

RESOLUTION NUMBER 7808

WHEREAS, the City of Beatrice is developing a transportation project for which it intends to obtain Federal funds; and

WHEREAS, the City of Beatrice as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State, and local laws, rules, regulations, policies, and guidelines applicable to the funding of the Federal-aid project; and

WHEREAS, the City of Beatrice and JEO Consulting Group, Inc., wish to enter into a Professional Services Agreement to provide Environmental Services for the Federal-aid project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That the Mayor is hereby authorized to execute the Environmental Services Agreement between the City of Beatrice and JEO Consulting Group, Inc., for:

NDOT Project Number: DPS-34(46)

NDOT Control Number: 13608

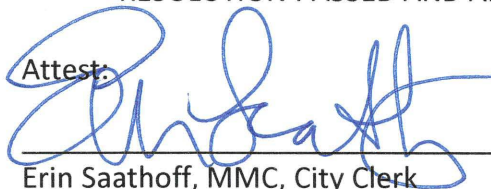
NDOT Project Description: Beatrice Court Street Access and Safety Transformation
("CAST") Initiative

A copy of said Agreement, marked as Exhibit "A", is attached hereto and incorporated by reference.

SECTION 2. That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 15th day of June, 2026.

Attest:


Erin Saathoff, MMC, City Clerk

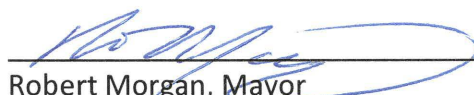

Robert Morgan, Mayor

Exhibit "A"

Agreement No.	BK2609
NTP Date	2/23/2026
Agreement Amount	CPFF \$45,749.52

PROFESSIONAL SERVICES AGREEMENT

LPA PROJECTS ENVIRONMENTAL SERVICES

CITY OF BEATRICE
JEO CONSULTING GROUP, INC.
PROJECT NO. DPS-34(46)
CONTROL NO. 13608
BEATRICE COURT STREET ACCESS & SAFETY
TRANSFORMATION (CAST) INITIATIVE

THIS AGREEMENT is between the City of Beatrice ("LPA") and JEO Consulting Group, Inc. ("Consultant"), collectively referred to as the "Parties".

WITNESSETH

WHEREAS, "State" means the Nebraska Department of Transportation in Lincoln, Nebraska, its Director, or authorized representative. The State will act as an agent of LPA and will represent the interests of the United States Department of Transportation in the development and construction of such LPA's project when State is managing the project on behalf of the LPA, and

WHEREAS, "LPA" for this Agreement means City of Beatrice who has jurisdictional responsibility over the transportation facility that will be the subject of this Agreement with Consultant. In this Agreement, 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

WHEREAS, State is authorized by state law to assist Nebraska Local Public Agencies, hereinafter referred to as LPA or LPAs, with obtaining and expending federal funds for local transportation projects, and

WHEREAS, State is presently assisting LPAs in the development of Federal-aid LPA transportation projects for local streets, roads and facilities, and

WHEREAS, LPA desires that this project be developed and constructed under the designation of Project No. DPS-34(46) and formally authorizes the signing of this Agreement by the Mayor, as evidenced by the Resolution of LPA dated 15th day of June, 2026, attached as Exhibit "F" and incorporated herein by this reference, and

WHEREAS, LPA used a qualification-based selection process to select Consultant to provide Environmental services, hereinafter referred to as "Services", and

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

WHEREAS, LPA and Consultant wish to enter into this Agreement to specify the duties and obligations of the Parties for the Services described herein, 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 Agreement, and agrees to comply with all applicable federal-aid transportation project

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related program requirements, so that Consultant's costs under this Agreement will be eligible for federal reimbursement, and

WHEREAS, LPA and Consultant intend that these 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". 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

WHEREAS, Consultant should request from LPA or State the contact information for Consultant's primary point of contact for this project, and

WHEREAS, the Parties understand that this Agreement will be posted to a publicly accessible database of State agreements pursuant to the requirements Neb. Rev. Stat. § 84-602.04.

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

SECTION 1. CONTACT INFORMATION

Contact information, for the convenience of the Parties, is as follows:

1.1 Consultant Project Manager

Firm Name	JEO Consulting Group, Inc.
Contractor/Vendor	6084
Address	1937 N Chestnut St., Wahoo, NE
Project Manager's	Jon Olsen
Project Manager's	402-525-4586

1.2 State Project Coordinator

Name	Jenna Habegger
Phone Number	402-479-3607

1.3 LPA RC

Name	Tobias Tempelmeyer
Phone Number	402-228-5200

1.4 State Agreements Specialist

Name	Lucinda Dowding
Phone Number	402-479-3127

SECTION 2. *This section has intentionally been left blank.*

SECTION 3. *This section has intentionally been left blank.*

SECTION 4. NOTICE TO PROCEED AND COMPLETION SCHEDULE

- 4.1 State, on behalf of LPA, issued Consultant a written Notice to Proceed on February 23, 2026. Invoiced charges for services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be eligible for reimbursement.
- 4.2 In the event that prior to the Effective Date of this Agreement, Consultant is issued a Notice to Proceed and Consultant began work, Consultant will be paid for such work in accordance with this Agreement and the Parties are bound by this Agreement as if the work had been completed after the Effective Date of the Agreement.
- 4.3 Consultant shall complete the Services according to the schedule in attached Exhibit "A" and shall complete all Services required under this Agreement in a satisfactory manner by August 31, 2028. Costs incurred by Consultant after the completion date, are not

PROFESSIONAL SERVICES AGREEMENT

eligible for reimbursement unless Consultant has received a written extension of time from LPA or State, on LPA's behalf. Extensions of the time to complete the Services must not be construed as an extension to the duration of the agreement.

- 4.4 The completion date will not be extended because of any avoidable delay attributed to Consultant, but delays not attributable to Consultant, such as delays attributable to LPA or State, may, upon request, constitute a basis for an extension of time.

SECTION 5. DURATION OF THE AGREEMENT (Matches Project Lifespan)

- 5.1 Effective Date – This Agreement is effective when executed by the Parties.
- 5.2 Expiration Date -- This Agreement expires when State has (a) completed the project final audit and cost settlement or (b) waived the requirement of a financial audit.
- 5.3 Duration of the Agreement – The Agreement duration is from the Effective Date to the Expiration Date. The Agreement duration is "specified" under Neb. Rev. Stat. § 73-506 to the period of time necessary for a Consultant to complete the applicable phase or phases of the development of this particular federal, state or locally funded construction project, including when applicable, the time during construction of the project.
- 5.4 Identifying Date – This Agreement may be identified by the date LPA signed the agreement.
- 5.5 Termination or Suspension – LPA, or State on LPA's behalf, reserves the right to terminate or suspend this Agreement at any time for any of the reasons provided herein.

SECTION 6. SCOPE OF SERVICES

- 6.1 LPA and Consultant understand that the Services provided by Consultant must be completed in accordance with all federal-aid reimbursement requirements and conditions. Consultant shall provide Environmental services for project DPS-34(46), Beatrice, in Gage County, Nebraska. The Scope of Services ("Services") is outlined in Exhibit "A", attached and incorporated herein by this reference.
- 6.2 Exhibit "A" is the result of the following process:
- 6.2.1 Consultant was provided with a document describing the detailed proposed Scope of Services for this project
- 6.2.2 Consultant made necessary and appropriate proposed additions, deletions, and revisions to the detailed Scope of Services document
- 6.2.3 Consultant participated in a review of the proposed Scope of Services, and the proposed revisions, and negotiated the final detailed Scope of Services and Fee Proposal document, as shown in Exhibit "A" and Exhibit "B", attached and incorporated herein by this reference.
- 6.3 LPA, or State on LPA's behalf, reserves the unconditional right to add to, subtract from, or alter the Scope of Services at any time and such action on its part will in no event be deemed a breach of this Agreement. The addition, subtraction, or alteration will become effective seven (7) days after mailing written notice of such addition, subtraction, or alteration.
- 6.4 Any change in the Services will follow the process specified in the *Out-of-Scope Services* section in Exhibit "C", attached and incorporated herein by this reference.

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SECTION 7. STAFFING PLAN (PE)

- 7.1 Consultant has provided LPA and State with a Staffing Plan or Staffing Plans, described in Exhibit "B". The Staffing Plan identifies the employees of Consultant, and when applicable subconsultants, who are anticipated to provide Services under this Agreement. Consultant understands that LPA and State are relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Agreement. LPA and State consider the Principals, senior level staff, Project Managers, Team Leaders or other similar classifications, to be the key personnel for the Services provided. Consultant and, when applicable subconsultants, may make occasional temporary changes to the key personnel. However, any permanent change to Consultant's or subconsultant's key personnel will require prior written approval from LPA, or State on LPA's behalf.
- 7.2 Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended services. Failure on the part of Consultant or subconsultant to provide acceptable replacement personnel or qualified new personnel to keep the Services on schedule will be cause for termination of this Agreement, with settlement to be made as set out on Exhibit "C".

SECTION 8. *This section has intentionally been left blank.*

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/ndot289.pdf>.

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- 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 Consultant's fee proposal is attached as Exhibit "B" and incorporated herein by this reference.
- 10.2 The maximum compensation amounts and general provisions concerning payment under this Agreement are attached as Exhibit "C".

SECTION 11. CONSULTANT'S PERFORMANCE (LPA PE)

11.1 Standard of Performance

Consultant shall complete the Services under this Agreement 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 this Agreement. 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 LPA, or State on LPA's behalf, 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 this Agreement.

11.3 Performance Evaluation

11.3.1 LPA, or State on LPA's behalf, 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 LPA, or State on LPA's behalf, 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, LPA, or State on LPA's behalf, may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If LPA, or State on LPA's behalf, chooses to conduct a Consultant Performance Evaluation, LPA, or State on LPA's behalf, 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

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this Agreement in response to the Performance Evaluation. LPA's or State's remedies for substandard performance will apply even in the absence of a Consultant Performance Evaluation.

11.4 LPA's or State'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 LPA or State. Further, Consultant shall reimburse LPA or State for any costs incurred by LPA or State for necessary remedial work. Consultant shall respond to LPA's or State's notice of any errors, omissions, or negligence within twenty-four (24) hours 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 LPA or State. If Consultant discovers errors, omissions, or negligence in its Services, Consultant shall notify LPA and State of the errors within three (3) business days. Failure of Consultant to notify LPA and State constitutes a breach of this Agreement.

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

If LPA or State requires Consultant to remedy any deficiencies in the Services, Consultant shall make such corrections at no additional cost to LPA or State. 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 LPA or State caused by Consultant's errors, omissions, or negligent acts without liability or expense to LPA or State. The rights and remedies of LPA or State provided herein are in addition to any other remedies provided by law.

SECTION 12. CONSULTANT'S ACCOUNTABILITY FOR ITS SERVICES (LPA)

- 12.1 Consultant agrees that LPA and State will rely on the professional training, experience, performance and ability of Consultant. Consultant agrees that examination by LPA, State, or Federal Highway Administration of the United States Department of Transportation (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 this Agreement. Consultant agrees that LPA's or State'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 LPA or State or of payment, partial or final, will not constitute a waiver of any rights of LPA or State to recover from Consultant damages caused by Consultant due to error, omission, or negligence of Consultant in its services.

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SECTION 13. DISPUTES

Any dispute concerning a question of fact in connection with the work will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE RESOLUTION.

SECTION 14. SUSPENSION OR TERMINATION (PE 2-25-16)

14.1 Suspension or Termination

LPA or State, on LPA's behalf, has the absolute right to suspend the work or terminate this Agreement at any time and for any reason and such action on its part will in no event be deemed a breach of this Agreement. Without limiting the rights set out in this section, the following is a non-exclusive list of the examples of the circumstances under which LPA or State may suspend or terminate this Agreement:

- a. A loss, elimination, decrease, or re-allocation of funds that make it difficult, unlikely or impossible to have sufficient funding for the Services or the project
- b. The Services or the project are abandoned for any reason
- c. Funding priorities have changed
- d. LPA's or State's interests are best protected by suspension or termination of this Agreement
- e. Consultant fails to meet the schedule, milestones, or deadlines established in this Agreement or agreed to in writing by the Parties
- f. Consultant fails to provide acceptable replacement personnel or qualified new personnel
- g. Consultant has not made sufficient progress to assure that the Services are completed in a timely manner
- h. Consultant fails to meet the standard of care applicable to the Services
- i. Consultant fails to meet the performance requirements of this Agreement
- j. Consultant's breach of a provision of this Agreement or failure to meet a condition of this Agreement
- k. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity
- l. Consultant fails to complete the project design in a form that is ready for letting a contract for construction according to the approved contract documents, including, but not limited to, project plans and specifications

14.2 *This section has intentionally been left blank.*

14.3 Suspension

- a. Suspension for Convenience. If LPA or State, on LPA's behalf, suspends the work for convenience, Consultant will be given notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide LPA and State a detailed summary of the current status of the Services completed and an invoice of all costs incurred up to and including the date of suspension.
- b. Suspension for Cause. If LPA or State, on LPA's behalf, suspends the work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, Consultant will be given notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. The

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notice of suspension will provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, and a description of the actions that must be taken for LPA or State to rescind the suspension. Consultant's right to incur any additional costs will be suspended at the end of the day of suspension and will continue until all remedial action is completed to the satisfaction of LPA and State. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

14.4 Termination

If LPA or State, on LPA's behalf, terminates this Agreement, Consultant will be given notice of the date of termination, which will be no fewer than three (3) business days after notice is given. The notice of termination will provide Consultant with a description of the reason(s) for the termination. The notice must specify when the Agreement will be terminated along with the requirements for completion of the work under the Agreement. Consultant's right to incur any additional costs will cease at the end of the day of termination or as otherwise provided.

14.5 Compensation upon suspension or termination

If LPA or State, on LPA's behalf, suspends the work or terminates the Agreement, Consultant must be compensated in accordance with the provisions set out in Exhibit "C", provided however, that in the case of suspension or termination for cause or for Consultant's breach of this Agreement, LPA or State, on LPA's behalf, will have the power to suspend payments, pending Consultant's compliance with the provisions of this Agreement. In the event of termination of this Agreement for cause, LPA or State, on LPA's behalf, may make the compensation adjustments set out in Exhibit "C".

SECTION 15. OWNERSHIP OF DOCUMENTS

- 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 this Agreement are the property of LPA. Consultant shall deliver these documents to LPA at the conclusion of the project for inclusion in LPA's federal-aid file without restriction or limitation as to further use.
- 15.2 LPA acknowledges that such data may not be appropriate for use on an extension of the Services 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 LPA'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

Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for LPA's project to remain fully eligible for federal funding. By signing this 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

- 17.1 Certain information provided by LPA or State 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 LPA or State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an LPA or State 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 LPA or State.
- 17.2 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 LPA or State 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. LPA or State 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.”*
- 17.3 Consultant agrees to obtain the written approval of LPA and State 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.
- 17.4 Consultant and LPA or State 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 LPA or State for any damages that may occur as a result of the unauthorized dissemination. Consultant agrees to hold harmless, indemnify, and release LPA or State from any liability that may ensue on the part of LPA or State for any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant.

SECTION 18. FORBIDDING USE OF OUTSIDE AGENTS (Standard provision)

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, LPA or State has the right to annul this Agreement without liability or, in its discretion, to deduct

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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, such violation may be the basis for the suspension or termination under this Agreement.

SECTION 20. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE (3-2-21)

- 20.1 Consultant agrees to hold harmless LPA and State from all claims and liability due to the error, omission, or negligence of Consultant or those of Consultant's agents or employees in the performance of work under this Agreement. It is expected that in carrying out the work under this Agreement, 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 this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to LPA or State in carrying out the work under this Agreement.
- 20.2 For the duration of this Agreement, Consultant shall carry insurance as outlined in Exhibit "D", 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 "D".

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

21.1 Coordinating Professional:

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

If LPA's project involves more than one licensed professional engineer, LPA 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 § 81-3104 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. Consultant agrees to cooperate with the designated Coordinating Professional to meet the requirements of state law. Consultant further 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 written notice of the name of the replacement within 10 business days.

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21.2 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 this 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. Consultant's employees shall not use illegal drugs or consume alcohol during work hours and while performing Services for State 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

- 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 this Agreement.
- 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 LPA or State or such remedy as LPA or State deem 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

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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 contractor 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:

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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);

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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

- 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 behalf, is obtained.
- 28.2 At LPA'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 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

The undersigned duly authorized representative of Consultant, by signing this 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 this Agreement is a lump sum, actual cost-plus-fixed-fee, or specific rates of compensation type professional services agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in 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:
- a. 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
 - b. 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
 - c. 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,

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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. Section 29.3a below contains 10 instructions that consultant agrees to follow in making the certifications contained in 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

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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:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b) 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;
- c) 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
- d) 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. LPA CERTIFICATION

- 30.1 By signing this 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 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 Agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

PROFESSIONAL SERVICES AGREEMENT

SECTION 31. 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 32. 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 33. FEDERAL AID REQUIRED CLAUSES

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

PROFESSIONAL SERVICES AGREEMENT

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

EXECUTED by Consultant this 22nd day of May, 2026.

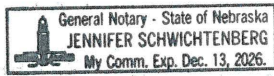
JEO CONSULTING GROUP, INC.
Jeff Henson

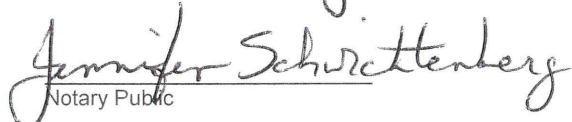


President

STATE OF NEBRASKA)
)ss.
SAUNDERS COUNTY)

SUBSCRIBED AND SWORN to before me this 22nd day of May, 2026





Notary Public

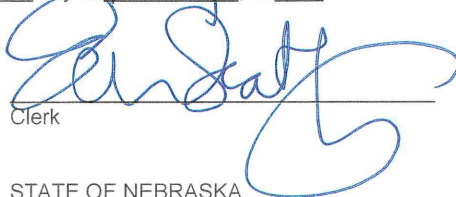
EXECUTED by the City of Beatrice this 26 day of May, 2026

CITY OF BEATRICE
Bob Morgan



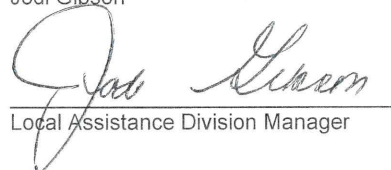
Mayor

Subscribed and sworn to before me this 26 day of May, 2026



Clerk

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION
Form of Agreement Approved for
Federal Funding Eligibility
Jodi Gibson



Local Assistance Division Manager

ENVIRONMENTAL SERVICES

PROJECT NO.: DPS-34(46)
CONTROL NO.: 13608
LOCATION: Beatrice, NEBRASKA
STATE PC: Jenna Habegger
LPA POINT OF CONTACT: Tobias Tempelmeyer
CONSULTANT: JEO Consulting Group, Inc.
CONSULTANT POINT OF CONTACT: Jon Olsen, PE
STRUCTURE NUMBER(S): N/A

A. PROJECT DESCRIPTION

This scope provides for environmental services related to compliance with the Environmental National Policy Act (NEPA) for the Project named above. Consultant shall serve as the agent for City of Beatrice, hereafter referred to as the LPA (Local Public Agency), representing them in all matters related to environmental services for this Project.

B. CONSULTANT TO PROVIDE

1. NDOT – 182 Project Description, NDOT – 173 Project Details, NDOT – 213 Purpose and Need State Statement

C. LPA OR STATE, ON LPA'S BEHALF, TO PROVIDE (to the extent that the items listed are available or needed for the scope checklist above):

1. Project location, Program documents (NDOT-530, NDOT-53), ~~NDOT-213 Purpose and Need statement, NDOT-182 Project Description, NDOT-173 Project Details,~~ Threatened and Endangered species (T&E) Activity Checklist, and general project location map. When appropriate, detour route information will be provided (including a list of property owners along the project and detour route).
2. If available, electronic files of current aerial photographs with Project alignment and preliminary design, existing and new rights-of-way (ROW) and easements, topographic survey, utilities data, and Limits of Construction (LOC).
3. Roadway Feature File, Alignment File, Feature Codes and SMD (Simple Method Description) File (downloadable from NDOT's website).
4. County-wide plat (ownership) or TAM (occupancy) maps for Consultant's use if landowner notification is needed. A notification letter, on LPA's letterhead for the consultant's use in landowner contact and site access will also be provided.
5. Waterway Permit Data Sheet (NDOT 290)
6. E (aerial) plan Sheets from design consultant.
7. Wetland Delineation Data Sheets and Photographs (if already available and not part of this scope of work).
8. Environmental Justice/Limited English Proficiency Memo (provided by State).

9. Section 106 documentation (if not part of this scope of work)
10. Section 106 PQS Memo (provided by State).
11. HMR PQS Memo (provided by the State).
12. Threatened and Endangered Species PQS Memo (provided by State).
13. Wetlands PQS Memo (provided by State).
14. Floodplain PQS Memo

D. APPLICABLE PUBLICATIONS:

Work shall be done in accordance with the most current version of the following materials:

1. Nebraska Categorical Exclusion Guidance (September 2024).
2. Guidance for Completing the Section 4(f) Review Process in Nebraska for Federal-Aid Projects (November 2024).
3. Programmatic Categorical Exclusion Agreement between the Federal Highway Administration and the Nebraska Department of Transportation (September 2024).
4. Nebraska Department of Transportation. Hazardous Materials Review Guidance Manual (April 2024).
5. NDOT National Historic Preservation Act Section 106 Guidelines (October 2019).
6. Nebraska Biological Evaluation Process, Prepared in Support of the Programmatic Agreement that was developed and updated between FHWA, NDOT, USFWS and NGPC (February 2023).
7. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1. Environmental Laboratory, Department of the Army Waterways Experiment Station, US Army Corps of Engineers, Vicksburg, Mississippi, 1987.
8. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, ERDC/EL TR-08-27. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
9. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region, ERDC/EL TR-08-12. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
10. Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification. US Army Corps of Engineers, 2005.
11. Cowardin et al. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31. Biological Services Program, Fish and Wildlife Service, US Department of the Interior, 1979.
12. Nebraska Department of Transportation. Wetland and Water Resource Procedure Document (April 2020).
13. USACE. 2016b. Nebraska Stream Condition Assessment Procedure (NeSCAP). Eds. M.C. Gilbert, K.L. Lawrence, and M.T Wray. CENWO-OD-RF Technical Report 05-12. Omaha District. October 2016.

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14. Nebraska Department of Transportation. Nebraska Public Involvement Procedure. (August 2020).

E. CE DOCUMENT:

1. CE Document and Resource Reviews. Consultant shall develop applicable documentations as determined in this contract in accordance with Nebraska Categorical Exclusion Guidance and applicable NDOT technical resource guidance or procedures found at <https://dot.nebraska.gov/projects/environment/pubs/docs/> unless specified elsewhere within this contract.
 - a. Desktop Review Consultant shall produce an environmental overview that identifies environmental resources that may be considered "red-flag" resources. These identified resources will be used during kick-off meetings to provide information and direction to NDOT.
 - b. Scoping Site Visit NEPA consultant (one staff member) shall attend an on-site or scoping site visit coordinated and led by the design consultant and LPA Project Coordinator.
 - c. CE Documentation for Federal-Aid Projects. Consultant shall produce the required CE documentation using the NDOT NEDS system. Consultant shall notify the NDOT NEPA PM if a threshold has been crossed which elevates the level of CE documentation. Consultant shall obtain or produce supplemental information to attach to the NDOT NEDS system, or to be placed into the Project file as back-up reference material for the document. Figures and resource maps are required to be attached to the NEPA Form. If not required as an attachment, Consultant shall produce them for the NEPA project file.
 - d. Plan in Hand Site Visit. NEPA consultant shall coordinate with design consultant to prepare and submit agenda and meeting minutes to NDOT. NEPA consultant (one staff member) shall also attend the on-site or virtual Plan-in-Hand meeting coordinated and led by the design consultant and LPA Project Coordinator.
 - e. Project Location Maps. Consultant shall prepare Project location maps that include the following: An aerial image depicting the project location with start and end points labeled, an inset map with the project location or county identified within the state, North arrow, Scale bar, Legend, Project Name, Control Number, and Project Number.
 - f. Documentation and Revisions. CE documentation shall be submitted to NDOT for review and approval (assume 3 rounds of comments).
 - g. NEPA Re-evaluations. Consultant shall complete up to 2 NEPA re-evaluations. Consultant's effort shall also include determining if there are any project changes that require additional resource reviews. Re-evaluations may be documented with the NDOT Re-evaluation Form, email, memo to file, or other written summary. Consultant shall coordinate with NDOT NEPA PM prior to completing any re-evaluation.
2. Farmland.
 - a. Farmland Conversion Form. Consultant shall prepare a Natural Resource Conservation Service (NRCS) Farmland Conversion Form CP-106
 - b. Consultant shall perform coordination with NRCS.

3. Section 106.

- a. Section 106 Review Request Letter. The NEPA Consultant shall complete the Section 106 Review Request Letter and submit it as a PDF to the State's Section 106 Professionally Qualified Staff (PQS), copy the LPA Project Coordinator and NDOT NEPA PM. The Section 106 Review Request Letter shall include a Vicinity Map and a Location Figure, showing the project's start and end points.
- b. Section 106 Identification and Evaluation of Properties. This task is for undertakings within the Omaha, Metropolitan Planning Agency (MAPA), Lincoln City and Lancaster County (LCLC) metropolitan planning area, and the South Sioux City Metro planning area.
 - 1) The NEPA Consultant shall complete the cultural resource identification and evaluation in accordance with NDOT Section 106 guidance document: https://dot.nebraska.gov/media/12086/ndot_section_106_guidelines.pdf
 - 2) Cultural resource identification and evaluation shall be completed and/or supervised by individuals meeting or exceeding qualifications set forth by the U.S. Secretary of the Interior's Standards for Professional Qualification Standards https://www.nps.gov/history/local-law/arch_stnds_9.htm. The qualifications (36 CFR 61) define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. Illustrative examples include an architectural historian with specialized experience in evaluating post-WWII architecture, a geoarchaeologist with specialized experience in assessing the potential for deeply buried cultural deposits in alluvial settings, or a paleobotanist with specialized experience in assessing floral material recovered from a prehistoric pit feature. The Principal Investigator (PI) shall submit their resume to the State's Section 106 PQS for review and approval prior to execution of this agreement.
 - 3) Area of Potential Effect. Upon execution of this agreement, and prior to completing fieldwork, the NDOT Section 106 PQS shall review and approve the proposed area of potential effects (APE) as well as the proposed level of effort.
 - 4) NDOT Guidelines. The NEPA Consultant and the PI shall follow the report guidelines discussed in NDOT's Section 106 Guidance document (2019) when compiling and submitting documentation, including identifying potential consulting parties. The identification of consulting parties shall be done in consultation with the NDOT Section 106 PQS.
 - 5) Consultation and Approval. The report shall be submitted to the NDOT Section 106 PQS for review and approval. The State (or FHWA, when applicable) will complete all formal consultation, SHPO, tribal, etc. The State will complete the Section 106 PQS memo.

4. Section 4(f).

- a. NDOT Section 4(f) Initial Assessment Form. Consultant shall determine if adjacent Section 4(f) properties such as public parks, recreation areas, and wildlife/waterfowl

refuges, or historic sites of local, state or national significance are present, as part of the resource review. Consultant shall prepare the NDOT Section 4(f) Initial Assessment Form and submit to NDOT NEPA PM for review and approval.

- b. Section 4(f) Documentation. Consultant shall determine a 'use' of land from the identified Section 4(f) property (assume one property) within the Project area. If it is determined that there is a 'use' of the land, then coordination with NDOT must occur and one or more of the following documents will be prepared by the Consultant:
 - 1) NDOT Section 4(f) Exceptions Form
 - 2) NDOT Section 4(f) De Minimis Form
 - 3) Coordinate with the Official With Jurisdiction for the Section 4(f) resource, to obtain concurrence that the impact will/will not adversely affect the resource.
- c. Individual Section 4(f) Evaluation is not included as part of this scope of work.

5. Section 6(f).

- a. Section 6(f) Review. Consultant shall conduct coordination with the Nebraska Game and Parks Commission (NGPC) to determine if LWCF funds were used for the property requiring the additional Section 4(f) analysis. If Section 6(f) resources are present, then Consultant will determine if a conversion will occur.
- b. Coordination. Consultant shall conduct coordination with jurisdictional agencies and provide documentation for the Section 6(f) conversion and replacement land.

6. Quality Control

- a. Consultant QC Certification Statement. At the time of CE submittal to NDOT, the consultant shall submit to NDOT a "QC Certification Statement" in accordance with NDOT's NEPA Documentation Quality Assurance/Quality Control Manual which will attest to the accuracy and completeness of each NEPA document submitted for NDOT review.
- b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.

7. Deliverables for the CE Document and Resource Review task include:

- a. The CE documentation (and supporting attachments and file data)
- b. Farmland Conversion Form CP-106
- c. Section 106 Documentation
- d. NDOT Section 4(f) Initial Assessment Form
- e. 4(f) Exception/De Minimis Documentation
- f. Section 6(f) Documentation
- g. Quality Control Documentation

F. THREATENED AND ENDANGERED SPECIES (T&E) REVIEW

- 1. Resource Reviews. Consultant shall review the project for T&E species impacts (both state and federally listed species) protected by the Endangered Species Act and the Nebraska

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Non-game and Endangered Species Conservation Act. The Consultant will also review the project for impacts to bald and golden eagles protected by the Bald and Golden Eagle Protection Act.

2. The consultant shall determine if a review under the Fish and Wildlife Coordination Act is required. If the project has wetlands/waters of the U.S. impacts that require an Individual Permit Application to the U.S. Army Corps of Engineers, coordination is needed. At the direction of NDOT, the consultant will summarize any consultation comments or recommendations between NDOT and USFWS and document in the Overview of Effects and Required Conversation Conditions form.
3. ~~Consultant shall determine if American Burying Beetle (ABB) early coordination with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission is required. Projects with any soil disturbing activities that occur outside the hinge point within the USFWS and/or the NGPC range for ABB requires early coordination. Consultant shall utilize most recent guidance from USFWS and NGPC to assess permanent and temporary soil disturbances in suitable and unfavorable habitat, and estimate potential ABB take. On behalf of NDOT, consultant shall initiate early coordination by providing ABB early coordination memo, spreadsheet of habitat disturbances, and Google Earth KMZ file of habitat disturbances to the USFWS and NGPC. Consultant shall assume one round of comment/response with the resource agencies.~~
4. Consultant shall determine if Project is within the range of Northern Long-eared Bat (NLEB) and will require consultation. Consultation for NLEB will utilize the USFWS/FHWA Range-wide Programmatic Consultation and the USFWS Information for Planning and Consultation (IPaC) website for review. Consultant shall evaluate Project using IPaC determination key for NLEB and produce a consistency letter for the NDOT T&E Biologist to review and sign for concurrence verification.
 - a. ~~If Project includes work on bridges or culverts larger than four feet diameter that are in suitable habitat, Consultant shall complete a bridge/culvert and structure bat assessment form for each structure to document bat occupancy. Assessments of bat use will follow the USFWS/FHWA Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat and associated guidance documents and appendices.~~
5. Biological Assessment. Consultant shall prepare the Biological Assessment and related documentation, submit them (in Word and Excel format as well as a compiled PDF), to NDOT, and revise them in response to NDOT comments as needed. If all of the Species Evaluation Parameter (SEP) questions are checked "No", Consultant will prepare the Overview of Effects and Required Conservation Conditions (OERCC). If any of the SEP questions are checked "Yes", Consultant will prepare the Matrix Spreadsheet for those species and the activities found in the Activity Checklist. If the Matrix determination is "No Effect", Consultant will submit the Matrix, SEP Form and OERCC Form. If determination for an individual species is Not Likely to Adversely Affect with Conservation Conditions (NLAA-CC), then Consultant prepares the OERCC Form with appropriate Conservation Conditions included for those species. Consultant's effort shall also include up to 3 progress meetings with NDOT, by telephone.
6. Individual Project Level Evaluation (will be supplemented as necessary). Consultant shall prepare an Individual Project Level Evaluation (IPLE) supported by figures, literature review, and other supplemental information such as aerial photos and resource agency

correspondence, including appropriate conservation conditions in the OERCC for species with a "May Affect" determination. If the determination for an individual species is "MA" or "NLAA-CC" but this determination appears wrong due to existing habitat conditions, species range information, or other factors, an IPLE shall be prepared by the Consultant to justify a change in determination.

7. Quality Control Documentation
 - a. Quality Control Statement
 - b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.
8. Deliverables for the T&E Review Include:
 - a. Biological Assessment and related documentation
 - b. Individual Project Level Evaluation
 - c. Quality Control Documentation
 - d. ~~ABB Early Coordination Documentation~~
 - e. ~~ABB early coordination memo~~
 - f. Excel spreadsheet of habitat disturbances
 - g. Google Earth KMZ file of habitat disturbances
 - h. NLEB Consultation
 - 1) IPaC Concurrence Verification Letter

G. HAZARDOUS MATERIALS REVIEW (HMR)

1. The Consultant shall demonstrate competency by fulfilling NDOT's training requirements and providing the appropriate documentation as stipulated within the 2024 HMR Guidance Manual prior to award of Hazardous Material Review (HMR) contract.
2. Consultant shall complete an HMR within the HMR Study Area in accordance with the NDOT Hazardous Material Review Guidance Manual. This includes the review of sites that are known to be, or may potentially be, contaminated with hazardous materials. Conditions that indicate an existing release, a past release, or a material threat of a release, of any hazardous substances or petroleum products into structures, on the property or into the soils, groundwater, or surface water should be evaluated and assessed for potential impacts on the Project and discussed in the project's HMR technical report. The Consultant's effort shall also include up to 3 progress meetings with NDOT, by telephone.
 - a. The Consultant shall review local, state, and federal environmental database records, searching for regulated sites within the HMR Study Area.
 - b. The Consultant shall conduct an on-site visual reconnaissance survey and complete the HMR Visual Reconnaissance Form and photo log.
 - c. The consultant shall conduct analysis on regulated sites per the HMR Guidance. Analysis shall include (1) conducting a regulatory file review (NDEE, SFM, etc.) and, if

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necessary, (2) reviewing readily available historical record sources (aerial photographs, topographic maps, Sanborn Fire Insurance maps, etc.).

- d. A subsurface investigation is not included as part of this scope of work.
 - e. The Consultant shall prepare a written Hazardous Materials Review Technical Report. The Report shall be submitted by the Consultant to NDOT for inclusion in the Project file.
3. Quality Control Documentation
- a. Quality Control Statement documenting their procedures to ensure the accuracy of the HMR Technical Report
 - b. The Consultant shall develop a QC Comment/Response Matrix or other approved review method. The matrix or other approved review method shall be provided with each document submittal to NDOT to track resolutions to review comments.
4. The Consultant shall provide the following Deliverables for the Hazardous Materials Review:
- a. Hazardous Materials Review Report
 - b. Visual Recon Form and Photolog
 - c. Quality Control Documentation

H. NOISE STUDY AND REPORT.

- 1. ~~The Consultant shall complete a noise study, to include modeling and field work, in accordance with 23 CFR 772 and the Nebraska Noise Analysis and Abatement Policy. The consultant shall utilize the Nebraska Noise Analysis Guidance Manual when completing the study and complete the training and certification requirements as described within. Coordination with an NDOT Noise Specialist shall occur prior to beginning the study.~~
- 2. ~~The Consultant shall complete a Noise Study Report which shall include, but is not limited to the following:~~
 - a. ~~General information regarding the nature of noise and measurement of sound, 23 CFR Part 772 Standards, noise abatement criteria and noise prediction method used;~~
 - b. ~~Project Description;~~
 - c. ~~Table showing existing and future (at least 20+ years from date of construction) traffic counts (Average Daily Traffic and Design Hourly Volume) as well as medium and heavy truck percentages, all to be used in conjunction with FHWA's Traffic Noise Model (TNM);~~
 - d. ~~Field noise measurements are required; Consultant shall prepare a table to include such items as location, distance from Project centerline, noise levels, and other appropriate information;~~
 - e. ~~Information about land use adjacent to Project;~~

f. Table showing the following:

- 1) receptor ID (home address or business name if possible);
- 2) modeled existing noise level (TNM results);
- 3) predicted future no-build noise level (TNM results);
- 4) predicted future build noise level (TNM results);
- 5) Leq noise abatement criteria (66 or 71 dBA);
- 6) Specify if build situation approaches or exceeds Leq criteria (if substantial noise increase > 15dBA) (yes or no).

g. Analyze noise abatement for feasibility and reasonableness if necessary (determined by noise impacts).

h. Address construction noise.

i. Provide setback recommendations to local officials.

j. Consultant will provide conclusions—stating findings (how many impacted receptors in existing, no-build and build situations, noise abatement results).

k. List references.

l. Prepare diagram using aerials or topographic map identifying:

- 1) Receivers adjacent to project;
- 2) Areas for possible noise abatement;
- 3) 66 and 71 dBA noise contour lines

3. The Consultant shall submit the Noise Study to the NDOT Noise Specialist. Consultant shall revise materials per NDOT comments and resubmit subsequent drafts to NDOT for review and approval.

4. Quality Control Documentation

a. Quality Control Statement

b. QC Comment/Response Matrix. The Consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.

5. Deliverables for the Noise Study and Report Include:

- a. Noise Study Report
- b. Quality Control Documentation

I. WETLAND AND STREAM DELINEATION SERVICES.

1. Consultant shall complete a wetland/water resource delineation and prepare documents in accordance with the NDOT Wetland and Water Resource Procedure Document found at <https://dot.nebraska.gov/projects/environment/pubs/docs/>.

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2. Site Visit. The Consultant shall visit the Project site to determine if waters of the United States (US), including wetlands, are present within the Project Delineation Limits as described below. The site visit will be conducted by a qualified wetland scientist and during the recognized growing season unless otherwise approved by the NDOT Wetlands Project Manager.
3. Review Existing Resources/Databases. Consultant shall review existing resources prior to field delineation. For projects requiring new Right of Way (ROW) beyond existing, into agricultural land, NDOT Wetlands PM shall be contacted for direction.
4. ~~Wetlands in an Agricultural Setting (WIAS) Review. Consultant shall review WIAS historic aerial photography with recorded wetland delineations when required for permitting.~~
5. Nebraska Stream Condition Assessment Procedure (NeSCAP). Consultant shall complete the USACE-developed assessment of streams and floodplain/riparian areas to determine functional units of impacts and mitigation stream channels (USACE 2016b). NeSCAP shall include the collection of desktop and on-site data.
6. A Wetland Mitigation Plan is not included as part of this scope of work.
7. Delineation Limits. For purpose of scope and fee development, the Consultant shall assume the following study area for a Full Delineation. Along the project alignment, the study area extends 50 feet beyond LOCs or within ROW whichever is farther from the roadway centerline. At bridge or bridge-sized structures along the project alignment, the study area extends 150 feet beyond designed LOCs or 150 feet beyond ROW, whichever is farther from the roadway centerline.
8. Plot Boundaries. Consultant shall plot the data on aerial photographs. Data plotted on aerial photographs will include project wetland delineation limits (environmental study area), roadway alignment and mile markers. Data will include wetland boundaries (hollow line-style), wetland I.D., wetland types, OHWM for channels (and channel name if available), other water resources, and location of data and photo collection points. NEPA Consultant will be provided Design Consultant's survey files prior to delineation.
9. Documentation of Findings. Consultant shall prepare documents according to NDOT procedures (April 2020).
10. Electronic Files (GIS). Consultant shall submit the delineation materials in electronic format plot(s) to NDOT Wetlands PM, copy the LPA Project Coordinator and NDOT NEPA PM. Submittal shall include environmental study area boundaries, wetland delineation boundaries, wetland types, acres, other water resources and location of data collection points and photo points in NDOT's GIS file Geodatabase (.gdb). Coordinate system projections for all submittals shall be: NAD 1983 State Plane Nebraska FIPS 2600 (Feet). The submittal will include a completed attribute table with relevant information, such as wetland name and type, for each feature, as described in NDOT (2020) procedure. All geospatial data shall be post-processed to correct GPS data inaccuracies, compile all required information in the NDOT geodatabase attribute tables, and checked for completeness, accuracy, and conformance to NDOT data standards. Geospatial data shall provide an accurate representation of field observations.
11. Coordination. Consultant shall coordinate with Design Consultant to create wetland .dgn file to be used in E (aerial) plan sheets. This effort may include creating a .dgn file and labeling the wetlands/water resources.

12. Quality Control Documentation
 - a. Quality Control Statement
 - b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.
13. Deliverables for Wetland and Water Resource Delineation Services Include:
 - a. Wetland Delineation Report and associated geospatial data
 - b. ~~Wetland in an Agricultural Setting (WIAS) Report~~
 - c. NeSCAP Documentation
 - d. Quality Control Documentation

J. SECTION 404 PERMITTING SERVICES

- ~~1. Pre-Application Meeting. Consultant shall arrange for, attend, and conduct, a pre application meeting with the USACE and other interested resource agencies to discuss the wetland delineation and other issues relating to fill and disturbance impacts. Consultant shall prepare and distribute minutes.~~
- ~~2. 404 Nationwide Permit Application Package.
 - a. ~~Consultant shall prepare a 1st Draft of the 404 Permit Application Package consisting of 404 Permit Application and Wetland Delineation Report. Electronic files of the documents will be submitted to NDOT Wetlands PM for review and approval. The Consultant shall revise materials per NDOT comments and resubmit subsequent drafts to NDOT for review and approval.~~
 - b. ~~Consultant shall prepare and submit to LPA, or State on LPA's behalf, the electronic files and hard copies of all materials. For the final package, the Consultant shall submit one bound copy to LPA and electronic files to State on NDOT's ftp site. The Consultant shall submit a hard copy of the 404 permit application package to the USACE and NDEE (when required) unless otherwise directed by LPA, or State on LPA's behalf.~~~~
- ~~3. Agency Coordination. Consultant shall correspond with the USACE, whether in writing or personal contact documented in a telephone memo or meeting notes.
 - a. ~~Consultant shall be available to provide additional information and answer questions. All correspondence with the USACE and other agencies, if necessary, shall be submitted to the NDOT in draft form for approval from LPA, or State on LPA's behalf at least 10 days before final submittal.~~
 - b. ~~Consultant shall coordinate with NDEE and obtain a letter of 401 Water Quality Certification. If wetlands are non-jurisdictional, Consultant shall obtain a Letter of Opinion from NDEE, stating compliance with the non-degradation clause of Title 117 Nebraska Surface Water Quality Standards.~~~~
- ~~4. Quality Control Documentation
 - a. ~~Quality Control Statement~~~~

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b. ~~QC Comment/Response Matrix.~~ The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.

5. ~~Section 404 Individual Permit Application~~

a. ~~Alternatives Analysis and Sequencing Demonstration.~~ All tasks specified above for Nationwide permits also apply to Individual Permits with the following additional tasks: Consultant shall prepare an Alternatives Analysis and Sequencing Demonstration for inclusion in the Individual Permit Application. This task involves incorporating materials provided by the LPA's design consultant. The Consultant will also coordinate activities with the USACE and other regulatory and resource agencies, as needed.

b. ~~Public Comments.~~ Consultant shall respond to public comments from the USACE Public Notice comment period.

6. ~~Deliverables for Section 404 Permitting Services Include:~~

a. ~~404 Nationwide Permit Application~~

b. ~~404 Individual Permit Application including Alternatives Analysis and Sequencing Demonstration~~

c. ~~Section 404 Authorization Letter~~

d. ~~Quality Control Documentation~~

PUBLIC INVOLVEMENT

1. ~~A Public Involvement Plan will be submitted to the NDOT Public Involvement Coordinator for review and approval through the NDOT Local Projects Coordinator.~~

2. ~~Additional hours will be negotiated with the Consultant, by supplement to this Agreement, for preparation of public involvement materials required to support the determined level of Public Involvement.~~

CONSULTANT SHALL PROVIDE:

1. ~~Public Involvement Plan~~

a. ~~Consultant will prepare a Public Involvement Plan in accordance with NDOT's template to be submitted to the NDOT Public Involvement Coordinator for review and approval~~

DELIVERABLES

1) ~~Public Involvement Plan~~

K. PROJECT MANAGEMENT

1. This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices, prepare project correspondence with the LPA or State on LPA's behalf, and maintain project records. Monthly Progress Reports shall be prepared and submitted

EXHIBIT "A"
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according to the schedule provided by LPA, which may or may not coincide with Consultant's invoicing schedule.

2. Consultant will meet with the LPA and NDOT to discuss the status of plan development and coordinate design activities at different stages throughout the project. The consultant should anticipate six meetings (PCMs 0, 20, 30, 35, 50, 70, and 90).
3. Send Deliverables to the LPA Project Coordinator and applicable NDOT Resource Project Manager

L. DATA TRANSFER

1. It shall be the Consultant's responsibility to obtain the necessary software to translate to and from the specified format for all electronic files supplied by the LPA and/or NDOT and for all electronic files prepared by the Consultant and supplied to the LPA and/or NDOT.
2. Electronic files shall be submitted with each submittal or revision. PDF copies of all materials and final electronic files (i.e. geodatabases for wetland delineations) as stated above. All supporting information shall be submitted to the NDOT via NDOT's Sharefile site (and/or email when requested by NDOT).

M. COMMUNICATION

1. Files shall be accompanied by a transmittal letter or email with Project Name, Project Number, and Control Number in the subject line and body.
2. **All correspondence regarding scope items outlined in this section shall be addressed to the NDOT LPA Project Coordinator and applicable NDOT Resource PM.**

N. ASSUMPTIONS

1. Wetland Delineations assume 2 staff for field work.
2. Consultant shall coordinate/consolidate site visits, as appropriate.
3. Tasks that are shown stricken-through are not considered part of this scope of services. If these tasks are required at a later date, they may be added through a supplemental agreement.

O. SCHEDULE

Notice to Proceed for NEPA	02/23/2026
End Contract	08/17/2028

Staffing Plan (CPFF)

Environmental Services

Project Name: Court St. Access and Safety Transformation Init.
 Consultant: JEO Consulting Group
 Consultant PM: Jon Olsen, 402-525-4586, jolsen@jeo.com
 LPA RC: Jenna Habegger, 402-479-3607, jenna.habegger@nebraska.gov
 Date: February 11, 2025

Project Number: DPS-34(46)
 Control Number: 13608



#	Code	Classification	#	Code	Classification
1	PR	Principal	6	SES	Senior Environmental Scientist
2	PM	Program Manager	7	ES	Environmental Scientist
3	SENG	Sr. Engineer	8	ADM	Administrative
4	ENG	Engineer	9	UD1	User Defined 1
5	SDES	Sr. Designer	10	UD2	User Defined 2

Overhead Rate^[1] 201.01%
Fee for Profit Rate^[2] 11.60%
FCCM (if applicable) 2.20%

BLENDED RATES TABLE

Template: T-WB-Environmental Services (LPA) (rev 10-23-2019) CPFF

Employee Name	Job Title & Certifications ^[3]	Current Actual Salary Rate/Hr ^[4]	% Assigned
Senior Environmental Scientist			
<u>Ryan Joe</u>	<u>Senior Environmental Scientist</u>	<u>\$42.79</u>	<u>40%</u>
<u>Mark Pomajzl</u>	<u>Senior Environmental Specialist</u>	<u>\$34.62</u>	<u>40%</u>
<u>Zach Cunningham</u>	<u>Senior Environmental Scientist</u>	<u>\$57.21</u>	<u>20%</u>
	Blended Rate:	\$42.41	
Environmental Scientist			
<u>Eric Marrow</u>	<u>Environmental Scientist</u>	<u>\$31.00</u>	<u>40%</u>
<u>Justine Cherovsky</u>	<u>Environmental Scientist</u>	<u>\$23.25</u>	<u>40%</u>
<u>Seth Anderson</u>	<u>Environmental Scientist</u>	<u>\$22.00</u>	<u>20%</u>
	Blended Rate:	\$26.10	
Administrative			
<u>Jenny Cyboron</u>	<u>Project Coordinator</u>	<u>\$29.68</u>	<u>10%</u>
<u>Amanda Price</u>	<u>Accounting - Billing Coordinator</u>	<u>\$35.67</u>	<u>90%</u>
	Blended Rate:	\$35.07	

Consultant's Estimate of Hours

Environmental Services

Project Name: Court St. Access and Safety Transformation Init. **Project Number:** DPS-34(46)
Consultant: JEO Consulting Group **Control Number:** 13608
Consultant PM: Jon Olsen, 402-525-4586, jolsen@jeo.com
LPA RC: Jenna Habegger, 402-479-3607, jenna.habegger@nebraska.gov
Date: February 11, 2025

TASKS	PERSONNEL CLASSIFICATIONS								Total
	PR	PM	SENG	ENG	SDES	SES	ES	ADM	
I. Project Management						70		36	106
1. Project Management						22		36	58
2. PCM Meetings						21			21
3. Scoping/PIH/Progress Meetings(3)						15			15
4. Project Description/ Purpose and Need/ Project Details						12			12
II. CE Document and Resource Reviews						110	112		222
1. Categorical Exclusion Document						56	48		104
2. Plan in Hand Site Visit									
3. Project Location Maps and KMZs									
4. Documentation and Revisions									
5. NEPA Re-Evaluations									
RESOURCE REVIEWS									
1. Farmland						2	8		10
2. Section 106						1	2		3
3. Section 4(f) De Minimis or Exemption						4	10		14
4. Section 6(f) Analysis Documentation						2	4		6
5. Floodplain Review									
6. Water Quality Review									
7. Threatened and Endangered Species (T&E) Review						5	10		15
8. Biological Assessment						10	20		30
9. Individual Project Level Evaluation									
10. Hazardous Materials Review (HMR)						30	10		40
11. Noise Study and Report									
III. Wetland and Stream Delineation						8	25		33
1. Wetland Delineation						8	25		33
2. Pre-Application Meeting									
3. 404 Nationwide Permit Application Package									
4. 404 Individual Permit Application									
5. Wetland/Channel Mitigation Plan									
Total Days						23.5	17.1	4.5	45
Total Hours						188	137	36	361.0

Project Cost & Breakdown

Environmental Services

Project Name: Court St. Access and Safety Transformation Init. **Project Number:** DPS-34(46)
Consultant: JEO Consulting Group **Control Number:** 13608
Consultant PM: Jon Olsen, 402-525-4586, jolsen@jeo.com
LPA RC: Jenna Habegger, 402-479-3607, jenna.habegger@nebraska.gov
Date: February 11, 2025

DIRECT LABOR COSTS			
Classification	Hours	Rate	Amount
Principal			
Program Manager			
Sr. Engineer			
Engineer			
Sr. Designer			
Senior Environmental Scientist	188	\$42.41	\$7,973.08
Environmental Scientist	137	\$26.10	\$3,575.70
Administrative	36	\$35.07	\$1,262.52
User Defined 1			
User Defined 2			
	361	Subtotal	\$12,811.30

DIRECT EXPENSES	Amount
Subconsultants:	
Printing And Reproduction:	
Mileage/Travel:	\$208.80
Lodging/Meals:	
Other Miscellaneous Costs:	
	Subtotal
	\$208.80

TOTAL PROJECT COSTS	Amount
Direct Labor Costs	\$12,811.30
Labor Cost Escalation Factor for Multi-year Projects (if allowed): Y 3.0 years @ 5.0% / year = 5.13%	\$657.22
Overhead @ 201.01%	\$27,073.07
Facility Capital Cost of Money (FCCM) @ 2.200% (labor costs x FCCM%)	\$296.31
Direct Expenses	\$208.80
Fee for Profit Rate @ 11.60%	\$4,702.82
	TOTAL COST
	\$45,749.52

LABOR COST BY MAJOR TASKS	Direct Labor	Overhead+FCCM	Profit	Amount
I. Project Management	\$4,448.28	\$9,039.35	\$1,553.21	\$15,040.84
II. CE Document and Resource Reviews	\$7,977.58	\$16,211.24	\$2,785.54	\$26,974.36
III. Wetland and Stream Delineation	\$1,042.66	\$2,118.79	\$364.07	\$3,525.52
IV. Public Involvement Materials				
	\$13,468.52	\$27,369.38	\$4,702.82	\$45,540.72

1. PAYMENT METHOD

Payments under this Agreement will be made based on a Cost Plus Fixed Fee for Profit (CPFF) payment method. Consultant will be paid for acceptable actual services performed in accordance with Section 4. ALLOWABLE COSTS, plus a fixed fee for profit in accordance with Section 6. FIXED FEE FOR PROFIT.

2. MAXIMUM AGREEMENT AMOUNTS

The following are the maximum payment amounts established under this Agreement for each category of cost. Consultant shall not be paid for any cost that exceeds these amounts without prior written approval from LPA, or State on LPA's behalf. The "indirect costs and direct expenses" category may be adjusted to exceed the amount listed below; however, any adjustment will not increase the total agreement amount.

AMOUNT	CATEGORY
\$ 13,468.52	for actual direct labor costs
\$ 27,578.18	for indirect costs and direct expenses
<u>\$ 4,702.82</u>	for a fixed fee for profit
\$ 45,749.52	total agreement amount

3. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS

Over-run: Consultant shall require all subconsultants to notify Consultant any time it has been determined that a subconsultant's costs will exceed its fee estimate (over-run). Consultant must provide an acceptable justification for the over-run and obtain LPA, or State on LPA's behalf, prior written approval before incurring any cost over-run expenses. If approved by LPA, or State on LPA's behalf, a supplemental agreement will be prepared to either shift funds from Consultant to its subconsultant(s) or increase the contract maximum. Contract increases will be considered when additional scope of services are required.

Under-run: If the amount of any subconsultant's cost is less than its fee estimate (under-run), Consultant understands that the amount of the under-run will be subtracted from the total compensation to be paid to Consultant under this Agreement, unless LPA, or State on LPA's behalf, gives prior written approval and, if necessary, approval from Federal Highway Administration (FHWA). If Consultant wishes to shift the balance of subconsultant's fee to Consultant, justification must be provided to LPA and State. Shifting of funds may be approved by LPA, or State on LPA's behalf, with no increase to the fixed fee for profit unless additional scope of services is required by Consultant, and additional fee is necessary to complete the work under this Agreement.

4. ALLOWABLE COSTS

Allowable costs are direct labor costs, indirect costs, and direct non-labor costs as defined below which Consultant has incurred within 180 days before State has received Consultant's invoice. Costs that Consultant incurred to correct mistakes or errors attributable to Consultant's or Subconsultant's own actions are not allowable costs, even if those costs would not exceed the amounts listed in Section 2. MAXIMUM AGREEMENT AMOUNTS.

- A. Direct Labor Costs are the costs Consultant pays its employees for the time they are working directly on the project and are calculated by multiplying the hourly rate of pay by the hours worked (in increments not less than one quarter hour).
- 1) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's regular hourly pay rate during regular (40) hours of work per pay week. If overtime hours are worked on this project, State will only pay for employee's regular hourly pay rate. State will not pay the premium pay portion of the overtime hours. For salaried employees, the hourly earnings rate shall be the employee's actual hourly rate as recorded in the Consultant's accounting books of record, multiplied by the hours worked.
- The Staffing Plan must identify by name all employees of the Consultant who are reasonably expected to provide Services under this Agreement. Reference Staffing Plan Section of this Agreement regarding changes in personnel.
- 2) Time Reports: All hours charged to the project must be documented on time distribution records. The records must clearly indicate the daily number of hours each employee worked on any project or activities for the entire pay period. **Time reports must provide the employee's name and position, dates of service, and a clear, identifying link to the projects; such as project description, project number, control number, and pertinent work phase.** Consultant must establish an adequate system of internal controls to ensure that time charged to projects are accurate and have appropriate supervisory approval.
- B. Indirect Costs (Overhead and FCCM) are the indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with Federal Acquisition Regulations [48 CFR 31 \(Contract Cost Principles and Procedures\)](#). Indirect costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable Indirect Cost Rates (ICR); or if the ICR is unknown or unavailable, Consultant will be allowed to use the most recent

provisional ICR approved by State. Changes in the ICR that occur during the project period will not be cause for a change in the total agreement amount established in Section 2. MAXIMUM AGREEMENT AMOUNTS.

- C. Direct Non-Labor Costs (Direct Expenses) are all necessary, properly documented, and allowable costs related to the Consultant completing the Services. All costs must be supported by detailed receipts or invoices, unless otherwise specified below. Direct non-labor costs include, but are not limited to, the following:

Transportation, mileage, lodging, and meals, subject to limitations specified below; Communication costs; Reproduction and printing costs; Special equipment and materials required for the project and approved by LPA, or State on LPA's behalf ; Special insurance premiums if required solely for this Agreement; Subconsultant costs; Such other allowable items as approved by LPA, or State on LPA's behalf.

- 1) A non-labor cost charged as a direct cost cannot be included in Consultant's overhead rate. If, for reasons of practicality, Consultant does treat a direct non-labor cost category in its entirety as an overhead cost, then such costs are not eligible to be additionally billed as a direct expense to this project.
- 2) Costs for subconsultants may not exceed the amounts shown on the attached Consultant's Fee Proposal for each subconsultant unless agreed upon in writing by the Consultant and LPA, or State on LPA's behalf. Consultant shall require subconsultant costs to have the same level of documentation as required of Consultant. Consultant must review subconsultants' invoices and progress reports to ensure they are accurate, include only allowable costs, and have proper documentation before sending to State.
- 3) The following direct non-labor costs (direct expenses) will be reimbursed at actual costs, not to exceed the rates as shown below.
 - (a) TRANSPORTATION – Automobile rentals, air fares, and taxi/shuttle transportation will be reimbursed at the actual, reasonable cost and, if discounts are applicable, the Consultant shall give LPA and State the benefit of all discounts. Itemized receipts must be submitted with invoices. A bank card receipt that displays only the total cost of the transportation expense is not sufficient documentation. Tips must be included in the total fare amount claimed on the travel log form. Tips for complimentary transportation are considered an incidental expense and cannot be claimed as a transportation-related expense.

EXHIBIT "C"
FEES AND PAYMENTS

- (b) MILEAGE – The reimbursement for mileage associated with the use of company owned vehicles will be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately-owned vehicle (POV), is limited to the lesser of:
- (i) The mileage rate that the Consultant reimbursed to the person who submitted the claim for POV use; or
 - (ii) The prevailing standard rate as established by the IRS.
- NOTE: When Consultant is seeking only reimbursement for mileage, Consultant must itemize travel on State's Travel Log, itemize on invoice, or include a separate mileage log which includes the following information: employee name, vehicle identification, date of travel and miles driven, reimbursement rate and total expenses. The total expenses are to be shown on the invoice as a direct expense. State's Travel log form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.
- (c) LODGING – The reimbursement for lodging rates will be limited to the prevailing standard rate as indicated on the U.S. General Services Administration's (GSA) website at <http://www.gsa.gov/portal/category/100120>. Consultant shall give LPA and State the benefit of all lodging discounts. Lodging receipts must be submitted with invoices.
- 4) Meal and incidental (M&I) expenses will be reimbursed on a per diem basis, not to exceed the rates as shown below. The incidental expenses portion of the per diem rate includes, but is not limited to, courtesy transportation related tips, such as hotel, park and ride, or airport shuttles; and fees and tips to porters, hotel employees, baggage carriers, and flight attendants. No receipts are required for M&I expenses.
- (a) The State per diem rate for the destination of travel is 70% of the applicable Federal GSA per diem rate. The State per diem breakdown amounts for breakfast, lunch, dinner, and incidental expenses are 70% of the Federal GSA per diem breakdown amounts.
 - (b) The State per diem rate shall be reduced by the State meal breakdown amount(s) for any meal provided by others. Examples include:

EXHIBIT "C"
FEES AND PAYMENTS

- (i) Meals included in a conference or event fee
 - (ii) Meals provided by lodging facility
 - (iii) Meals purchased by 3rd Party
 - (iv) Meals charged directly to and paid for by the State
- (c) MULTI-DAY TRAVEL – Travel that includes at least one overnight stay.
- (i) M&I reimbursement on the first and last day of travel will be reduced to 75% of the State per diem rate.
 - (ii) Except for a meal provided by others (see paragraph 4)(b) above), all meals may be claimed on the first and last day of travel irrespective of the start and stop times for those days.
- (d) SAME DAY TRAVEL – Travel that does not include an overnight stay.
- (i) Employee shall not claim reimbursement for a meal that was purchased within 20 miles of the city or town of the employee's residence or primary work location.
 - (ii) M&I reimbursement for same day travel will be reduced to 75% of the State per diem breakdown amounts.
 - (iii) The following criteria must be met for Consultant and its employees to be eligible for the M&I reimbursement on same day travel.
 - (1) Breakfast - Employee leaves for same day travel at or before 6:30 a.m. or 1-1/2 hours before the employee's shift begins, whichever is earlier, the breakfast rate may be claimed.
 - (2) Lunch – No reimbursement is allowed.
 - (3) Dinner/Supper – Employee returns from same day travel or work location at or after 7:00 p.m., or 2 hours after the employee's shift ends, whichever is later, the evening meal rate may be claimed.
 - (4) Incidental Expenses – No reimbursement is allowed unless the employee is also approved for breakfast or dinner meal expenses.
 - (5) The time limitations set forth above do not include the time taken for the meal.
 - (iv) EXCEPTION to same-day travel meal reimbursement for Construction Engineering (CE) Services Agreements – For CE Services Agreements, Consultant will not be eligible for reimbursement for meals related to same-day travel.

5) EXTENDED STAY/LONG TERM TRAVEL

No extended stay arrangements, such as apartments or weekly/monthly meal reimbursement rates, have been approved.

5. INELIGIBLE COSTS

State will not pay for costs incurred prior to the Notice to Proceed date or after the completion deadline date set out in the NOTICE TO PROCEED AND COMPLETION SCHEDULE Section of this Agreement, unless approved in writing by LPA, or State on LPA's behalf. **Per Section 4. ALLOWABLE COSTS, State will not pay for costs incurred, but not submitted to State within 180 days of the date incurred. Travel costs are deemed to have been incurred on the day the travel occurs. Subconsultant costs are deemed to have been incurred on the day the Subconsultant actually incurs the cost, not the day the subconsultant invoices the cost to the Consultant.**

6. FIXED FEE FOR PROFIT

- A. The fixed fee for profit amount payable to Consultant is identified in Section 2. MAXIMUM AGREEMENT AMOUNTS. For each invoicing period, the Consultant may invoice State a portion of the fixed fee for profit equal to the sum of the actual direct labor costs and overhead (Indirect Costs, excluding FCCM if applicable) for the period, multiplied by the profit rate of 11.60%. Upon completion of the services outlined in this Agreement, the Consultant may invoice State any remaining fixed fee for profit not previously invoiced. If all of the services under this Agreement are not completed for any reason, LPA, or State on LPA's behalf may decrease the amount of fixed fee for profit based on LPA's and State's determination of the actual percentage of services completed.
- B. Subconsultants fixed fee for profit (if applicable): Consultant must apply the above provisions regarding fixed fee for profit to all Subconsultant contracts that utilize the cost plus fixed fee (CPFF) payment method. If all of the services allocated to Subconsultant(s) under this agreement are not completed for any reason, the fixed fee for profit paid to Subconsultant(s) must be reduced based on the LPA's and State's determination, or Consultant's determination with LPA's and State's concurrence, of the actual percentage of services completed by the Subconsultant.

7. INVOICES AND PROGRESS REPORTS

- A. Consultant shall promptly submit invoices to State based on Consultant's billing period but shall not submit more than one invoice per month. Invoices must include all allowable

costs, and when applicable, the associated Fee for Profit, for services provided during the billing period. Invoices may also include a request for services provided or costs incurred during a prior billing period, including subconsultant costs, with an explanation for why those costs were not previously included in an invoice, so long as those costs were incurred no more than 180 days prior to State's receipt of the invoice. Accordingly, State retains the sole discretion to not pay for costs incurred that have not been invoiced as provided above.

- B. In the event Consultant has incurred otherwise allowable costs, and such costs would exceed the maximum direct labor costs or total agreement amount listed in Section 2. MAXIMUM AGREEMENT AMOUNTS, Consultant shall list such costs on the invoice, but they must be subtracted from the total invoice amount submitted to State for payment.
- C. Content of Invoice Package (Presented in this order)
 - 1) Consultant's Invoice:
 - (a) The first page of an invoice must identify the company's name and address, invoice number, invoice date, invoicing period (beginning and ending dates of services), and agreement or task order number.
 - (b) The invoice and, when applicable, accompanying supporting documentation must identify each employee by name and classification, the hours worked, and the actual labor cost for each employee.
 - (c) Direct non-labor expenses:
 - (i) Direct non-labor expenses, other than travel-related expenses, must be itemized and provide a complete description of each item billed along with supporting receipts or invoices.
 - (ii) Travel-related expenses must be summarized and submitted on NDOT Form 163 (see paragraph 7.C.4) below). Supporting receipts (excluding meal receipts) must be submitted with NDOT Form 163 when invoicing for these expenses.
 - (iii) All supporting receipts must be kept as required in Section 18.
CONSULTANT COST RECORD RETENTION.
 - (d) Time Records, as outlined in paragraph 4.A.2).
 - (e) Subconsultant Services: Consultant shall require subconsultants to provide the same supporting documentation, invoices, and receipts as Consultant is required to submit and retain.

EXHIBIT "C"
FEES AND PAYMENTS

- 2) Progress Report: A Progress Report, containing both the Narrative and Task Summary, must accompany the invoice package documenting Consultant's work during the service period. Progress Report templates are available on the State's website at <https://dot.nebraska.gov/business-center/consultant/invoices/> . If an invoice is not submitted monthly, then a Progress Report must be submitted at least quarterly via email to LPA and State's Project Coordinator. All Progress Reports must include, but are not limited to, the following:
 - (a) A description of the Services completed for the service period to substantiate the invoiced amount.
 - (b) A description of the Services anticipated for the next service period
 - (c) A list of information Consultant needs from LPA, or State on LPA's behalf
 - (d) Percent of Services completed to dateNOTE: LPA or State's Project Coordinator may request more specific information or detail be included in Progress Reports.
- 3) Cost Breakdown Form: Each invoice package must include a current and completed "Cost Breakdown Form" (NDOT Form 162). This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Utilizing the Cost Breakdown Form helps reduce errors in calculating previously billed amounts and limitations on eligible costs billed.
- 4) Travel Log: If an invoice contains any travel-related expenses, then a current and completed "Invoice Travel Log" (NDOT Form 163) must be included with the invoice package. This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Upon pre-approval by State, Consultant may use a substitute Invoice Travel Log provided it documents substantially the same information as the current NDOT Form 163. The Travel Log must document the employee's name, vehicle identification (if applicable), date/time of departure to the project, date/time of return to the headquarters town, locations traveled, and expenses for transportation, meals, and lodging.
- 5) Mileage Log (when applicable): When Consultant is seeking reimbursement for mileage only, Consultant must itemize travel on State's Travel Log, itemize on invoice, or include a separate mileage log which includes the following: employee name, vehicle identification, date of travel and miles driven, reimbursement rate and total expenses. The total expenses are to be shown on the invoice as a direct expense.

EXHIBIT "C"
FEES AND PAYMENTS

- D. All invoice packages (invoice, progress report, required NDOT Forms, supporting material) must be submitted electronically through State's OnBase Invoice Workflow System for review, approval, and payment. The user guide for the OnBase Invoice Workflow system, along with training videos can be found at <http://dot.nebraska.gov/business-center/consultant/onbase-help/>.
- E. Notice of Public Record: Documents submitted to State and LPA, including invoices, supporting documentation, and other information are subject to disclosure by State and LPA pursuant to the Nebraska Public Records Act found at Neb. Rev. Stat. § 84-712 et.seq. ACCORDINGLY, CONSULTANT SHALL REDACT OR NOT SUBMIT TO STATE AND LPA INFORMATION THAT IS CONFIDENTIAL, INCLUDING, BUT NOT LIMITED TO, FINANCIAL INFORMATION SUCH AS SOCIAL SECURITY NUMBERS, TAX ID NUMBERS, OR BANK ACCOUNT NUMBERS. Consultant understands that State and LPA do not have sufficient resources to review and redact confidential information submitted by Consultant. If such confidential information is submitted, Consultant shall have no right of action of any kind against State or LPA for the disclosure of such information.

8. PAYMENTS

State, on LPA's behalf, will pay Consultant after receipt of Consultant's invoice and determination by LPA, or State on LPA's behalf, that the invoice and progress report adequately substantiate the Services provided, and the Services were completed in accordance with this Agreement. Payments will not be made if the progress report does not provide adequate substantiation for the Services, or LPA or State determines that the Services have not been properly completed. State, on LPA's behalf, will make a reasonable effort to pay Consultant within 30 days of receipt of Consultant's invoices.

9. PROMPT PAYMENT CLAUSE

Consultant shall include a "Prompt Payment Clause" as a part of every subcontract for work, including all lower tier subcontracts. The "Prompt Payment Clause" will require progress payments to all subconsultants for all work completed, within twenty (20) calendar days after receipt of progress payments from the State for said work. If Consultant fails to carry out the requirements of the "Prompt Payment Clause" without just cause, it will be considered a material breach of this Agreement. In such situation, State may withhold any payment due to Consultant until all delinquent payments have been made (no interest will be paid for the period that payment was withheld), terminate this Agreement, or any other such remedy as State deems appropriate. Consultant may withhold payment to a subcontractor only for just cause and must notify the State in writing of its intent to withhold payment before actually withholding payment. Consultant shall not withhold, delay, or postpone payment without first receiving written approval from the State.

10. SUSPENSION OF PAYMENTS

When work is suspended on this project, payments shall be suspended until the work resumes or this Agreement is terminated. Consultant shall not be compensated for any work completed or costs incurred on the project after the date of suspension. When work is suspended for convenience, Consultant shall be compensated for work completed, or costs incurred prior to the date of suspension. When work is suspended for cause, payments shall be withheld until all remedial action is completed by Consultant to the satisfaction of State, at Consultant's sole cost.

11. ANNUAL OVERHEAD ADJUSTMENT (TRUE-UP) INVOICES

- A. After State receives Consultant's latest Indirect Cost Rate (ICR) submittal and State establishes an approved ICR for Consultant, it is State's preference that Consultant submit a separate Overhead Adjustment Invoice that reconciles the indirect costs billed during the past fiscal year covered by the latest ICR submittal. If reconciling the indirect costs requires the Consultant to reimburse State for overpayment of indirect costs, Consultant may request reimbursement of additional allowable costs that have not been already reimbursed, provided that the costs were documented and subtracted out on previous invoices. In no circumstance may Consultant request reimbursement of any costs incurred that are not in accordance with Section 4. ALLOWABLE COSTS.
- B. When uploading this invoice to OnBase, append "(OH ADJ)" to the invoice number when populating the invoice number keyword in OnBase. More information regarding Overhead

Adjustment Invoices is available on the State's website at
<http://dot.nebraska.gov/business-center/consultant/>.

- C. Consultant shall require Subconsultant(s) to submit Overhead Adjustment Invoices to Consultant consistent with this Section. Consultant must include such subconsultant overhead adjustment invoices when Consultant submits their own invoices to State.

12. FINAL INVOICE, FINAL OVERHEAD (TRUE-UP) INVOICE, AND PAYMENT

- A. Upon completion of the Services under this Agreement, Consultant shall submit their final invoice to include all labor, expenses, and, if applicable, may include the balance of Fee for Profit.
- B. Consultant, and, if applicable, its subconsultant(s), shall review the indirect costs billed to-date to determine if the indirect cost rates (overhead and FCCM) used on prior invoices match the actual indirect cost rates applicable to the time period that the labor was incurred. If cost adjustments are necessary, they should be reflected on an Overhead Adjustment Invoice (**separate from final costs incurred invoice**). Refer to Section 11. OVERHEAD ADJUSTMENT INVOICE. If a particular year's actual overhead has not yet been computed or approved by State, the most recently approved yearly rate should be applied. Consultant shall submit any final Overhead Adjustment Invoice within 180 days of completion of the work under this Agreement, and if such invoice is not timely submitted, State may audit and close the Agreement without accepting any further invoices from Consultant. More information regarding Overhead Adjustment Invoices is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.
- C. After receipt of final invoice and Overhead Adjustment Invoice and determination by LPA, or State on LPA's behalf, that the final invoice and Progress Report adequately substantiate the Services provided and that the Services were completed in accordance with this Agreement, State, on LPA's behalf, will pay Consultant. Acceptance of the final payment by Consultant will constitute and operate as a release to LPA and State for all claims and liability to Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the Services rendered by or in connection with this Agreement or any part thereof.

13. AGREEMENT CLOSE-OUT

Upon submitting its final invoice and, if required, a final Overhead Adjustment invoice, the Consultant must complete and submit to LPA, or State on LPA's behalf, a Notification of

Completion Form (NDOT Form 39). The form is generated and submitted electronically through State's OnBase Invoice Workflow System. Instructions for generating and submitting the NDOT Form 39 are available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Consultant shall submit NDOT 39 Form within 180 days of completion of the work under this Agreement, and if such Form is not timely submitted, State may audit and close the Agreement without accepting any further invoices from Consultant.

14. FEDERAL COST PRINCIPLES

LPA will not make payments directly to Consultant for services performed under this agreement. Instead, the State will serve as a paying agent for LPA and will pay Consultant directly for properly submitted and approved invoices using both LPA and Federal funds based on the applicable project federal cost participation percentage. The following process shall apply whenever the LPA, the State or the FHWA determines that certain costs, previously paid to Consultant, should not have been paid with federal funds by the State to Consultant. Consultant shall immediately repay the State the federal share of the previously paid amount and may invoice LPA for the costs repaid to the State. LPA shall promptly pay the full amount of the invoice from its own funds unless LPA, in good faith, disputes whether the Consultant is entitled to the payment under the agreement or the amount of the invoice. In the event of a dispute between LPA and Consultant, the dispute resolution process, outlined Section 4.4.3.5 DISPUTE RESOLUTION of the LPA Manual, shall be used by the parties. For performance of Services as specified in this Agreement, State will pay Consultant subject to the terms of this Agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulations [48 CFR 31 \(Contract Cost Principles and Procedures\)](#).

15. OUT-OF-SCOPE SERVICES AND CONSULTANT WORK ORDERS

- A. LPA, or State on LPA's behalf, may request that Consultant provide services that, in the opinion of Consultant, are in addition to or different from those set out in the Scope of Services. When LPA, or State on LPA's behalf, decides that these out-of-scope services may require an adjustment in costs, Consultant shall provide in writing:
- 1) A description of the out-of-scope services,
 - 2) An explanation of why Consultant believes that the out-of-scope services are not within the original Scope of Services and additional work effort is required,
 - 3) An estimate of the cost to complete the out-of-scope services. Consultant must receive written approval from LPA, or State on LPA's behalf, before proceeding with the out-of-scope services. Before written approval will be given by LPA, or State on

LPA's behalf, LPA or State must determine that the situation meets the following criteria:

- (a) The out-of-scope services are not within the original Scope of Services and additional work effort is required;
- (b) The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered; and
- (c) It is in the best interest of LPA that the out-of-scope services be performed under this Agreement.

B. Once the need for a modification to the Agreement has been established, the State, on LPA's behalf, will prepare a supplemental agreement. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the State, on LPA's behalf, may issue a written notice to proceed prior to completing the supplemental agreement using the process set out below:

- 1) The Consultant Work Order (CWO) – NDOT Form 250 shall be used to describe and provide necessary justification for the additional scope of services, effort, the deliverables, modification of schedule, and to document the cost of additional services. The CWO form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. The agreement will be supplemented after one or more CWOs have been authorized and approved for funding.

16. TERMINATION COST ADJUSTMENT

If the Agreement is terminated prior to project completion, State and LPA will compare the percentage of work actually completed by Consultant, to the total amount of work contemplated by this Agreement. This comparison will result in a payment by the State, on LPA's behalf, for any underpayment, no adjustment, or a billing to Consultant for overpayment. The State's final audit may result in an additional cost adjustment.

17. AUDIT AND FINAL COST ADJUSTMENT

Upon LPA's and State's determination that Consultant has completed Services under this Agreement, State, or its authorized representative, may complete an audit review of the payments made under this Agreement. The Parties understand that the audit may require an adjustment of the payments made under this Agreement. Consultant agrees to reimburse

State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

18. CONSULTANT COST RECORD RETENTION

Consultant, and all its subconsultants or subcontractors, shall maintain originals or copies of any document required to be completed in this Agreement, that substantiate any expense incurred, or changes any legal obligations for three (3) years from the date of final cost settlement by FHWA and project closeout by the State.

Documents include, but are not limited to: written approvals; time reports; detailed receipts; invoices; transportation costs; mileage; lodging costs; all NDOT forms including NDOT cost breakdown form and NDOT travel form; books; papers; electronic mail; letters; accounting records; supplemental agreements; work change orders; or other evidence pertaining to any cost incurred.

Such materials will be available for inspection by the LPA, State, FHWA, or any authorized representative of the federal government, and copies of any document(s) will be furnished when requested.

A. Consultant agrees to:

- (1) Make a detailed review of its existing insurance coverage,
- (2) Compare that coverage to the expected scope of the work under this Agreement,
- (3) Obtain the insurance coverage that it deems necessary to fully protect Consultant from loss associated with the work. Also, Consultant shall have at a minimum the insurance described below:

B. General Liability –

- (1) Limits of at least:
 - a. \$ 1,000,000 Per Occurrence
 - b. \$ 2,000,000 General Aggregate
 - c. \$ 2,000,000 Completed Operations Aggregate (if applicable)
 - d. \$ 1,000,000 Personal/Advertising Injury
- (2) Consultant shall be responsible for the payment of any deductibles.
- (3) Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- (4) General Aggregate to apply on a Per Project Basis.
- (5) LPA and the State of Nebraska, Department of Transportation ("State") shall be named as Additional Insureds on a primary and non-contributory basis.
- (6) Consultant agrees to waive its rights of recovery against LPA and State. Waiver of subrogation in favor of LPA and State shall be added to, or included in, the policy.
- (7) Contractual liability coverage must be on a broad form basis and not be amended by any limiting endorsements.
- (8) If work is being done near a railroad track, the 50' railroad right of way exclusion must be deleted.
- (9) In the event that this contract provides for consultant to construct, reconstruct or produce a completed structure, building, or facility, products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be further maintained for a minimum period of five (5) years after final acceptance and payment.

EXHIBIT "D"
INSURANCE REQUIREMENTS FOR
PROFESSIONAL SERVICE PROVIDERS (LPA PROJECTS)

- (10) Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended to include a total or absolute pollution exclusion, please refer to the following section entitled "Pollution Coverage.")

C. Pollution Coverage –

- (1) In the event that the standard pollution exclusion as provided by CG0001 has been amended to include a total or absolute pollution exclusion, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of \$1,000,000 per occurrence or claim, and \$1,000,000 aggregate.
- (2) If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of Consultant.

D. Automobile Liability –

- (1) Limits of at least:
- a. \$ 1,000,000 CSL Per Accident
- (2) Coverage shall apply to all Owned, Hired, and Non-Owned Autos.
- (3) Consultant agrees to waive its rights of recovery against LPA and State. Waiver of Subrogation in favor of LPA and State, shall be added to the policy.

E. Workers' Compensation –

- (1) Limits: Statutory coverage for the state where the project is located.
- (2) Employer's Liability limits:
- a. \$100,000 Each Accident
 - b. \$100,000 Disease – Per Person
 - c. \$500,000 Disease – Policy Limit
- (3) Consultant agrees to waive its rights of recovery against LPA and State. Waiver of subrogation in favor of LPA and State shall be added to, or included in, the policy

F. Professional Liability –

- (1) Limits of at least:
- a. \$ 1,000,000 Per Claim
 - b. \$ 1,000,000 Annual Aggregate
- (2) Coverage shall be provided for three years after work/project completion.

EXHIBIT "D"
INSURANCE REQUIREMENTS FOR
PROFESSIONAL SERVICE PROVIDERS (LPA PROJECTS)

G. Electronic Data and Valuable Papers –

- (1) Limits of at least:
 - a. \$100,000 Electronic Data Processing Data and Media
 - b. \$25,000 Valuable Papers

H. Umbrella/Excess –

- (1) Limits of at least:
 - a. \$ 1,000,000 Per Occurrence
 - b. \$ 1,000,000 Annual Aggregate
- (2) Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
- (3) LPA and State shall be "Additional Insureds".
- (4) Consultant agrees to waive its rights of recovery against LPA and State. Waiver of subrogation in favor of LPA and State shall be added to, or included in, the policy.

I. Additional Requirements –

- (1) If any of the work is sublet, equivalent insurance shall be provided by or on behalf of the subconsultant or subconsultants (at any tier).
- (2) Any insurance policy shall be written by a reputable insurance company acceptable to State or with a current Best's Insurance Guide Rating of A – and Class VII or better, and authorized to do business in Nebraska.
- (3) Prior to consultant beginning work on a project under this agreement, Consultant shall provide LPA and State evidence of such insurance coverage in effect in the form of an ACORD (or equivalent) certificate of insurance executed by a licensed representative of the participating insurer(s). Certificates of insurance must show the LPA and State as the certificate holders.
- (4) For so long as insurance coverage is required under this agreement, Consultant shall notify LPA and State when Consultant knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be canceled or terminated. Consultant shall forward any pertinent notice of cancelation or termination to State at the address listed below by mail (return receipt requested), hand-delivery or facsimile transmission within two (2) business days of receipt by Consultant of any such notice from an insurance carrier.

EXHIBIT "D"
INSURANCE REQUIREMENTS FOR
PROFESSIONAL SERVICE PROVIDERS (LPA PROJECTS)

Copies of notices received by Consultant shall be sent to LPA, in care of LPA's Responsible Charge, and to State at the following address:

Nebraska Department of Transportation
Consultant Services- Insurance
1500 Highway 2, P. O. Box 94759
Lincoln, NE 68509-4759
NDOT.ConsultantInsurance@nebraska.gov

- (5) Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this Agreement.
- (6) The Limits of Coverage's set forth in this document are minimum limits of coverage. The limits of coverage shall not be construed to be a limitation of the liability on the part of Consultant or any of its subconsultants/tier subconsultants. The carrying of insurance described shall in no way be interpreted as relieving Consultant, subconsultant, or tier subconsultant of any responsibility of liability under the Agreement.
- (7) If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement will prevail.

Template T-EXH-14 (rev 9/14/22)

This Exhibit contains multiple clauses required by Title 2 of the Code of Federal Regulations, Part 200 (2 C.F.R. Part 200) for services or goods contracts that include any federal-aid direct or pass-through funding. Contractors should review each provision to determine if a dollar amount threshold is met or if a particular section is applicable to this Agreement. The Parties to this Agreement intend that each of the below clauses be read to not conflict with the provisions of the Agreement to which this Exhibit is attached, even if that means Contractor must meet two similar sets of agreement requirements. However, in the event of direct conflict between the language of a provision set out below and the other language of this Agreement, the language of this Exhibit will prevail.

Contractor shall keep appropriate documentation to evidence compliance with these provisions in Contractor's files for at least three years from the completion of final cost settlement by FHWA and project closeout by State.

The use of the word "Contractor" is intended herein to apply to both those providing services and those providing goods or materials. If this Exhibit is attached to an agreement for a Local Federal-aid project, all references to "State" mean Local Public Agency (LPA), State, or State of behalf of the LPA, unless the context otherwise requires. Likewise, if this Exhibit is attached to a Planning Agreement for a Metropolitan Planning Organization (MPO), all references to "State" means the MPO, unless the context otherwise requires.

I. Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

If the Contractor has been approved to subcontract any part of the work, Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms as defined under federal law are used when possible, including the following affirmative steps. These requirements do not impose an obligation on Contractor to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation on the Contractor to carry out and document the six affirmative steps identified below. These requirements do not preclude the Contractor from undertaking additional steps to involve small and minority businesses and women's business enterprises.

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. This does not authorize breaking down a single project into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting");
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) If lower-tier subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this subparagraph.

II. Domestic Preference

In the performance of this Agreement, Contractor shall, as appropriate and to the greatest extent practicable, purchase, acquire, and/or use goods, products, and materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

III. Recovered Materials

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

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

recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

IV. Contract Violations

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

Unless there is no provision in the Agreement for contract violations, if Contractor breaches the Agreement or anticipates breaching the Agreement, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the Agreement. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

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

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

V. Termination for Cause or Convenience

In the event that there is no termination for cause or convenience provision in the Agreement, the Agreement may be terminated as follows:

- (1) The State and the Contractor, by mutual written agreement, may terminate the Agreement at any time.
- (2) The State, at its sole discretion, may terminate the Agreement for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the Agreement. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
- (3) The State may terminate the Agreement immediately for the following reasons:
 - a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Agreement by its Contractor, its employees, officers, directors, or shareholders;
 - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
 - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - g. Contractor intentionally discloses confidential information;
 - h. Contractor has or announces it will discontinue support of the deliverable; and,
 - i. In the event funding priorities have changed.

VI. Davis-Bacon Act

[This section is applicable only for Agreements in excess of \$2,000]

For any contract that involves the work of laborers and mechanics, as defined in 29 C.F.R. § 5.2, the Contractor must pay wages at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. The Contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must

be conditioned upon the acceptance of the wage determination. The Contractor must report all suspected or reported violations to the Federal awarding agency. The Contractor and its subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. All suspected or reported violations must be reported to the Federal awarding agency.

VII. Contract Work Hours and Safety Standards Act

[This section is applicable only for Agreements in excess of \$100,000 and involving mechanics or laborers]

For any contract that involves the work of laborers and mechanics, as defined in 29 C.F.R. § 5.2, the Contractor must compute wages on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

VIII. Rights to Inventions

The following clause applies to each Agreement involving experimental, developmental, or research work, and is governed by 37 C.F.R. Part 401. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Agreement to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Parties agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the applicable Federal Agency is ultimately notified.

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

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

IX. Clean Air Act.

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

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

X. Debarment, Suspension or Exclusion

In the event that there is no debarment, suspension or exclusion provision in the Agreement, Contractor certifies that it, and any of its subcontractors, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. The State reserves the right to terminate this Agreement if a Contractor or its subcontractor is being considered for, presently being, or becoming debarred, suspended, ineligible or excluded from contracting with any state or federal entity.

XI. Anti-Lobbying

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

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

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as

amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)] Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XII. Equal Opportunity Employment

The Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this Agreement, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about,

discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with

EXHIBIT "E"
FEDERAL FUNDING

respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.