

**TASK ORDER AGREEMENT
CONSTRUCTION ENGINEERING, CONSULTANT
LPA PROJECTS**

CITY OF LEXINGTON
MILLER & ASSOCIATES CONSULTING ENGINEERS, P.C.
PROJECT NO. URB-6558(1)
CONTROL NO. 61537
17TH ST, MADISON – VAN BUREN, LEXINGTON

THIS AGREEMENT, made and entered into by and between the City of Lexington, Nebraska hereinafter referred to as the Local Public Agency or LPA, and Miller & Associates Consulting Engineers, P.C. hereinafter referred to as the "Consultant

WITNESSETH:

WHEREAS, in accordance with the terms of the Master Agreement for Consultant Services Project (Master Agreement), State Agreement No.BK1240, executed by the Consultant on February 7, 2012, and by the State of Nebraska Department of Roads (State) on February 14, 2012, the State selected several consultants, including Consultant, to be available to complete services for various local public agency Federal-Aid projects, and

WHEREAS, the LPA has completed or is in the process of completing plans, special provisions, and standard specifications for the letting and construction of a federal-aid transportation related project, and

WHEREAS, the LPA has selected Consultant to provide Construction Engineering services hereinafter the "Services" for its project identified as Project No. URB-6558(1) and

WHEREAS, solely for convenience, consistency and in an attempt to obtain federal funding for the consultant services, the parties intend that this task order agreement, herein after referred to as "Task Order", include some of the provisions of a February 14, 2012 Master Agreement for on-call services between Consultant and the State of Nebraska, Department of Roads, and

WHEREAS, LPA and Consultant wish to enter into this Task Order to specify the duties and obligations of the parties for the Services described herein, and

WHEREAS, the Consultant and LPA intend that the Services provided by Consultant comply with all applicable federal-aid transportation project related program requirements, so that Consultant's costs of Construction Engineering will be eligible for federal reimbursement, and

WHEREAS, the LPA and Consultant intend that this Task Order be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal

Aid Projects; hereinafter referred to as LPA Manual (See definition in Section 1), and

WHEREAS, Consultants primary contact person for LPA will be LPA's representative, who has been designated as being in responsible charge of the project, and who is referred to herein as RC or Responsible Charge.

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1. DEFINITIONS (LPA Task Order)

WHEREVER in this Task Order the following terms are used, they shall have the following meaning:

"LPA" stands for Local Public Agency, and in this Task Order means City of Lexington, Nebraska unless the context otherwise requires. LPA may also be used to refer generally to other Local Public Agencies. 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

"CONSULTANT" means the firm of Miller & Associates Consulting Engineers, P.C. and any employees thereof, whose business and mailing address is 2511 W 35th Street, Kearney, NE 68845, and

"SUBCONSULTANT/SUBCONTRACTOR" means the firm of Mid-State Engineering & Testing, Inc. and any employees thereof, whose business and mailing address is 11 East 11th Street, Kearney, NE 68847.

"LPA MANUAL" shall mean the Nebraska Department of Roads' LPA Guidelines Manual for Federal-Aid Projects. The LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address: <http://www.dor.state.ne.us/gov-aff/lpa/lpa-guidelines.pdf>, and

"RESPONSIBLE CHARGE" or "RC" shall mean LPA's representative for the project whose duties and responsibilities are identified in federal law and in the LPA Manual, and

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. The State represents the interests of the United States Department of Transportation on federally funded transportation projects sponsored by a sub recipient of federal funds and any reference to the "State" in this Task Order shall mean the State on behalf of the United States Department of Transportation, and

"FHWA" means the Federal Highway Administration, United States Department of

Transportation, Washington, D.C. 20590, acting through its authorized representatives, and

"DOT" means the United States Department of Transportation, Washington, D.C.

20590, acting through its authorized representatives, and

"STATE REPRESENTATIVE" means an employee of the State assigned by the State to observe whether the LPA's project meets the eligibility requirements for federal funding and to provide technical assistance when requested by the LPA, in LPAs efforts to comply with the requirements for Federal-aid funded local projects, and

To "ABANDON" the Task Order means that the LPA has determined that conditions or intentions as originally existed have changed and that the Task Order as contemplated herein is to be renounced and deserted for as long in the future as can be foreseen, and

To "SUSPEND" the Task Order means that the LPA has determined that the conditions or intentions as originally existed have changed and that the Task Order as contemplated herein should be stopped on a temporary basis. This cessation will prevail until the State determines to abandon or terminate the Task Order or to reinstate it under the conditions as defined in this Task Order, and

To "TERMINATE" or the "TERMINATION" of this Task Order is the cessation or quitting of this Task Order based upon action or failure of action on the part of the Consultant as defined herein and as determined by the LPA.

SECTION 2. TERM OF THE AGREEMENT

This Task Order becomes effective on the date it is signed by the LPA and will end upon: (1) the waiver of an audit review or (2) the final completion of an audit review by the State or its authorized representative, and the resolution of all issues identified in the audit report.

SECTION 3. TASK ORDER SCOPE OF SERVICES

LPA and Consultant understand that the Services provided by Consultant must be completed in accordance with all federal-aid reimbursement requirements and conditions. LPA and Consultant agree that the Scope of Services for this Task Order will be in two parts. Part one of the Scope of Services is contained within the General Scope of Services set out below. Part two of the Scope of Services is set out on the document attached hereto as Exhibit "A", entitled Scope of Services and Fee Proposal, which is hereby fully incorporated herein and made a part hereof by this reference. Exhibit "A" is the result of the following process:

- (1) LPA provided Consultant with a document describing the detailed proposed Scope of Services for this project

- (2) Consultant made necessary and appropriate proposed additions, deletions, and revisions to LPA's detailed Scope of Services document
- (3) LPA and Consultant together reviewed the proposed Scope of Services, the proposed revisions and negotiated the final detailed Scope of Services and Fee Proposal document, which is attached as Exhibit "A".

Consultant and LPA have agreed that Exhibit "A" sets out the Services reasonably necessary and the costs reasonably estimated for Consultant Services to adequately observe, monitor, inspect, measure, manage, document and report so that LPA's project is constructed by the contractor in compliance with the Construction Contract Documents (definition below), the Manuals (definition below), State and Federal law, rule or regulation and policy.

General Scope of Services:

The Consultant services generally include, but are not limited to: project management; construction engineering; pre-construction staking; traffic control plans; conducting the preconstruction conference; construction staking; project inspection; materials sampling and testing during project construction; monitoring environmental commitments; preparing as-built plans; progress computations; final computations; preparing contractor change orders and work orders; and all project communications, including any necessary communication regarding federal-funding project eligibility questions, issues and concerns.

The Consultant shall review and have a working knowledge of the project plans, special provisions, standard specifications (the Standard Specifications for Highway Construction of NDOR (Current Edition)), change orders and all other project related contract documents for the construction of LPA's Federal-Aid project. The project plans, special provisions, standard specifications, and other contract documents are hereby incorporated by reference into this Task Order, as if they were fully set forth herein, and collectively, may be referred to as the Construction Contract Documents. Consultant shall assume the duties of "Inspector", (also referred to in the NDOR Construction Manual as "Construction Technician"); "Project Manager;" and also "Engineer" (unless the context of use of the term "Engineer" would otherwise require), as those terms are defined and duties set out in the Standard Specifications for Highway Construction (2007 Edition). Consultant shall assume that it is responsible for all duties of the "Engineer" unless notified otherwise by RC on behalf of LPA.

Additionally, Consultant shall review and have a working knowledge of the following authoritative guides and manuals related to highway construction, materials and federal aid reimbursement:

- (1) NDOR Construction Manual - Current Edition
- (2) Materials Sampling Guide (NDOR)
- (3) Standard Methods of Tests – 2006 (NDOR)
- (4) The LPA Manual
- (5) The Manual on Uniform Traffic Control Devices
- (6) AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing
- (7) The ASTM Standards
- (8) NDOR Final Review Manual

These documents are hereby incorporated herein by reference as if fully set forth, and these documents, collectively, may be referred to as the Manuals. Unless required otherwise by the Construction Contract Documents, Consultant shall be responsible for timely completion of all applicable checklists, tests, samples, duties, requirements and provisions of the Manuals. The Manuals will be used to determine what, when, how, the sequence, and other details of the work that must be provided by Consultant, whenever Consultant's duties in these respects are not clearly set out in the Construction Contract Documents. Consultant shall employ a sufficient number of qualified employees on the project to adequately observe, monitor, inspect, measure, manage, document, report and carry out the other duties of this Task Order, so that the project is constructed by the contractor in compliance with the Construction Contract Documents, the Manuals, State and Federal law, rule or regulation and policy. Consultant shall fulfill all contract duties of inspection, project management and construction engineering for the project in a timely manner and shall communicate regularly about the progress of the construction with the LPA, through the RC, and, when appropriate for federal funding or eligibility issues, the State representative.

The Consultant is required to use Trans*Port Site Manager as the construction record-keeping system for Services under this contract.

The Consultant shall be present at the project site when appropriate for each applicable phase of construction to inspect, observe, monitor, measure, manage, document and report on the progress of the work or as otherwise specifically agreed to by the LPA.

The parties understand that the Consultant is not responsible for the Contractor's means and methods of construction. To the extent the Construction Contract Documents and the Manuals specify sequencing of work, equipment requirements, or other construction methods, the Consultant shall keep the Owner's RC informed about the progress and quality of the

portion of the work and shall advise the RC about observed or measured deficiencies in the work.

Additional Requirements:

- A. The Consultant shall advise the LPA when it appears any Disadvantaged Business Enterprise (DBE) working on the project is in need of assistance.
- B. The Consultant shall make every effort to assist the Contractor or any Subcontractor in interpreting Project Plans, Special Provisions, Standard Specifications, other Construction Contract Documents, or the Manuals.
- C. The Consultant will be present at the project site or available at LPA's Offices beginning on the date specified in the LPA's notice to proceed to the contractor, unless project work has not begun at the site; or, with at least 24 hours notice, at any prior date (1) when contract work begins or when materials are delivered to the project that need to be tested, sampled or inspected to verify conformance to the requirements of the Construction Contract Documents.
- D. The Consultant will promptly review and approve or reject all construction work on the project, with the right, but not the duty, for the State and FHWA to review for compliance or funding eligibility.
- E. All reports of field tests performed by the Consultant will be submitted weekly to the State Representative (two copies). Consultant will take prompt and appropriate action to reject or cause Contractor to remedy the work or materials that do not conform to the contract documents.
- F. The Consultant shall comply with all Federal, State and local laws, rules or regulations, policies or procedures, and ordinances applicable to the work contemplated in this Task Order.
- G. Project time delays attributed solely to the Contractor will constitute a basis for a request for an equivalent extension of time for the Consultant. The parties understand that federal reimbursement of extra compensation must be approved in advance as described in the Fees and Payments Section of this Task Order.
- H. The sampling and testing type, method and frequency must be completed by Consultant according to the current State of Nebraska Manuals, including the Materials Sampling Guide and the State Standard Methods of Tests (www.dor.state.ne.us), and the Construction Contract Documents. For sampling or testing issues or situations that are not covered in the Construction Contract Documents or the Manuals, Consultant shall

notify LPA, provide its advice and request that LPA decide what testing type, method or frequency should be applied for this project. Any test methods or procedures that are proposed to be used and are not covered by NDOR procedures must receive prior concurrence for use from NDOR and FHWA.

SECTION 4. STAFFING PLAN (TO CE)

The Consultant has furnished LPA with a staffing plan that identifies the employees of the Consultant who will be part of the primary team for this project. The primary team is expected to be directly responsible for providing the field services for the work under this Task Order. This document shall specify the role that will be assigned to each member of the primary team. This document is attached hereto as Exhibit "B" and is incorporated herein by this reference. During construction, the Consultant may make occasional temporary changes to the primary team. However, any permanent change to the primary team will require prior written approval from the LPA.

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 the Consultant to provide acceptable replacement personnel or qualified new personnel to keep the services on schedule will be cause for termination of this Task Order, with settlement to be made as provided in the SUSPENSION, ABANDONMENT, OR TERMINATION section of this Task Order.

SECTION 7. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The 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. The Consultant hereby 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. The undersigned duly authorized representative of the 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.

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

1. The Consultant must complete the United States Citizenship Attestation form and attach it to this agreement. The form is available on the Department of Roads website at www.transportation.nebraska.gov/projdev/#save.
2. If the Consultant indicates on such Attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

SECTION 5. NOTICE TO PROCEED AND COMPLETION

The LPA will issue Consultant a written Notice-to-Proceed upon 1) full execution of this Task Order, 2) LPA's determination that federal funding approval has been obtained for the project and 3) State's concurrence that the form of this Task Order is acceptable for federal funding eligibility. Any work or services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed will not be eligible for reimbursement.

The Consultant shall complete all work under this Task Order within 45 calendar days after the DR Form 91 "Notification of Contract Completion" is signed by the State. Any costs incurred by Consultant after the completion deadline will not be eligible for federal funding reimbursement unless the Consultant has received a written extension of time from the LPA.

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

SECTION 6. FEES AND PAYMENTS

The general provisions concerning payment under this Task Order are set out on the

Exhibit "D", attached hereto and made a part of this Task Order.

For performance of the services under the terms of this Task Order, the Consultant will be paid a fixed-fee-for-profit of \$13,182.64 and up to a maximum amount of \$110,982.24 for actual costs in accordance with Exhibit "B". The total Task Order amount is \$124,164.88.

SECTION 7. PROFESSIONAL PERFORMANCE (CE Task Order 12-19-11)

The Consultant understands that the LPA will rely on the professional training, experience, performance and ability of the Consultant. Examination by the LPA, State, or FHWA, or acceptance or use of, or acquiescence in the Consultant's work product, will not be considered to be a full and comprehensive examination and will not be considered approval of the Consultant's work product which would relieve the Consultant from liability or expense that would be connected with the Consultant's sole responsibility for the propriety and integrity of the professional work to be accomplished by the Consultant pursuant to this Task Order. The Consultant further understands that acceptance or approval of any of the work of the Consultant by the LPA or concurrence by the State/FHWA or of payment, partial or final, will not constitute a waiver of any rights of the LPA to recover from the Consultant, damages that are caused by the Consultant due to error, omission, or negligence of the Consultant in its work. That further, if due to error, omission, or negligence of the Consultant, the work product of the Consultant is found to be in error or there are omissions therein revealed during or after the construction of the project and revision, reconsideration or reworking of the Consultant's work product is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the notice of any errors, omissions or negligence within 24 hours and give immediate attention to necessary corrections. If the Consultant discovers errors, omissions, or negligence in its work, it shall notify the LPA within 24 hours. Failure of the Consultant to notify the LPA will constitute a breach of this Task Order. The Consultant's legal liability for all damages incurred by the LPA caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the LPA.

SECTION 8. SUSPENSION, ABANDONMENT OR TERMINATION (2/8/12)

The LPA has the absolute right to suspend or abandon the work, or terminate this Task Order at any time and such action on its part will in no event be deemed a breach of this Task Order. The LPA will give the Consultant seven days written notice of such suspension, abandonment, or termination. Any necessary change in Scope of Services shall follow the Consultant Work Order Process outlined in the FEES AND PAYMENTS section above.

If the LPA suspends or abandons the work or terminates this Task Order as presently outlined, the Consultant shall be compensated in accordance with the provisions of 48 CFR 31, provided however, that in case of suspension, abandonment, or termination for breach of this Task Order, the LPA will have the power to suspend payments, pending the Consultant's compliance with the provisions of this Task Order. For an abandonment or termination of this Task Order, payment to Consultant will be prorated based on the percentage of work completed by the Consultant prior to abandonment or termination compared to the total amount of work contemplated by this Task Order.

The ownership of all project plans and supporting documents completed or partially completed at the time of such termination or abandonment will be retained by the LPA and the Consultant shall immediately deliver all project plans and supporting documents to the LPA.

SECTION 9. SECTIONS INCORPORATED BY REFERENCE:

For the convenience of the parties, for consistency for funding review, and in an effort to reduce the length of this Task Order, LPA and Consultant agree to be bound by and hereby incorporate by this reference as if fully set forth herein, Sections 12 through 18 and 20 through 27 of the Master Agreement for on-call construction engineering services for LPA projects between the Nebraska Department of Roads and Consultant, dated March, 2010, with one recurring change:

The name of LPA should be substituted in for any reference in that Master Agreement to State, State of Nebraska, Director or the Nebraska Department of Roads, unless the context would otherwise require. The LPA and Consultant agree to meet the requirements of all incorporated provisions and represent that by signing this Task Order, they expressly certify to any required certifications contained in those provisions.

Although some of the provisions of the Master Agreement are incorporated herein by reference, it is understood that the Nebraska Department of Roads is not a party to this Task Order and shall have no obligations or duties under this Task Order.

SECTION 10. RESPONSIBILITY FOR CLAIMS AND LIABILITY (LPA)

The Consultant agrees to save harmless the LPA and State/FHWA from all claims and liability due to the activities of the Consultant or those of the Consultant's agents or employees in the performance of services under this Task Order. In this connection, the Consultant shall for the life of this Task Order, carry insurance as outlined in Exhibit "C" and attached hereto, and hereby made a part of this Task Order. In any contract Consultant has with a subconsultant,

Consultant shall require that the insurance requirements outlined in Exhibit "C" must be met by the subconsultant.

SECTION 12 CONSULTANT CERTIFICATIONS

The undersigned duly authorized representatives of the Consultant, by signing this agreement, hereby swears, under the penalty of law, the truth of the following certifications, and agrees as follows:

- A. Neb. Rev. Stat. § 81-1715(1).** I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum or actual cost-plus-a-fixed fee professional service contract, 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 the LPA determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- B. Neb. Rev. Stat. §§ 81-1717 and 1718.** I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:
1. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
 2. Has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
 3. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

C. Certification Regarding Debarment, Suspension, and Other Responsibility

Matters-Primary Covered Transactions. Section C1 below contains 10 instructions that consultant agrees to follow in making the certifications contained in C2.

1. Instructions for Certification

- a. By signing this agreement, the Consultant is providing the certification set out below.
- b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The 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 the State's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the State determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the State may terminate this agreement for cause or default.
- d. The Consultant shall provide immediate written notice to the State if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "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.
- f. The 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 the State before entering into this agreement.

- g. The Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. The 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.
- i. 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 the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if the 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, the State may terminate this agreement for cause or default.

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

- a. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - ii. 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;
- iii. 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 a.ii above; and
 - iv. 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.
- b. Where the 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 the 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 12. LPA CERTIFICATION

By signing this Task Order, I, John Fagot, do hereby certify that, to the best of my knowledge, the 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 Task Order 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.

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

SECTION 13. ALL ENCOMPASSED

This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all

	Reed Principal	Lance PM	Kent PE	Rich Inspector	Randy Inspector	Craig CAD	Ron RLS	Chad Surveyor	Lisa Clerical	TOTAL	Mileage	COMMENTS									
1 Project Management																					
a	2	2	1	2	2					9											
b		112								112	2720	2 trips/wk. 32 trips @ 3.5 hrs/trip									
c		4								4		1/2 day									
d		2								2											
e		8							64	8		PM: 1/2 hr/week - CL: 4 hrs/week									
f			32							32		2 hrs/week									
g			8							8		1 hr every 2 weeks									
2 Meetings																					
a	2	6	4	4					3	16	85	1 trip									
b	1	4	4			2				11	85										
c		24							8	24	280	8 trip, 3 hrs/meeting									
3 Traffic Control Plan & SWPPP Manual																					
a			8			8				16											
b		12.5		75						87.5		Insp. Assume 25 trips, 3 hrs/trip - PM 1/2 hr/trip									
4 Construction Survey/Staking																					
a		3.5					7	58		68.5	595	PM: 1/2 hr/trip - RLS 1hr/trip - 7 trips (see attach)									
5 Shop Drawing Review																					
a		2								2		Mix Design review & comment									
b		1								1											
6 Construction Consultation / Site Manager																					
a			80							80		1 hr/day									
b			16							16		2 hrs every 2 weeks									
c			31.5							31.5		63 samples @ 1/2 hr/sample for entry									
d			4							4		Assume 2 - 2 hrs each									
7 Construction Inspection																					
a										0		Under Task 7c responsibilities									
b				160						160		2 hrs/day									
c				480						480	6800	6 hrs/day, 80 trips									
d										0		Under Task 7c responsibilities									
e				48						48		Under Task 7c responsibilities with added time for night inspections @ 3 hrs/week									
f										0		Under Task 7b responsibilities									
g										0		Under Task 7c responsibilities									
h										0		Under Task 7c responsibilities									
i										0		Under Task 7b responsibilities									
j										0		Under Task 7b responsibilities									
k										0		Under Task 7b responsibilities									
l										0		Under Task 7b responsibilities									
m										0		Under Task 7b responsibilities									
n		8	4			12				24		Under Task 7b responsibilities									
o										0		Under Task 7c responsibilities									
p										0		Under Task 7c responsibilities									
q										0		Under Task 7c responsibilities									
8) Perform Material Sampling and Testing																					
a					4					4	85	1 trip									
b										0		Under Task 7c responsibilities									
c					4					4		1 trip									
d										0											
e			32		80					112	1190	16 pours, 5 hrs/day, 16 pours @ 2 Hrs/Ea. Remaining hours shown on 1b									
f			7							7		1/2 hr/test (14 tests)									
g			3						1	3											
9) Environmental																					
a										0											
b			4							4		PM: 1/4 hr/week - Insp: Under Task 7d									
c			3							3		Under Task 3b responsibilities									
d			4							4											
10) Project Closeout																					
a			4		4					8		1/2 day									
b										0											
c			6						1	6		1 hr/eval, assume 6 contractors									
d			8							8		1 day									
e			2						1	2											
f			4	2		2			1	8											
Totals											5	397.5	63	773	90	24	7	58	79	1496.5	

Category	Hours	Rate	Amount
PR - Principal	5	\$40.38	\$ 201.90
PE - Professional Engineer	397.5	\$35.19	\$ 13,988.03
PM - Project Manager	63	\$28.85	\$ 1,817.55
Insp 1 - Inspector 1	773	\$16.85	\$ 13,025.05
Insp 2 - Inspector 2 (ACI/NDOR Certified) Testing	90	\$27.26	\$ 2,453.40
CAD Technician	24	\$32.02	\$ 768.48
RLS - Survey Crew Chief	7	\$26.54	\$ 185.78
Survey Crew	58	\$18.35	\$ 1,064.30
C - Clerical	79	\$12.50	\$ 987.50
TOTAL DIRECT LABOR			\$ 34,491.99

Category	Hours	Rate	Amount
OVERHEAD		1.7496%	\$ 594.89
TOTAL LABOR AND OVERHEAD			\$ 35,086.88
DIRECT PROJECT EXPENSES			
Mileage	11245	mi.	\$0.555 /mi
Mileage - Survey Vehicle	695	mi.	\$0.58 /mi
Construction Staking Materials	250	each	\$0.10 /each
Photocopies	500	copies	\$0.10 /copy
Equipment Rental		days	\$50.00 /day
Lodging & Meals		days	\$118.00 /day
Printing 24 x 36 Sheets (Reproducible Paper)		copies	\$3.00 /copy
Outside Audit		each	\$3.00
TOTAL DIRECT PROJECT EXPENSES			\$5,661.08

Category	Amount
SUBCONSULTANTS	Cost
Testing Laboratory - Mid-State Engineering & Testing, Inc., Kearney	\$9,482.00
TOTAL LABOR AND OVERHEAD	\$35,086.88
FIXED FEE PERCENT	13.90%
DIRECT PROJECT EXPENSES	\$5,661.08
SUBCONSULTANTS	\$9,482.00
TOTAL FEE	\$124,164.88
Construction Cost	\$97,832.38
	13.65%

tan shaded cell indicates value to be entered by consultant
 blue shaded cell indicates locked cell for formulas

Working Days	80
Hours	800
Weeks	16
Months	4

- Project Management:** See Attached
- Meetings:** See Attached
- Traffic Control Plan & SWPPP Manual:** See Attached
- Construction Survey/Staking:** See Attached
- Shop Drawing Review:** See Attached
- Construction Consultation /Site Manager:** See Attached
- Construction Inspection:** See Attached
- Perform Material Sampling and Testing:** See Attached
- Environmental:** See Attached
- Project Closeout:** See Attached
- Construction Inspection by CE**
 - Conduct wage rate interviews
 - Maintain project field diaries, files, and records in Site Manager
 - Verify the performance of the work is in conformance with the plans and specifications
 - Monitor construction activities for compliance with NEPA permitting (Wetlands, 44, Floodplain, NPDES, etc.)
 - Review work zone traffic control devices daily to include weekly nighttime visual reflectivity checks
 - Collect and file all delivery tickets and material certifications
 - Verify the suitability and acceptance of the material incorporated in the work
 - Perform material sampling and testing in accordance with the NDOR Materials Sampling Guide
 - Measure and calculate quantities of pay items
 - Prepare a weekly report of working day report
 - Review Contractor Pay Request and submit to RC
 - Review change order or time extension requests and forward to RC
 - Communicate and coordinate plan revisions and change orders with the Designer
 - Prepare as-built plans
 - Work is completed in accordance with the Nebraska Department of Roads Construction Manual
 - Prepare a field checked culvert list
 - Review critical path schedules prepared by the Contractor for appropriateness
 - The Construction Engineer is required to create a checklist to show compliance with all environmental commitments for the project. An Environmental Compliance Inspection Audit will be conducted by NDOR personnel to ensure the project is in compliance with all applicable environmental commitments. (Checklist No. 12-20)

SOS/ICE: SURVEY/STAKING

PROJECT NAME - 17th Street Madison to VanBuren

PROJECT NO. URB-6558(1)

CONTROL NO. 61537

MANHOUR AND FEE ESTIMATE

CONSTRUCTION ENGINEERING SERVICES

Construction Survey/Staking	Hours			Mileage	Meals	Comments
	Crew Chief	Crew Member	Inspector			
Roadway Staking						
Coordination	7					1 hr/trip x 7 trips
Stake post locations for traffic control		4		85		1 trip
Locate Control		2				
ROW/Easements		4				
Alignment Points (Centerline)						
Roadway Grading (Slope Stakes)						
Channel Grading						
Blue Tops						
Paving Hubs		40		425		5 trips
Radius Points (Drives, Intersections, Etc.)						
Pavement Marking (for traffic control)						
Guardrail						
Silt Fence/Erosion Control						
Culverts - Stormsewer		8		85		1 trip
Travel Time						Included in hours shown above.
Subtotal	7	58	0	595	0	
Bridge Staking						
Coordination						
Substructure						
Shim Shots						
Grading						
Periodic checks during construction						
Travel Time						
Subtotal	0	0	0	0	0	
Total	7	58	0	595	0	

Round Trip: 85 miles

Crew: 1-man

- Trip 1: 10 Hr. Day Locate Control
Stake Signs & Barricades
Stake ROW/Easements
- Trip 2: 8 Hr. Day Stake Stormsewer - Walnut
Stake Stationing - 17th
- Trip 3: 8 Hr. Day Stake Paving Hubs - Walnut
- Trip 4: 8 Hr. Day Stake Paving Hubs - Walnut
- Trip 5: 8 Hr. Day Stake Paving Hubs - Walnut
- Trip 6: 8 Hr. Day Stake Paving Hubs - 17th
- Trip 7: 8 Hr. Day Stake Paving Hubs - 17th

Exhibit "A"

SOS/ICE: SAMPLING & TESTING

PROJECT NAME - 17th Street Madison to VanBuren
 PROJECT NO. URB-6558(1)
 CONTROL NO. 61537
 MANHOOR AND FEE ESTIMATE
CONSTRUCTION ENGINEERING SERVICES

Miller & Associates
 Mid-State Engineering & Testing

(Info indicates quantity of testing. Manhours are not shown)

	Lab Standard Proctor	Yield Density Test	Field Moisture Test	Field Gradation Test	Erosion Polling / Alter	Plant Tech Test			Field Tech Test					Unconfined Compression Cylinder Test	Quality Soundness	Core Thickness Test	Core Strength Test	Visual Gradation Documentation	Density Core Tests	Asph. Conc. Mixture Test	Mileage	Meals	Comments
						Samples Aggregate	Subs. Fine & coarse	Moisture	So	Slump	Unit Weight	Yield	Cylinders										
Excavation (EQ)																							
Earthwork Measured in Embankment																							
High Channel Construction																							
Culvert Pipes																							
Crushed Rock Surface Course																							
Crushed Rock Embedment																							
Bituminous Surfacing For Mail Box Turnouts																							
Special Surface Course For Mail Box Turnouts																							
Asphaltic Concrete SPR																							
Asphaltic Concrete SP-4 (Paving & Patching)																							
Class 47B-3000 for Bridge																							
Class 47BD-4000 for Bridge																							
Class 47B-3000 for Box Culvert																							
Pipe Piling																							
Rock Rip Rap																							
Fine & Coarse Aggregates				5		3															255		3 trips, 2 Coarse & 3 Fine
Concrete Pavement 47B-3000 (Sidewalks, Drives, and Steps)									10	10	10	10	10	40									
9" Concrete Pavement 47B-3500								6	8	8	8	8	8	34		6	6						
7" Concrete Pavement 47B-3500								6	8	8	8	8	8	34		2	2						
Reconstruct Curb Inlet 47B-3000								2	3	3	3	3	3	14									
Type C Repair								4	10	10	1	1	10	10									
4" Foundation Course																							
Subgrade Preparation	4																						
Modular Block Wall																							
Water Main Hydrant Drain Material																							
Water Main Bedding Material																							
Totals	4	0	0	5	0	3	0	18	39	39	30	30	39	132	0	8	8	0	0	0	255	0	
Unit Cost/Test	\$150.00			\$90.00										\$48.00		\$12.00	\$250.00						
Cost	\$600.00			\$450.00										\$6,336.00		\$96.00	\$2,000.00						Lab Testing Cost Est. \$9,482.00

CONTRACT NO. 6537 PROJECT NO. URB-6558(1)
 VENDOR NO: 2252 PAULSEN, INC.

LOCATION: 17TH STREET, MADISON - VAN BUREN, LEXINGTON
 TYPE OF CONSTR: GRAD CONC PAVE CULV
 LETTING DATE: 11/3/2011

**NOTE: ALL MANUFACTURERS OF STEEL MATERIALS
 WILL INCLUDE A STATEMENT ON THE TEST REPORT
 OR CERTIFICATION THAT ALL STEEL MATERIALS WERE
 MELTED AND MANUFACTURED IN THE USA
 (SEE NSS-106.07 PARAGRAPH 3)**

*TOS=TEST OR SAMPLE
 CC=CONTRACTOR'S CERTIFICATION
 COC=CETIFICATION OF COMPLIANCE
 COT=CERTIFICATION OF TEST
 APL=APPROVED PRODUCTS LIST
 PMV=PROJECT MANAGER'S VERIFICATION

**SP=SPECIAL PROVISIONS - PAGE NUMBER
 SG=SAMPLING GUIDE - SECTION NUMBER
 NSS=NEBR. STAND. SPECS. - SECTION #

DESCRIPTION	QUANTITY	UNITS	* REQUIRED DATA	** REF BK	M&R CONTACT
FABRIC SILT FENCE-LOW POROSITY	516.000	LF	APL	NSS809	DONDLINGER
FABRIC SILT FENCE-HIGH POROSITY	60.000	LF	APL	NSS809	DONDLINGER
CONC 47B-3000 SIDEWALK 5"	2,504.000	SY	TOS	SG-16	MASTERS
DETECTABLE WARNING PANEL	304.000	SF	APL	SP-85	KAREL
CONC 47B-3500 DRIVEWAY	760.000	SY	TOS	SG-16	MASTERS
CONC PVMT REPAIR TYPE C FULL DEPTH	4,171.800	SY	TOS	SP-74	MASTERS
7" CONC PVMT 47B-3500	1,366.000	SY	TOS	SG-15	MASTERS
9" CONC PVMT, 47B-3500	5,847.000	SY	TOS	SG-15	MASTERS
ADJUST MANHOLE TO GRADE	11.000	EACH	TOS	SG-16	MASTERS
FOUNDATION COURSE REPLACEMENT	400.000	SY	TOS	SP-77	MASTERS
SUBGRADE PREPARATION	7,973.000	SY	TOS	SG-10	PENAS
CURB INLET	1.000	EACH	TOS	SG-16	MASTERS
CURB INLET	1.000	EACH	TOS	SG-16	MASTERS
RECONSTRUCT CURB INLET	10.000	EACH	TOS	SG-16	MASTERS
47B-3000 CONC FOR CONCRETE CO	0.370	CY	TOS	SG-16	MASTERS
47B-3000 CONC FOR PIPE PLUG	0.070	CY	TOS	SG-16	MASTERS
RE-STEEL FOR COLLARS	36.000	LB	TOS/COT	SG-16	KAREL

CONTRACT NO. 6537 PROJECT NO. URB-6558(1)
 VENDOR NO: 2252 PAULSEN, INC.

LOCATION: 17TH STREET, MADISON - VAN BUREN, LEXINGTON
 TYPE OF CONSTR: GRAD CONC PAVE CULV
 LETTING DATE: 11/3/2011

NOTE: ALL MANUFACTURERS OF STEEL MATERIALS WILL INCLUDE A STATEMENT ON THE TEST REPORT OR CERTIFICATION THAT ALL STEEL MATERIALS WERE MELTED AND MANUFACTURED IN THE USA (SEE NSS-106.07 PARAGRAPH 3)

*TOS=TEST OR SAMPLE
 CC=CONTRACTOR'S CERTIFICATION
 COC=CETIFICATION OF COMPLIANCE
 COT=CERTIFICATION OF TEST
 APL=APPROVED PRODUCTS LIST
 PMV=PROJECT MANAGER'S VERIFICATION

**SP=SPECIAL PROVISIONS - PAGE NUMBER
 SG=SAMPLING GUIDE - SECTION NUMBER
 NSS=NEBR. STAND. SPECS. - SECTION #

DESCRIPTION	QUANTITY UNITS	* REQUIRED DATA	** REF BK	M&R CONTACT
12" REINF CONCRETE SEWER PIPE	6.000 LF	SG-SECTION 29	POLICY 9	KAREL
18" REINF CONCRETE SEWER PIPE	4.000 LF	SG-SECTION 29	POLICY 9	KAREL
CURB INLET SEDIMENT FILTER	108.000 LF	APL	SP-83	DONDLINGER
TEMP PVMT MARKING, TYPE PAINT	5,866.000 LF	APL	NSS422	DONDLINGER
GLASS BEADS		APL	NSS422	DONDLINGER
TUBULAR POST	42.000 EACH	APL	NSS422	KAREL
BUY AMERICA CERTIFICATION (PRIME CONTRACTOR)		CC	NSS106	KAREL
BARRICADE WARNING LIGHTS (ALL TYPES)		APL	SG-23	KAREL
BARRICADE REFLECTIVE SHEETING		TOS	SG-23	DONDLINGER
DOWEL BARS		TOS/COT	SP-74	KAREL
TIE BARS		TOS/COT	SP-74	KAREL
GROUT		APL	SP-74	MASTERS
JOINT SEALANT (HOT POURED)		APL	SP-74	BYRE

Miller & Associates Consulting Engineers, P.C.
Staffing Plan

Category	Employee	Rate
PR - Principal	Reed Miller	\$40.38
PE - Professional Engineer	Kent Cordes	\$35.19
PM - Project Manager	Lance Harter	\$28.85
Insp 1 - Inspector 1	Rich Roeder	\$16.85
Insp 2 - Inspector 2 (ACI/NDOR Certified) Testing	Randy Deans	\$27.26
CAD Technician	Craig Bennett	\$32.02
RLS - Survey Crew Chief	Ron Ridgway	\$26.54
Survey Crew	Chad Dixon	\$18.35
C - Clerical	Lisa Schmidt	\$12.50

EXHIBIT "C"
**INSURANCE REQUIREMENTS FOR
PROFESSIONAL SERVICE PROVIDERS
LPA PROJECTS**

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 contract,
- (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:

General Liability –

Limits of at least:

- \$ 1,000,000 Per Occurrence
- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Completed Operations Aggregate (if applicable)
- \$ 1,000,000 Personal/Advertising Injury

- Consultant shall be responsible for the payment of any deductibles.
- Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- General Aggregate to apply on a Per Project Basis.
- The LPA shall be named as Additional Insured on a primary and non-contributory basis including completed operations (the completed work/product) for three (3) years after the work/product is complete.
- Consultant agrees to waive its rights of recovery against the LPA. Waiver of Subrogation in favor of the LPA shall be added to, or included in, the policy.
- Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.
- If work is being done near a railroad track, the 50' railroad right of way exclusion must be deleted.
- In the event that this contract provides for consultant to construct, reconstruct or produce a completed product, 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 years after final acceptance and payment.

- 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, please refer to the following section entitled “Pollution Coverage.”)

- **Pollution Coverage –**

- In the event that the standard pollution exclusion as provided by CG0001 has been amended, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of \$1.0 million per occurrence or claim and \$1.0 million aggregate. If coverage is provided by a “claims made” form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Consultant.

Automobile Liability –

Limits of at least: \$ 1,000,000 CSL Per Accident

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

Workers’ Compensation –

Limits: Statutory coverage for the State where the project is located.

Employer’s Liability limits: \$100,000 Each Accident

\$100,000 Disease – Per Person

\$500,000 Disease – Policy Limit

- Consultant agrees to waive its rights of recovery against the LPA. Waiver of Subrogation in favor of the LPA shall be added to, or included in, the policy

Professional Liability –

Limits of at least: \$ 1,000,000 Per Claim and Annual Aggregate

- Coverage shall be provided for three years after work/project completion.

Electronic Data and Valuable Papers –

Limits of at least: \$100,000 Electronic Data Processing Data and Media

\$25,000 Valuable Papers

Umbrella/Excess –

Limits of at least: \$1,000,000 Per Occurrence and Annual Aggregate

- Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
- The LPA, shall be an “Additional Insured”.

- Consultant agrees to waive its rights of recovery against the LPA. Waiver of subrogation in favor of the LPA shall be provided.

Additional Requirements –

- Any insurance policy shall be written by a reputable insurance company acceptable to the LPA or with a current Best's Insurance Guide Rating of A – and Class VII or better, and authorized to do business in Nebraska.
- Evidence of such insurance coverage in effect shall be provided to the LPA in the form of an Accord certificate of insurance executed by a licensed representative of the participating insurer(s).
- For so long as insurance coverage is required under this agreement, the Consultant shall have a duty to notify the LPA and the State of Nebraska Department of Roads (State) when the Consultant knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be canceled or terminated. The Consultant must forward any pertinent notice of cancelation or termination to the LPA and to the State by mail (return receipt requested), hand-delivery or facsimile transmission within 2 business days of receipt by Consultant of any such notice from an insurance carrier. Copies of notices received by the Consultant shall be sent to the LPA, in care of the LPA's Responsible Charge and to the State at the following address:

Nebraska Department of Roads
Construction Division – Insurance Section
1500 Highway 2, P. O. Box 94759
Lincoln, NE 68509-4759
Facsimile No. 402-479-4854

- 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.
- The Limits of Coverage's set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the consultant or any of its subconsultants/tier subconsultants. The carrying of insurance described shall in no way be interpreted as relieving the consultant, subconsultant, or tier subconsultant of any responsibility of liability under the contract.
- If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement shall prevail.

FEES AND PAYMENTS

EXHIBIT "D"

- A. **Payment Method.** Payment under this agreement will be made based on Actual Costs plus a Fixed Fee for profit.
- B. **Total Agreement Amount.** For performance of the services as described in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$13,182.64 and up to a maximum amount of \$110,982.24 for actual costs as defined in paragraph "H" of this section. The total agreement amount is \$124,164.88. The Consultant's compensation shall not exceed this maximum amount without prior written approval of the LPA.
- C. **Ineligible Costs.** The LPA is not responsible 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 section of this agreement or as provided in a written time extension notification.
- D. **Federal Cost Principles.** For performance of Services under the terms of this agreement, the Consultant will be paid as authorized for each specific Task Order, subject to the terms of this agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31).
- E. **Federal-aid.** (2-1-12) 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 of Section 18 herein shall be used by the parties.
- F. **Subconsultant Over-runs and Under-runs.** The Consultant shall require any subconsultant to notify Consultant if at any time the subconsultant determines that its costs will exceed its negotiated fee estimate. The Consultant shall not allow any

subconsultant to exceed its negotiated fee estimate without prior written approval of the LPA. The Consultant understands that the amount of any subconsultant cost under-run will be subtracted from the total compensation to be paid to Consultant under this agreement, unless prior written approval is obtained from the LPA and, when applicable, FHWA.

G. **Out of Scope Services and Consultant Work Orders.** The LPA 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 the LPA decides that these services require an adjustment in costs, the Consultant shall: (a) describe the proposed services, (b) provide an explanation why Consultant believes that the proposed services are not within the original scope of services and additional work effort is therefore required, and (c) estimate the cost to complete the services. Consultant must receive written approval from the LPA before proceeding with the out-of-scope services. Before written approval will be given by the LPA, the LPA must determine that the situation meets the following criteria:

- That the additional work is beyond the scope of services initially negotiated with Consultant; and
- That the proposed services are within the scope of the Request for Proposal under which Consultant was selected and contract entered into; and
- That it is in the best interest of the LPA that the services be performed under this agreement.

Once the need for a modification has been established, a supplemental agreement will be prepared.

If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the LPA shall use the process set out below:

- The Consultant Work Order (CWO) – DR Form 250 shall be used to describe and provide necessary justification for the additional the scope of services, effort, the deliverables, modification of schedule, and to document the cost of additional services. The CWO form is available on the Department of Roads website at www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html#forms4. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. This agreement will be supplemented after one or more CWOs have been authorized and approved for funding.

H. **Payments.** Payment for work under this agreement will be made based on actual costs plus a fixed fee for profit. Actual costs include direct labor costs, direct non-labor costs, and overhead costs.

(1) Direct Labor Costs are the earnings that individuals receive for the time they are working directly on the project.

(a) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's straight time hourly rate for the pay period in which the work was performed. For salaried employees, the hourly earnings rate shall be their actual hourly rate as recorded in the Consultant's accounting books of record.

(b) Time records: The hours charged to the project must be supported by adequate time distribution records. The records must clearly indicate the distribution of hours to all activities on a daily basis for the entire pay period, and there must be a system in place to ensure that time charged to each activity is accurate.

(2) Direct Non-Labor Costs: These costs include all necessary, actual, and allowable costs related to completing the work under the agreement, including but not limited to: meals, lodging, mileage, subject to the limitations outlined below; communication costs; reproduction and printing costs; special equipment and materials required for the project; special insurance premiums if required solely for this agreement; and such other allowable items.

A non-labor cost charged as a direct cost cannot be included in the Consultant's overhead rate. If for reasons of practicality, the consultant is treating a direct non-labor cost category, in its entirety, as an overhead cost, then costs from that category are not eligible to be billed to this project as a direct expense.

Consultant shall submit to the LPA an invoice or billing itemizing all direct non-labor costs claimed for work under this agreement, and all supporting receipts or invoices. The State, on behalf of the LPA, will pay the Consultant for all necessary, allowable, eligible and properly documented direct non-labor costs related to the work under this agreement.

The following expenses will be reimbursed at actual costs, not to exceed the rates as shown below.

(a) The reimbursement for mileage associated with the use of company owned vehicles shall 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:

- 1) The mileage rate which the consultant reimbursed to the person who submitted the claim for POV use, or
 - 2) The prevailing standard rate as established by the IRS.
- (b) Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable the Consultant shall give the LPA the benefit of all discounts.
- (c) The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated in the current website address for U.S. General Services Administration's (GSA) rates which is indicated below:

<http://www.gsa.gov/portal/category/100120>

- 1) For the Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

- a) Employee is required to depart at or before 6:30 a.m., or
- b) Employee is on overnight travel.

Lunch:

- a) Employee must be on overnight travel. No reimbursement for same day travel.
- b) Employee is required to leave for overnight travel at or before 11:00 a.m., or
- c) Employee returns from overnight travel at or after 2:00 p.m.

Dinner:

- a) Employee returns from overnight travel or work location at or after 7:00 p.m., or
- b) Employee is on overnight travel.

Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.

The Consultant shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town. The total daily meal costs must not exceed the GSA rates set out above.

- (3) Overhead Costs include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with 48 CFR 31. Overhead 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 overhead rate. Overhead

rate increases which occur during the project period will not be cause for an increase in the maximum amount established in this agreement.

- I. **Fee for Profit (Actual Cost Plus Fixed Fee).** The Fixed Fee for Profit was computed upon the negotiated direct labor and overhead costs. The Fee for Profit is not allowable upon direct non-labor costs. For monthly or progress invoices, the Fee for Profit is calculated by multiplying the sum of the direct labor and overhead costs billed by the negotiated Fee for Profit Rate of "13.90%". Upon completion of the work under this agreement, the Consultant shall invoice the LPA any remaining Fixed Fee for Profit. If all of the work under this agreement is not completed for any reason, fixed fee for profit will be adjusted based on the LPA's determination of the actual percentage of work completed.
- J. **Invoices and Progress Reports.** The Consultant shall submit invoices to the LPA no more frequently than at monthly intervals and in accordance with the "LPA Reimbursement Procedures" which can be found on the State's website at: <http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html#policies4>. The invoices must present actual direct labor, actual overhead, actual direct non-labor costs, as well as the Fee for Profit based upon the actual direct labor and overhead costs billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed. Each monthly invoice must include a completed "Cost Breakdown Form" (see State's webpage at <http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html>) and must be substantiated by a progress report which is to include/address, as a minimum:
1. A description of the work completed for that period
 2. A description of the work anticipated for the next pay period
 3. Information needed from the LPA
 4. Percent of work completed to date
- Consultant shall submit a progress report monthly even if Consultant does not submit a monthly invoice.
- K. **Progress Payments.** Payments will not be made unless the monthly progress reports provide adequate substantiation for the work and the LPA and the State determine that the work has been properly completed. The State, on behalf of the LPA, will make a reasonable effort to pay the Consultant within 30 days of receipt of the Consultant invoices.

L. **Final Invoice.** Upon completion of the work under this agreement, the Consultant shall submit their final invoice with a letter identifying it as the final invoice. The letter shall also include the following information/statements:

1. Project name/location, project number, control number, service provided, and agreement number.
2. All the work under this agreement has been completed and all required deliverables have been submitted to the LPA,
3. Consultant has no outstanding issues to be resolved regarding the work under this agreement.

In addition, the Consultant shall review the overhead costs billed to-date to determine if the overhead rates used on the progress billings match the actual allowable rate applicable to the time period that the labor was incurred. If cost adjustments are necessary, they should be reflected on the final invoice. If a particular year's actual overhead has not yet been computed or approved by the State, the most recent years accepted rate should be applied.

M. **Final Payment.** Upon determination by the LPA and the State that the work was adequately substantiated and completed in accordance with this agreement, payment will be made in the amount of the approved final invoice. The acceptance by the Consultant of the final payment will constitute and operate as a release to the LPA and the State for all claims and liability to the 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.

N. **Audit and Final Cost Adjustment.** Upon acceptance by the LPA and the State, the 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. The Consultant agrees to reimburse the State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

O. **Consultant Cost Record Retention.** The Consultant shall maintain, and also require that its Subconsultants/Subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final cost settlement by FHWA and project closeout by the State. Such materials must be available for inspection by the LPA, State, FHWA, or any authorized representative of the federal government, and when requested, the Consultant shall furnish copies.