Aids
* Environmental Considerations
* Underground Utility Lines in Work Areas
* Miscellaneous Work Items
* Application of Life Cycle Cost Analysis (as applicable)
* FAA Owned Facilities
* Non-AIP work
* Engineers Estimate
* Project Schedule
* Project Budget
* Sponsor Modifications to Design or Construction Standards
* DBE Participation
* Pre-design Meeting Minutes

This phase will be considered complete after the preliminary design report is reviewed by the Sponsor, FAA & Aeronautics, and comments/concerns are addressed.

**SECTION 3: DESIGN PHASE**

Under this phase, the Consultant agrees to prepare the necessary construc­tion plans and contract documents that will include special and general conditions, construc­tion specifications, contract forms, labor provisions, notice to bidders and proposal forms for the airport improvements listed in Section 1.

The Consultant will affix the seal of a registered Professional Engineer licensed to practice in the State of Nebraska to the construction plans and specification/contract bound volume. The Consultant agrees to provide the following services:

a. \*\*\*Delete if preliminary phase used.\*\*\*\*Confer with the Sponsor, the NDOT / Division of Aeronautics (Aeronautics) and the Federal Aviation Administration (FAA) in accordance with FAA AIP Sponsor Guide No. 910-Predesign Conference. The Consultant shall prepare a summary of the conference that highlights critical project issues.

b. Prepare detailed plans (approximately ??? sheets), specifications, contract documents and Engineer’s Design Report. FAA's current (at contract date) Advisory Circular (AC) **150/5370-10**, **Standards for Specifying Construction of Airports,** will be used when preparing the plans and specifications. The detailed plans, specifications, contract documents and Engineer’s Design Report will be submitted to Aeronautics (1 copy) and FAA (2 copies) for review within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ days of this agreement. At a minimum, the Engineer’s Design Report will include the following items in accordance with FAA AIP Sponsor Guide No. 920 Engineer’s Report.

* General Scope of Project
* Photographs
* Design Standards
* Airport Operational Safety
* Site Conditions
* Pavement Design
* Drainage Design
* Material Available
* Pavement Marking
* Lighting
* Signage
* Navigational Aids
* Environmental Considerations
* Underground Utility Lines in Work Areas
* Miscellaneous Work Items
* Application of Life Cycle Cost Analysis (as applicable)
* FAA Owned Facilities
* Non-AIP work
* Engineers Estimate
* Project Schedule
* Project Budget
* Sponsor Modifications to Design or Construction Standards
* DBE Participation
* Pre-design Meeting Minutes

c. The consultant agrees to follow the FAA AIP Sponsor Guides (current as of the contract date) numbered below:

(1) FAA AIP Sponsor Guide No. 920 Engineer’s Report

(2) FAA AIP Sponsor Guide No. 930-Plans & Specifications

(3) FAA AIP Sponsor Guide No. 940-Regional Approved Modifications to AC 150/5370-10

(4) FAA AIP Sponsor Guide No. 950-Sponsor Modifications of FAA Standards

(5) FAA AIP Sponsor Guide No. 951-Use of State Standards

(6) FAA AIP Sponsor Guide No. 960-Operational Safety on Airport During Construction

d. Revise and submit plans, specifications, contract documents and Engineer’s Design Report within 14 days of receipt of comments from Aeronautics and FAA per Item b submittals above.

e. Prepare and submit a Construction Safety and Phasing Plan (CSPP) in accordance with FAA’s current Advisory Circular (AC) 150/5370-2.

f. Prepare and submit an FAA Form 7460-1 for the (indicate object). Prepare and submit FAA Form(s) 7460-1 for construction work area/phasing boundaries/key points on haul routes/staging area boundaries, etc. \*\*Delete if not applicable\*\*

g. Prepare and submit an FAA Quarterly Performance Report. (Include if design phase grant anticipated)

The original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations and other data prepared or obtained under the terms of this contract are instruments of service and shall remain the Consultant's property. Reproducible copies of drawings and copies of other pertinent data will be made available to the sponsor upon request. Copies of disks containing all drawings will be furnished to the sponsor for their use. The Consultant will provide, without cost to the Sponsor and approving agencies, the neces­sary number of copies for review and approval.

This phase will be complete upon completion of all items listed above.

**SECTION 4: BIDDING PHASE**

Under this phase of the contract the Consultant will assist the Sponsor in advertis­ing and securing bids. The Consultant agrees to provide the following services.

a. Provide sufficient copies of the approved plans and specifications to permit advertising and bidding. Copies of the documents may be furnished to prospective bidders at a cost fixed by the Consultant. The Consultant shall perform in accordance with FAA AIP Sponsor Guide No. 1010-Bidding.

b. Conduct a pre-bid conference. *\*\*For complex projects only.\*\**

c. Answer questions raised during the bidding process. Issue addenda as required.

d. Attend the bid opening, tabulate and analyze bid results, evaluate bidders and furnish recommen­dations on the award of contracts.

e. Assist the Sponsor with the submission of documents necessary to obtain construction contract approval. The Consultant shall prepare and submit a request for concurrence to Aeronautics/FAA in accordance with FAA AIP Sponsor Guide No. 1020-Contract Award, except that the Sponsor Certification will be prepared and submitted by Aeronautics.

f. After appropriate approval, prepare all executed contract documents necessary for the project including bonds, insurance, contracts, drawings, etc. Bind the executed contract documents with the specifications and provide one bound set each to FAA, Aeronautics and the Sponsor.

This phase will be considered complete when the executed contracts have been approved by the Sponsor, FAA and Aeronautics. Re-advertising, if necessary, will be negotiated under a supplemental agreement to this contract.

**SECTION 5: CONSTRUCTION PHASE**

(INCLUDES OBSERVATION)

Based on estimated \_\_\_\_ Working/Calendar Days (Estimated Construction Contract Time)

Under this phase the Consultant agrees to perform the following services.

a. Provide consultation and advice to the Sponsor during all construction phases.

b. Assign a Project Engineer to the project that will periodically observe work in progress, review test reports and provide weekly working day, construction progress and testing reports to the Sponsor, FAA and Aeronautics. The Consultant will provide written confirmation that all performance tests required by the specifications were conducted and met or exceeded the specifications.

c. Submit a Construction Observation Program at least 10 days prior to preconstruction meeting. (If the estimated pavement construction cost exceeds $250,000). The Consultant will comply with FAA AIP Sponsor Guide No. 1030-Construction Management Program  *\*\** ***only*** *for FAA projects with paving construction , otherwise, delete.\*\**

d. Participate in preconstruction conferences, per the latest (as of contract date) FAA AIP Sponsor Guide No. 1040-Preconstruction Conference. Submit a formal report of the conference discussions.

e. Provide field and/or construction surveys and staking, as required under the FAA standard specification General Provision 50-06, including spot checks and final cross sections for establishing pay quantities and as-built plans.

f. Upon receipt of Aeronautics/FAA authorization to issue Notice-to-Proceed, the Consultant will issue, for the Sponsor, the Notice-to-Proceed to the Contractor. Aeronautics/FAA authorization will not be issued until all conditions are met in accordance with FAA AIP Sponsor Guide No. 1050-Notice-to-Proceed.

g. Provide on-site construction observation in accordance with FAA AIP Sponsor Guide Nos. 1030-Construction Management Program and 1070 –Inspections.

h. Review and approve shop and erection drawings and all materials data submit­ted by construction contractors for compliance with design concepts.

i. Prepare and negotiate contract modifications, change orders and supplemental agreements, according to the latest (as of contract date) FAA AIP Sponsor Guide Nos. 1080-Contract Modifications, 1081-Change Orders and 1082-Supplementary Agreements.

j. Determine amounts owed to construction contractors and process financial documents.

k. Review compliance with Labor Standards in accordance with FAA AIP Sponsor Guide No. 1060-Labor Provisions. Provide compliance documentation to the Sponsor.

l. Review compliance with Labor and Civil Rights provisions in accordance with FAA AIP Sponsor Guide No. 1070-Inspections. All compliance records shall be provided to the Sponsor.

m. Arrange and conduct final inspections. Submit a summary of test results and a quality control report complete with checklists, performance test results, pay factor adjustments, etc.

n Prepare as-built record drawings, as-built airport layout plan, a final construction report, etc. in accordance with FAA AIP Sponsor Guide No. 1610-Development Project Closeout. Final close-out documents shall be provided to Aeronautics and FAA within 90 days of the final acceptance date (per FAA AIP Sponsor Guide No. 1610-Development Project Closeout) and prior to the consultant's final pay request.

o. Prepare and submit FAA Quarterly Performance Reports.

**SECTION 6: SPECIAL SERVICES**

Under this phase, the Consultant will provide the following services. Services not listed in Sections 2 through 6 can only be added by supplemental agreement to this contract.

NOTE: Examples shown below. List only those items to be provided. Indicated which items are

subcontracted and to whom contracted.

a. Laboratory tests, soil investigations, etc. for Preliminary phase. The testing laboratory will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

b. Laboratory tests, soil investigations, etc. for Design phase. The testing laboratory will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

c. Testing of materials and soils during construction, as required by the project specifications and the Construction Observation Program. The main testing laboratory will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

d. Airport Layout Plan (ALP) preparation or update to meet FAA standards, feasibility studies, environmental studies and assessment reports and photogrammetry surveys. *The as-built ALP is a part of Section 5 Construction Services, paragraph n.*

e. Land surveys and property map for the grant application. The survey party will be led by a party chief/instrument man who is a registered land surveyor in the State of Nebraska.

f. Survey for Instrument Approach Procedure (IAP) per FAA AC 150/5300-16, 17, & 18

**SECTION 7: FEES AND CHARGES**

The Sponsor shall pay the Consultant for the services described in this agreement as follows:

Section 2: Preliminary Phase. Payment for the items included in Section 2, Preliminary Phase, shall be the lump sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as shown on Exhibit A, attached and made a part hereto. Payment shall be due according to the following payment schedule:

75% when the field investigation is complete;

25% when the preliminary design report is approved by the Sponsor, Aeronautics and FAA.

**\* \* OPTION:** In place of the above payment schedule, the following is an acceptable option: "Payment shall be due monthly based on the percentage of work completed."

Section 3: Design Phase. Payment for the items included in Section 3, Design Phase, shall be the lump sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shown on Exhibit B, attached and made a part hereto. Payment shall be due according to the following payment schedule:

25% when design is 1/3 complete;

25% when design is 2/3 complete;

25% when plans and specifications are submitted for review;

25% when plans and specifications are approved by the Sponsor, Aeronautics and FAA.

**\* \* OPTION:** In place of the above payment schedule, the following is an acceptable option: "Payment shall be due monthly based on the percentage of work completed; however, 25% of the payment will be withheld until after plans and specifications are approved."

Section 4: Bidding Phase. Payment for the items included in Section 4 Bidding Phase shall be the lump sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shown on Exhibit C attached and made a part hereto. Payment shall be due according to the following schedule:

85% when bids received;

15% when item f. of Section 4: Bidding Phase is complete.

**\* \* OPTION:** In place of the above payment schedule, the following is an acceptable option: "Payment shall be due monthly based on the percentage of work completed."

Section 5: Construction Phase. Payment for the items included in Section 5 Construction Phase shall be made based on direct salary, overhead costs and reimbursable expenses incurred plus a fixed payment of $\_\_\_\_\_\_\_\_\_\_\_ and sub­contract costs. The schedule of charges and reimbursable expenses is Exhibit D attached and made a part hereto. Labor and general administra­tion overhead percentage shall be supported by a statement of overhead expenses certified by the consultant's auditor or a governmental auditor.

The total charges for Section 5 will not be greater than the "Not-to-Exceed" (NTE) amount of $\_\_\_\_\_\_\_\_\_\_\_, if 1) the construc­tion work is completed within the construction contract aggregate time allowance; and 2) the scope of work as set forth in Section 1 is not exceeded. If construction contract time is exceeded or the scope of services is increased then the "Not-to-Exceed" amount may be increased by a supplemental agreement to this contract. No payment above the Not-to-Exceed limit shall be made without prior approval of an amendment supported by proper justification.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee.

Section 6: Special Services. Payment for the items included in Section 6 Special Services Phase shall be made based on direct salary, overhead costs and reimbursable expenses incurred plus a fixed payment of $\_\_\_\_\_\_\_\_\_\_\_ and subcontract costs. The schedule of charges and reimbur­sable expenses is Exhibit E attached and made a part hereto.

Testing laboratory services are estimated to be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as shown on the attachment to Exhibit E. The estimated amount may be increased with (1) prior notification from the Consultant and approval from the Sponsor, Aeronautics and FAA, and (2) execution of a supplemental agreement to this contract. If the testing fees come close to the limit and it becomes apparent that the project cannot be completed within the limit, the Consultant shall notify the Sponsor, Aeronautics and FAA. The notification shall include a brief justification for the overrun referencing applicable tests required by the specifications and a revised Exhibit E depicting the new schedule of charges.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee.

If Special Services are added during the course of this contract, a supplemental agreement will be executed to cover any added fees when the services are authorized. All supplemental agreements are subject to the same approvals as this agreement.

**\* \* \* \* \* OPTION FOR SPECIAL SERVICES OTHER THAN TESTING \* \* \* \* \***

The total charges for Section 6 will not be greater than the "Not-to-Exceed" amount of $\_\_\_\_\_\_\_\_\_\_, plus testing costs estimated to be $\_\_\_\_\_\_\_\_\_\_\_, provided the scope of work as set forth in Sections 1 and 6 is not exceeded. If this occurs, the "Not-to-Exceed" amount may be increased by a supplemental agreement to this contract. No payment above the Not-to-Exceed limit shall be made without prior approval of an amendment supported by proper justification.

**\* \* \* \* \* OPTION FOR NEW ALP AND SIMILAR WORK \* \* \* \* \***

Payment for the items included in Section 6, Special Services Phase, shall be the lump sum of $\_\_\_\_\_\_\_\_\_\_\_ as shown on Exhibit E, attached and made a part hereto. Payment shall be due according to the following payment schedule: *(payment schedule will vary depending on the services to be provided). \* \* \* \* \**

Payment Provisions and Adjustments

All payments shall be made based on the lump sum amounts or unit charges and fixed fees, as provided. If the scope of consultant services changes, causing an increase or decrease to the Consultant's costs, this contract shall be adjusted to cover the increase or decrease in costs. If circumstances beyond the control of the Consultant require more than 18 months from the date of this agreement to complete the work specified herein, this contract may be adjusted to cover any increase in the Consultant's costs yet to be incurred. All adjustments shall be negotiated in the same manner as this contract and shall be executed as a Supplemental Agreement to the original contract. The Sponsor will not reduce the Consul­tant's final payment for any part of the project designed but not actually constructed.

The Consultant shall attach a separate Exhibit to this agreement for each subconsultant used in each phase for any part of the services to be performed by subconsultant. Subconsultant Exhibits shall break out hours, rates and fees necessary for determination of reasonableness of cost.

**NOTE TO ENGINEER**: Sections 8 through 26 are not required for state aid projects. References to FAA should also be deleted for state aid projects. Sections 8 through 20 & Section 26 are required for all federal projects. Add Section 21 for contracts exceeding $10,000. Add Section 22 for contracts exceeding $25,000. Add Sections 23 through 25 for contracts exceeding $100,000.

**SECTION 8: ACCESS TO RECORDS AND REPORTS**. The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comp­troller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the contractor which are directly pertinent to the specific contract for the purpose of making an audit, examina­tion, excerpts and tran­scriptions. The Contractor agrees to maintain all books, records and reports required under this contractor for a period of not less than three years after final payment is made and all pending matters are closed.

**SECTION 9: BUY AMERICAN PREFERENCES.**

Not applicable to this professional service agreement because it does not include any manufactured product as a deliverable.

**SECTION 10: GENERAL CIVIL RIGHTS PROVISIONS**

The contractor agrees that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participat­ing in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal Assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

(a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assis­tance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

**SECTION 11: CIVIL RIGHTS – TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** 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 procurement of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regula­tions, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurement 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 procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimina­tion on the grounds of race, color, or national origin.

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 sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instruc­tions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a) Withholding payments to the contractor under the contract until the contractor complies, and/or

b) Cancelling, terminating or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six 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 sponsor or the Federal Aviation 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 sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**SECTION 12: CIVIL RIGHTS – TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

* 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);
* 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964);
* 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);
* 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;
* The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
* Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
* 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, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
* Titles II and III of the Americans with Disabilities Act of 1990, 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 CFR Parts 37 and 38;
* The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
* Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-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;
* 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);
* 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 13: DISADVANTAGED BUSINESS ENTERPRISES.**

**Contract Assurance (§26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of NDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

**SECTION 14: FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

**Requirement:** Federal Fair Labor Standards Act (29 USC 201)

**Federal Agency with Enforcement Responsibilities:** U.S. Department of Labor – Wage and Hour Division

**SECTION 15: LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

**SECTION 16: OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

**Requirement:** Occupational Safety and Health Act of 1970 (20 CFR Part 1910)

**Federal Agency with Enforcement Responsibilities:** U.S. Department of Labor – Occupational Safety and Health Administration

**SECTION 17: RIGHTS TO INVENTIONS**

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

**SECTION 18: TRADE RESTRICTION CLAUSE**

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcon­tractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancel­lation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicita­tion, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certifica­tion of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**SECTION 19: VETERAN’S PREFERENCES (FEB 14)**

In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**SECTION 20: CERTIFICATION FOR PROJECT PLANS AND SPECIFICATIONS.** The Contractor certifies that:

1. The plans and specifications will be developed in accordance with all applicable Federal standards and requirements and there will be no deviation from or modification to standards set forth in the advisory circulars without prior FAA approval;

2. The specifications for equipment will not be proprietary or written so as to restrict competition;

3. The development included in the plans is depicted on an airport layout plan approved by FAA;

4. Development which is ineligible for AIP funding will be omitted from the plans and specifications or will be depicted in a separate section;

5. Process control and acceptance tests required for the project by standards contained in Advisory Circular 150/5370-10 will be included in the project specifications;

6. A value engineering clause will not be incorporated into the contract without FAA concurrence;

7. The plans and specifications will incorporate applicable requirements and recommendations set forth in the Federally-approved environmental finding;

8. For construction activities within or near aircraft operational areas, the requirements contained in the latest (as of bid date) Advisory Circular 150/5370-2 will be discussed with FAA and incorporated into the specifications and a safety or phasing plan will be prepared with FAA's concurrence.

**SECTION 21: TERMINATION OF CONTRACT** *(include this section if contract exceeds $10,000)*

1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discon­tinued (unless the notice directs otherwise) and all materials as may have been accumu­lated in performing this contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
5. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

*(include this section if contract exceeds $25,000)*

**SECTION 22: DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

**CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offer submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)**

The successful bidder, by administering each lower tier subcontract that exceeds $25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <https://www.sam.gov>/
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

**SECTION 23: BREACH OF CONTRACT TERMS**. *(include this section if contract exceeds $100,000)*

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

*(include this section if contract exceeds $100,000)*

**SECTION 24: CLEAN AIR AND WATER POLLUTION CONTROL**

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 *et seq*. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq*. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.

*(include this section if contract exceeds $100,000)*

**SECTION 25: CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

*(include this section in all federal contracts)*

**SECTION 26: TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving” (10/1/2009) and NDOT Order 3902.10 “Text Messaging While Driving” (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant. The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

**APPROVALS**.

It is understood and agreed that this contract and any subcontracts or supplemen­tal agreements are subject to approval by the Nebraska DOT / Division of Aeronautics and the Federal Aviation Administration before any state or federal funds are obligated.

IN TESTIMONY WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized representatives on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, with copies to be filed with the Nebraska DOT / Division of Aeronautics and the Federal Aviation Administration.

CONSULTING FIRM

Address

City, State Zip

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

ATTEST \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

AIRPORT SPONSOR

Address

City, State Zip

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

ATTEST \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

**EXHIBIT A, B or C**

PRELIMINARY, DESIGN OR BIDDING PHASE (Primary Consultant)

1. Direct Salary Costs

Direct Salary

Title Hours Rate/Hour Cost ($)

Principal

Project Engineer

Inspector

Surveyor

Technician

Draftsman

Others as appropriate

Total Direct Salary Costs $\_\_\_\_\_\_\_\_\_\_\_

2. Labor and General & Administrative Overhead

Percentage of Direct Salary Costs \_\_\_\_\_\_\_ % \* $\_\_\_\_\_\_\_\_\_\_\_

3. Subtotal of Items 1 & 2 $\_\_\_\_\_\_\_\_\_\_\_

4. Fixed Fee: \_\_\_\_% of Item 3 (Direct Nonsalary Expenses shall not be included) $\_\_\_\_\_\_\_\_\_\_\_

5. Direct Nonsalary Expenses

Travel $\_\_\_\_\_\_\_\_\_\_

Per Diem $\_\_\_\_\_\_\_\_\_\_

Materials and Supplies $\_\_\_\_\_\_\_\_\_\_

Printing $\_\_\_\_\_\_\_\_\_\_

In-House Testing $\_\_\_\_\_\_\_\_\_\_

Other $\_\_\_\_\_\_\_\_\_\_

Total Expenses (Total Item 5) $\_\_\_\_\_\_\_\_\_\_\_

6. Subcontract costs- Attach a separate breakout exhibit for each subcontractor. $\_\_\_\_\_\_\_\_\_\_\_

7. Lump Sum Amount - Total Items 3, 4, 5 & 6 $\_\_\_\_\_\_\_\_\_\_\_

\* For Item 2, the Primary consultant should submit a statement of auditable overhead expen­ses, certified by the consultant's auditor, the sponsor's auditor, the state's auditor, or a Federal government auditor.

(Not required for subcontractors)

## EXHIBIT D or E

CONSTRUCTION OR SPECIAL SERVICES PHASE (Primary Consultant)

Based on estimated \_\_\_\_ Working/Calendar Days (Construction Contract Time)

1. Direct Salary Costs

Direct Salary

Title Hours Rate/Hour Cost ($)

Principal

Project Engineer

Inspector

Surveyor

Technician

Draftsman

Others as appropriate

Total Direct Salary Costs $\_\_\_\_\_\_\_\_\_\_\_

2. Labor and General & Administrative Overhead

Percentage of Direct Salary Costs \_\_\_\_\_\_\_ % $\_\_\_\_\_\_\_\_\_\_\_

3. Subtotal of Items 1 & 2 $\_\_\_\_\_\_\_\_\_\_\_

4. Fixed Fee - \_\_\_\_% of Item 3 (Out-of-pocket Expenses shall not be included) $\_\_\_\_\_\_\_\_\_\_\_

5. Out-of-pocket Expenses

Travel

Commercial - Actual $\_\_\_\_\_\_\_\_\_\_

Vehicle \_\_\_\_ miles @ $\_\_\_\_\_\_ per mile $\_\_\_\_\_\_\_\_\_\_

Per Diem - Actual $\_\_\_\_\_\_\_\_\_\_

Materials and Supplies - Actual $\_\_\_\_\_\_\_\_\_\_

Other - Actual $\_\_\_\_\_\_\_\_\_\_

Total Expenses (Total Item 5) $\_\_\_\_\_\_\_\_\_\_\_

6. Subcontract costs – Attach a separate breakout exhibit for each subcontractor. $\_\_\_\_\_\_\_\_\_\_\_

7. Not-to-Exceed Total (Items 3 through 6) $\_\_\_\_\_\_\_\_\_\_\_

ESTIMATED TESTING COSTS (Detailed Estimate Attached) $\_\_\_\_\_\_\_\_\_\_\_

ESTIMATE OF SUBCONTRACTOR/ TESTING COSTS

TESTING LABORATORY OR SUBCONTRACTOR: Firm Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

(Personnel charges – Breakout) \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

LIST ALL ANTICIPATED TESTING COSTS.

ESTIMATED

ESTIMATED UNIT TOTAL

SERVICE OR TEST QUANTITY PRICE COST

Moisture-Density Relationship \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

Relative Density \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

Sieve Analysis \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

Flexural Strength \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

Marshall Test \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

Equipment Mobilization \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

Mileage \_\_\_\_\_ \_\_\_\_\_ $\_\_\_\_\_\_\_\_\_

TOTAL ESTIMATED COST $\_\_\_\_\_\_\_\_\_