

**CITY OF LEXINGTON
RESOLUTION NO 2011-11**

**RESOLUTION
SIGNING OF AN ENGINEERING SERVICES AGREEMENT**

Whereas: The City of Lexington is developing a transportation project for which it intends to obtain Federal funds; and

Whereas: The project is named "17th Street and Walnut Street" with the federal project number URB-6558(1), and the Nebraska Department of Roads Control Number 61537; and

Whereas: The City of Lexington 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 Lexington and Miller & Associates wish to enter into an Engineering Services Agreement to provide Engineering Services for the Federal-aid project.

Be It Resolved: by the City Council of the City of Lexington that:

Dennis Burnside, Responsible Charge, is hereby authorized to sign the attached Engineering Services Agreement between the City of Lexington and Miller & Associates.

PASSED AND APPROVED this 8th day of March, 2011.

CITY OF LEXINGTON, NEBRASKA

President of the Council

ATTEST:

Deputy City Clerk

LPA/CONSULTANT LOCALLY FUNDED
PROFESSIONAL SERVICES
PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES

CITY OF LEXINGTON
MILLER & ASSOCIATES
CONSULTING ENGINEERS, P.C.
PROJECT NO. URB-6558(1)
CONTROL NO. 61537
17th & WALNUT STREETS

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

WITNESSETH

WHEREAS, the LPA is in the process of developing a federal-aid transportation project at the location shown on EXHIBIT "A", which is attached and hereby made a part of this agreement, and

WHEREAS, LPA intends to engage the Consultant to render professional services for the above named project, and

WHEREAS, the above named project is solely the responsibility of the LPA; the Nebraska Department of Roads' (NDOR) involvement in this project is for the sole purpose of acting as the representative of the FHWA for eligibility of the federal funding for future phases of work; and

WHEREAS, the LPA will fund the professional services under this agreement with LPA funds only, and has obtained funding approval from the NDOR to do so, based on the LPA meeting all federal-aid eligibility requirements for all phases of the project, and

WHEREAS, the 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, Consultant is willing to perform the services in accordance with the terms hereinafter provided, is presently in compliance with Nebraska law, and hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work under this agreement.

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

SECTION 1. DEFINITIONS

Wherever in this agreement the following terms are used, they will have the meaning here given:

"CONSULTANT" means Miller & Associates Consulting Engineers, P.C. and any employees thereof, whose business and mailing address is 1111 Central Avenue, Kearney, NE 68847, and

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

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. The State represents 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 Agreement shall mean the State on behalf of the United States Department of Transportation.

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

"DOT" means the United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

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

To "SUSPEND" the work means that the LPA has determined that progress is not sufficient, or that the conditions or intentions as originally existed have changed, or the work completed or submitted is unsatisfactory, and that the work as contemplated herein should be stopped on a temporary basis. This cessation will prevail until the LPA determines to abandon or terminate the work or to reinstate it under the conditions as defined in this agreement.

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

SECTION 2. SCOPE OF SERVICES

The Consultant shall provide preliminary engineering and final design services for Project URB-6558(1), C.N. 61537, in Dawson County, Nebraska. Upon receiving a written notice to proceed from the LPA, the Consultant shall perform all work required under this agreement as outlined in Exhibit "B", Scope of Services, Consultant's Fee Proposal, and Schedule of Completion which is attached and hereby made a part of this agreement.

For work beyond the agreed Scope of Services the consultant shall document the additional work, estimate the cost to complete the work, negotiate a supplement agreement and

receive written approval from the LPA before beginning work. Any work performed by the consultant prior to approval will be done at the expense of the consultant.

SECTION 3. CONSULTANTS PERSONNEL

The Consultant shall notify the LPA of any need to replace the project manager or significant personnel changes. Personnel who are added as replacements must be persons of comparable training and experience. Personnel added as new personnel and not replacements must be qualified to perform the intended work. The LPA reserves the right to accept or reject the personnel change. Failure on the part of the Consultant to provide acceptable replacement personnel as determined by the LPA will be cause for termination of this agreement, with settlement to be made as provided in the SUSPEND, ABANDON AND TERMINATE section of this agreement.

SECTION 4. 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 the Consultant a written Notice-to-Proceed (NTP) upon full execution of this agreement. Any work or services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement.

The Consultant shall do all the work according to the schedule included in attached EXHIBIT "B" and shall complete all work required under this agreement promptly and in a satisfactory manner by April 29, 2011.

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

LPA authorized changes in the scope of work, which increase or decrease work-hours or services required of the Consultant, will provide the basis for a change of time and/or changes to the total costs of the services under this agreement.

SECTION 6. FEES AND PAYMENTS

- A. For performance of the services as described in this agreement, the Consultant will be paid a lump sum, with payment process described in paragraphs D and E of this section. All fees will be subject to the terms of this agreement and to all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$59,913.
- B. The lump sum is computed upon the direct labor costs (wages) and expenses.
- C. Actual costs include labor costs and expenses.
 - (1) 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 normal hourly rate as established by the company's compensation plan, except for those pay periods where the employee works more hours than normally expected. In those pay periods, the hourly rate for project billing purposes shall be the actual rate determined by dividing the actual compensation for that pay period by the actual hours reported, including paid absences, for that pay period. Hours worked includes paid absences, such as: holiday, vacation, sick leave, administrative leave, etc.
- (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) Expenses include mileage, reproduction services and purchased services.

- D. The Consultant shall submit invoices to the LPA at a minimum of monthly intervals. The invoices must present actual labor for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Expenses must be itemized and provide a complete description of each item billed.

Each monthly invoice 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 LPA
4. Percent of work completed to date
5. A completed "Cost Breakdown Form" which is located on the State's webpage at www.transportation.nebraska.gov/rfp.

If the Consultant does not submit a monthly invoice, it shall submit its progress report monthly.

E. The LPA will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payments are dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the LPA determines that the work submitted is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs. Upon completion acceptance of the work required under this agreement a final audit of all invoiced amounts may be completed by the LPA or its authorized representative if required by local policy. The Consultant agrees to reimburse the LPA for any overpayments discovered by the LPA or its authorized representative.

The acceptance by the Consultant of the final payment will constitute and operate as a release to the LPA 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.

F. 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 under this agreement. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the Consultant shall furnish copies.

SECTION 7. PROFESSIONAL PERFORMANCE

The Consultant understands that the LPA will rely on the professional performance and ability of the Consultant. Any examination by the LPA or any acceptance or use of the work product of the Consultant, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of the Consultant which would relieve the Consultant from any 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 agreement. That further, acceptance or approval of any of the work of the Consultant by the LPA 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 plans, specifications, and estimates are found to be in error or there are omissions therein revealed during the construction of the project and revision or reworking of the plans is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the LPA's notice of any errors or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the construction contractor. This may involve visits by the Consultant to the project site, if directed by the LPA. If the Consultant discovers errors in its work, it shall notify the LPA of the errors within seven days. Failure of the Consultant to notify the LPA will constitute a breach of this agreement. 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. SUSPEND, ABANDON AND TERMINATE

The LPA has the absolute right to abandon the project or to change the general scope of work at any time and such action on its part will in no event be deemed a breach of agreement. The LPA can suspend or terminate this agreement at any time.

If the LPA abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the Consultant will be reimbursed for work completed up to the date of suspension, abandonment or termination of the agreement, provided however, that in case of suspension, abandonment, or termination for breach of this agreement or for tender of improper work, the LPA can suspend payments, pending the Consultant's compliance with the provisions of this agreement. In determining the percentage of work completed, the LPA will consider the work performed by the Consultant prior to abandonment or termination to the total amount of work contemplated by this agreement. 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. OWNERSHIP OF DOCUMENTS

All surveys, plans, specifications, maps, computations, charts, electronic data, and other project data prepared or obtained under the terms of this agreement are the property of the LPA and the Consultant shall deliver them to the LPA without restriction or limitation as to further use.

LPA acknowledges that such data may not be appropriate for use on an extension of the work covered by this agreement or on other projects. Any use of the data for any purpose other

than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at the LPA's sole risk and without legal exposure or liability to Consultant.

SECTION 10. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

Certain information provided by the LPA or the State to the Consultant is "Confidential Information" contained within "Privileged Documents" protected by 23 U.S.C. §409. "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. §409. "Privileged document" means any document pertaining to any file or project maintained by the LPA or the State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications.. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately design the project at hand on behalf of the LPA.

The 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 the LPA for the project at hand only. The Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. The LPA 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:

"CONFIDENTIAL INFORMATION: Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The 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."

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

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

SECTION 11. CONFLICT OF INTEREST

The Consultant shall review the conflict of interests provisions of 23 C.F.R. 1.33 and any other applicable provisions and agrees to fully comply with all the conflict of interest provisions in order to insure that the project remains fully eligible for state or federal funding. By signing this agreement, the Consultant certifies that it has no financial or other interests in this project or the outcome of this project. For further federal interpretation of these provisions, see "PE/CE Consultant Conflict of Interest Frequently Asked Questions" located on the State's Local Federal Aid Projects' Frequently Asked Questions webpage:

<http://www.transportation.nebraska.gov/gov-aff/faq.html>

SECTION 12. FORBIDDING USE OF OUTSIDE AGENTS

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the 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, the LPA has the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

SECTION 13. NON-RAIDING CLAUSE

The Consultant shall not engage the services of any person or persons presently in the employ of the LPA for work covered by this agreement without the prior written consent of the employer of the persons.

SECTION 14. GENERAL COMPLIANCE WITH LAWS

The Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

SECTION 15. DISPUTES

Any dispute concerning a question of fact in connection with the work not disposed of by this agreement will be referred for determination to the LPA or a duly authorized representative, whose decision in the matter will be final and conclusive on the parties to this agreement, using the process set out in section 4.4.3.5 of the Nebraska LPA Manual for Federal Aid Projects.

SECTION 16. RESPONSIBILITY FOR CLAIMS AND LIABILITY

The Consultant agrees to save harmless the LPA from all claims and liability due to the activities of the Consultant or those of the Consultant's agents, employees, Subconsultants, or anyone working on Consultant's behalf, in the performance of work under this agreement. In this connection, the Consultant shall for the life of this agreement, carry insurance as outlined in Exhibit "C" and attached hereto, and hereby made a part of this agreement. 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 17. PROFESSIONAL REGISTRATION

The Consultant shall affix the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all plans, documents, and specifications prepared under this agreement as required by the Nebraska Engineers and Architects Regulations Act, Neb.Rev.Stat §81-3401 et. seq.

SECTION 18. SUCCESSORS AND ASSIGNS

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

SECTION 19. DRUG-FREE WORKPLACE POLICY

The Consultant shall have an acceptable and current drug-free workplace policy on file with the LPA.

SECTION 20. FAIR EMPLOYMENT PRACTICES ACT

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. 48-1101 through 48-1126, which is hereby made a part of and included in this agreement by reference.

SECTION 21. DISABILITIES ACT

The Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

SECTION 22. DISADVANTAGED BUSINESS ENTERPRISES

The 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.

Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.

The Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of the 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 the LPA or such remedy as the LPA deems appropriate.

SECTION 23. TITLE VI, NONDISCRIMINATION

- A. Compliance with Regulations: During the performance of this agreement, the Consultant, for itself and its assignees and successors in interest, agrees to comply with the regulations of the DOT relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR 21 and 27, hereinafter referred to as the Regulations), which are hereby made a part of and included in this agreement by reference.
- B. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.
- C. Solicitations for Subagreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subagreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.

- D. Information and Reports: The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA, State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall certify to the LPA, State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.
- F. Incorporation of Provisions: The Consultant shall include the provisions of paragraphs A through E of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subagreement or procurement as the LPA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/Subcontractor as a result of such direction, the Consultant may request that the LPA enter into such litigation to protect the interests of the LPA and, in addition, the Consultant may request that the LPA and United States enter into such litigation to protect the interests of the LPA and United States.

SECTION 24. SUBLETTING, ASSIGNMENT, OR TRANSFER

The Subconsultant/Subcontractor will provide pavement evaluation services.

Any other subletting, assignment, or transfer of any professional services to be performed by the Consultant is hereby prohibited unless prior written consent of the LPA is obtained.

The Consultant shall enter into an agreement with its Subconsultants/Subcontractors for work covered under this agreement. All Subconsultant/Subcontractor agreements for work

covered under this agreement must contain similar provisions to those in this agreement. No right-of-action against the LPA will accrue to any Subconsultant/Subcontractor by reason of this agreement.

As outlined in the DISABILITIES ACT Section of this agreement, the 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 work must include documentation of efforts to employ a disadvantaged business enterprise.

SECTION 25. LPA CERTIFICATION

By signing this agreement, I, 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 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.

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

SECTION 26. ALL ENCOMPASSED

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

After being duly sworn on oath, I do hereby acknowledge the foregoing certification and state that I am authorized to sign this agreement for the firm.

EXECUTED by the Consultant this ____ day of _____, 2011.

MILLER & ASSOCIATES
CONSULTING ENGINEERS, P.C.
Reed A Miller

President

STATE OF NEBRASKA)
)ss.
BUFFALO COUNTY)

Subscribed and sworn to before me this ____ day of _____, 2011.

Notary Public

EXECUTED by the City of Lexington this ____ day of _____, 2011.

CITY OF LEXINGTON
Dennis Burnside

Responsible Charge

Subscribed and sworn to before me this ____ day of _____, 2011.

Clerk

Proposed 17th Street Improvements—Lexington, NE
80' ROW throughout project



Rebuild Intersections at 17th and Washington
And 17th and Polk Streets—with handicap
ramps as needed.

Replace substandard panels, perform an asphalt or bonded
Overlay, improve handicap ramps as needed from Adams Street
to Washington Street.

Proposed Walnut Street Improvements—Lexington, NE





Miller & Associates
CONSULTING ENGINEERS, P.C.

IMPLEMENTATION SCHEDULE

17th Street & Walnut Street Resurfacing
NDOR Project No. URB-6558(1)
Control No. 61537

1111 Central Ave. Kearney, NE 68847-6833

Tel: 308-234-6456

Fax: 308-234-1146

www.miller-engineers.com

TASK		COMPLETION DATE
1 Topographic Site Survey		
a	Research horizontal and vertical control, schedule	2-25-11
b	Topographic survey field work	2-25-11
c	Download survey, cut drawing sheets	2-27-11
2 Geotechnical Evaluation		
a	Coordinate geotech testing and subconsultant	2-25-11
b	Geotechnical field work and testing (by subconsultant)	3-15-11
c	Pavement Thickness design	3-20-11
3 Preliminary Roadway Design		
a	Field recognizance/Pavement condition	2-28-11
b	Determine Overlay treatment (asphalt/bonded)	3-1-11
c	Hydrology/Hydraulics/Drainage analysis	3-6-11
d	Preliminary design drawings and submit to NDOR for PIH meeting (2L, 2N, 2T, P&P Sheets)	3-11-10
e	Preliminary Estimate	3-10-10
f	Plan-in-hand meeting and minutes	3-18-11
4 Public Meeting		
a	Prepare presentation materials	3-23-11
b	Conduct meeting and follow-up report	3-25-11
5 Revised Design		
a	Final design sheets (2L, 2N, 2H, 2P, P&P, Cross Sections, Sidewalks, Traffic Control, Special Plans)	4-13-11
b	Incorporate comments from PIH, NEPA documents, and Public Meeting into revised design documents	4-15-11
c	Complete Agency Permits, SWPPP	4-18-11
d	Prepare Special provisions and estimates	4-20-11
e	Submit to PS&E for final review	4-20-11
6 Final Design		
a	Incorporate any final comments from NDOR in drawings and special provisions	4-27-11
b	Final document submittal to NDOR	4-29-11

Signature:

Kent E. Cordtz

Title:

Project Engineer

Date:

2-17-2011



Miller & Associates
CONSULTING ENGINEERS, P.C.

1111 Central Ave. Kearney, NE 68847-6833

Tel: 308-234-6456

Fax: 308-234-1146

www.miller-engineers.com

Project Cost Worksheet
17th Street & Walnut Street Resurfacing
NDOR Project No. URB-6558(1)
Control No. 61537

LABOR

<i>Classification</i>	<i>Manhours</i>
Principal in Charge	10
Project Manager	107
Project Engineer	241
Licensed Land Surveyor	25
Survey Technician	65
CADD Technician	235
Clerical	59
TOTAL	742

EXPENSES

<i>Description</i>	<i>Projected Cost</i>
Survey Mileage 240 Miles @ \$0.75/mile	\$180
Other Mileage 560 Miles @ \$0.50/mile	\$280
Reproduction Services	\$1,630
Purchased Services (Geotechnical Services)	\$3,425
TOTAL	\$5,515

LUMP SUM FEE	\$59,913
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Signature: Kent E. Ordie
Title: Project Engineer
Date: 2-17-2011

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 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

- 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

- 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), and must contain a clause granting at least 30 days prior written notice to the LPA of intent to affect cancellation.
- 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.