

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT is between **Miller & Associates Consulting Engineers, P.C., 1111 Central Avenue, Kearney, NE 68847** ("ENGINEER") and **City of Lexington, P.O. Box 70, 406 East 7th Street, Lexington, NE 68850** ("OWNER") for a PROJECT generally described as: *Southeast Addition Infrastructure Improvements - South Business Park*

ARTICLE 1. SCOPE OF SERVICES

It is also understood that this agreement is funded in whole or in part with EDA funds through the Economic Development Administration Award #05-01-05211, as administered by the Department of Commerce and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the agency may prescribe.

The Scope of Services is set forth in Attachment A.

ARTICLE 2. COMPENSATION

ENGINEER'S compensation is set forth in Attachment B.

ARTICLE 3. TERMS OF PAYMENT

Payment to ENGINEER will be made as follows:

A. Invoices and Time of Payment

Monthly invoices will be issued by ENGINEER for all services performed under this AGREEMENT. Invoices are due and payable on receipt.

Upon completion of Services enumerated in Article 1, the final payment of any balance will be due upon receipt of the final invoice.

B. Interest

Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting 30 days after date of invoice. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. OWNER will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If OWNER fails to make payment in full to ENGINEER for services within 60 days of the date due for any uncontested billing, ENGINEER may, after giving 7 days written notice to OWNER, suspend services under this AGREEMENT until paid in full, including interest. In the event of

suspension of services, ENGINEER will have no liability to OWNER for delays or damages caused by OWNER because of such suspension of services.

ARTICLE 4. OBLIGATIONS OF ENGINEER

Amendments to Article 4, if any, are included in Attachment C.

A. General

ENGINEER will serve as OWNER's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary Services incidental thereto.

B. Standard of Care

The standard of care applicable to ENGINEER's Services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar Services at the time said services are performed.

C. Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of ENGINEER.

D. ENGINEER's Personnel at Construction Site

The presence of duties of ENGINEER's personnel at a construction site, whether as onsite representatives or otherwise, do not make ENGINEER or ENGINEER's personnel in any way responsible for those duties that belong to OWNER and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work. ENGINEER and ENGINEER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except ENGINEER's own personnel.

The presence of ENGINEER's personnel at a construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). ENGINEER neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the Contract Documents.

E. Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the PROJECT, ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market condition; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, ENGINEER makes no warranty that OWNER's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from ENGINEER's opinions, analyses, projections, or estimates.

If OWNER wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, OWNER will employ an independent cost estimator, contractor, or other appropriate advisor.

F. Construction Progress Payments

Recommendations by ENGINEER to OWNER for periodic construction progress payments to the construction contractor(s) will be based on ENGINEER's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by ENGINEER to ascertain that the construction contractor(s) have completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that ENGINEER has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to OWNER free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between OWNER and the construction contractors that affect the amount that should be paid.

G. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

Record drawings will consist only of the signed and sealed set of drawings in hard copy form. Any computer-generated files on diskettes or tapes furnished by ENGINEER are for OWNER and others' convenience and to be utilized at user's sole risk.

H. Access to ENGINEER's Accounting Records

ENGINEER will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to OWNER during ENGINEER's normal business hours for a period of 1 year after ENGINEER's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. OWNER may only audit accounting records applicable to a cost-reimbursable type compensation.

ARTICLE 5. OBLIGATIONS OF OWNER

A. OWNER-Furnished Data

OWNER will provide to ENGINEER all data in OWNER's possession relating to ENGINEER's services on the PROJECT. ENGINEER will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER.

B. Access to Facilities and Property

OWNER will make its facilities accessible to ENGINEER as required for ENGINEER's performance of its services and will provide labor and safety equipment as required by ENGINEER for such access. OWNER will perform, at no cost to ENGINEER, such tests of equipment, machinery, pipelines, and other components of OWNER's facilities as may be required in connection with ENGINEER's services, unless otherwise agreed to. OWNER will be responsible for all acts of OWNER's personnel when personnel are performing acts for ENGINEER.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, OWNER will obtain, arrange, and pay for soil investigations and recommendations, advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for ENGINEER's services or PROJECT construction.

D. Timely Review

OWNER will examine ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as OWNER deems appropriate; and render in writing decisions of consultants by OWNER in a timely manner.

E. Prompt Notice

OWNER will give prompt written notice to ENGINEER whenever OWNER observes or becomes aware of any development that affects the scope or timing of ENGINEER's Services, or of any defect in the work of ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances and Indemnification

If asbestos or hazardous substances in any form are encountered or suspected, ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

If asbestos is suspected, ENGINEER will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

If hazardous substances other than asbestos are suspected, ENGINEER will conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, OWNER will indemnify ENGINEER and ENGINEER's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

G. Contractor Indemnification and Claims

OWNER agrees to include in all construction contracts the provisions of Article 4D, ENGINEER's Personnel at Construction Site, and provisions providing contractor indemnification of OWNER and ENGINEER for contractor's negligence.

H. Exclusion of Contractor Claims

OWNER agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers:

"Contractors, subcontractors, and equipment and material suppliers on the project, or their sureties, shall maintain no direct action against ENGINEER, ENGINEER's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with or resulting from the engineering services performed. OWNER will be the only beneficiary of any undertaking by ENGINEER."

I. OWNER's Insurance

- a) OWNER will maintain property insurance on all pre-existing physical facilities associated in any way with the PROJECT.
- b) OWNER will provide for a waiver of subrogation as to all OWNER-carried property damage insurance, during construction and thereafter, in favor of ENGINEER, ENGINEER's officers, employees, agents, and subcontractors.
- c) OWNER will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all PROJECT work including the value of all onsite OWNER-furnished equipment and/or materials associated with ENGINEER's services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to ENGINEER and the construction contractor(s) (or OWNER), and their respective officers, employees, agents, affiliates, and subcontractors. OWNER will provide ENGINEER a copy of such policy.

J. Litigation Assistance

The Scope of Services does not include costs of ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by OWNER. All such Services required or requested of ENGINEER by OWNER, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed, and payment for such Services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that ENGINEER's sole negligence caused OWNER's damage.

K. Changes

OWNER may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT.

L. Services of ENGINEER

Unless this AGREEMENT is modified or terminated, OWNER will have all Services specified in this AGREEMENT performed by ENGINEER, employing ENGINEER's standard form and content of drawings, specifications, and Contract Documents, generally conforming to the standards, recommendations, and content of the Construction Specifications Institute (CSI) and Engineers Joint Contract Documents Committee (EJCDC), and subject to OWNER's review and approval.

ARTICLE 6. GENERAL LEGAL PROVISIONS

Amendments to Article 6, if any, are included in Attachment C.

A. Authorization to Proceed

Execution of this AGREEMENT by OWNER will be authorization for ENGINEER to proceed with the work, unless otherwise provided for in this AGREEMENT.

B. Reuse of PROJECT Documents

All reports, drawings, specifications, documents, and other deliverables of ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse on another project, change, or alteration by OWNER or by others acting through or on behalf of OWNER of any such instruments of service without the written permission of ENGINEER will be at OWNER's sole risk. OWNER agrees to indemnify ENGINEER and ENGINEER's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change or alteration.

C. Force Majeure

ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of ENGINEER.

D. Limitation of Liability

To the maximum extent permitted by law, ENGINEER's liability for OWNER's damages for any cause or combination of causes will, in the aggregate, not exceed the compensation received by ENGINEER under this AGREEMENT. This article takes precedence over any conflicting article of this AGREEMENT or any document incorporated into it or referenced by it.

E. Termination

This AGREEMENT may be terminated for convenience on 30 days written notice, or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter.

On termination, ENGINEER will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related close-out costs.

F. Suspension, Delay, or Interruption of Work

OWNER may suspend, delay, or interrupt the Services of ENGINEER for the convenience of OWNER. In the event of force majeure or said suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment, and cost of ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

G. No Third-Party Beneficiaries

This AGREEMENT gives no rights or benefits to anyone other than OWNER and ENGINEER and has no third-party beneficiaries.

H. Assignment

This is a Bilateral Personal Services AGREEMENT. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire AGREEMENT are binding on the heirs, successors, and assigns of the parties hereto.

I. Consequential Damages

In no event will ENGINEER, ENGINEER's affiliated corporations, officers, employees, or subcontractors be liable for special, indirect, or consequential damages, and in order to protect ENGINEER against indirect liability or third-party proceedings, OWNER will indemnify ENGINEER for any such loss or damage.

J. Interpretation and Waivers

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties and will apply to all the different theories of recovery, including breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action, except the limitations will not apply to willful misconduct or gross negligence for limitation of liability of sole negligence for indemnification. Parties means OWNER and ENGINEER, and their officers, employees, agents, affiliates, and subcontractors. The parties also agree that OWNER will not seek damages in excess of the limitations indirectly through suits with other parties who may join ENGINEER as a third-party defendant.

K. Jurisdiction

The law of the State of Nebraska shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

L. Severability and Survival

If any of the Provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

Limitations of liability, indemnities, and other express representations shall survive termination of this AGREEMENT for any cause.

M. Contract Documents

Contract Documents are limited to the sealed and signed hard copies. Computer-generated drawing files on diskettes or tapes furnished by ENGINEER are for OWNER or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.

N. Reports and Information

The ENGINEER, at such times and in such forms as the OWNER may require, shall furnish the OWNER such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred in connection therewith, and any other matters covered by this Agreement.

O. Executive Order 11246, As Amended

This Order applies to all federally assisted construction contracts and subcontracts. The Grantee and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ENGINEER and subconsultants, if any, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

P. Conflict of Interest

From 24CFR85.26, no officer, employee or agent of the OWNER who will participate in the selection, the award, or the administration of this grant may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this Agreement. Upon written request, exceptions may be granted upon a case-by-case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration for the recipient's program or project.

Q. Audits and Inspections

The OWNER, EDA the Comptroller General of the United States, the Inspector General of the Department of Commerce, or their duly authorized representatives shall have access to any documents, books, papers, and records of the ENGINEER (which are directly pertinent to the project and the grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The ENGINEER will maintain all required records for at least 3 years after the OWNER makes final payment and all pending matters are closed.

ARTICLE 7. ATTACHMENTS, SCHEDULES, AND SIGNATURES

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services
Attachment B - Compensation

IN WITNESS WHEREOF, the parties execute below:

For OWNER, **City of Lexington,**

dated this _____ day of _____, 20 _____,

By: _____
Name Title

For ENGINEER, **Miller & Associates, Consulting Engineers, P.C.**

dated this _____ day of _____, 20 _____,

By: _____
Name Title

ATTACHMENT A

This attachment is to the AGREEMENT between **Miller & Associates, Consulting Engineers, P.C., 1111 Central Avenue, Kearney, NE 68847** ("ENGINEER"), and **City of Lexington, P.O. Box 70, 406 East 7th Street, Lexington, NE 68850** ("OWNER") for a PROJECT generally described as: *Southeast Addition Infrastructure Improvements - South Business Park*

ARTICLE 1. SCOPE OF SERVICES

The basic services are premised on the following scope of professional services:

Survey and design services for construction of approximately 14,100 S.Y. of 8" Thick concrete pavement, associate Storm Sewer, approximately 2,400 L.F. of 12" Diameter C900-PVC Water main, approximately 900 L.F. of 8" Diameter PVC Sewer Main, and associated appurtenances, for work incidental to the SOUTHEAST ADDITION INFRASTRUCTURE IMPROVEMENTS for the South Business Park in Lexington, Nebraska

ENGINEER agrees to furnish OWNER the following specific services:

1.1 GENERAL

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary civil engineering services.

1.1.2 The ENGINEER will incorporate environmental concerns and actions into the project, if necessary.

1.2 PRELIMINARY DESIGN PHASE

The ENGINEER shall:

1.2.1 Perform topographic survey of the project site, including marked underground utilities.

1.2.2 Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.2.3 Furnish the above preliminary design documents and present and review them with OWNER.

1.3 FINAL DESIGN PHASE

After authorization to proceed with the Final Design Phase, ENGINEER shall:

1.3.1 On the basis of the accepted preliminary design documents, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.3.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of the required documents so that OWNER may apply for approvals of such governmental

authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.3.4 Prepare for review and approval by OWNER, his legal counsel and other advisors, contract agreement forms, general conditions and supplemental conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.3.5 Furnish two copies of the above documents and present and review them in person with OWNER.

1.3.6 Submit Drawings and Specifications and other documentation as may be required to the Nebraska Department of Health and Human Services and Nebraska Department of Environmental Quality for review of the project. Any review fees due to the Nebraska Department of Health and Human Services shall be the responsibility of the OWNER.

1.4 BIDDING OR NEGOTIATING PHASE

After authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.4.1 Assist OWNER in obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.4.2 Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

1.5 CONSTRUCTION PHASE SERVICES

During the Construction Phase ENGINEER shall:

1.5.1 Consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.5.1.1 Schedule, conduct and prepare minutes of pre-construction conference.

1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents.

1.5.3 Review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto) determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review

(for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.

1.5.4 Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examination have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incidental thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

1.5.5 Prepare and furnish to OWNER a set of Project Record Drawings showing appropriate record information based on Project documentation received from ENGINEER'S construction resident and Contractor.

1.5.6 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to the OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.4.

1.5.7 If requested by OWNER, collect and review contractor submitted weekly payrolls for compliance with wage requirements. Conduct contractor employee wage interviews at intervals required by the regulatory agency. Consult with Contractor on any deficiencies to allow for correction in accordance with guidelines.

1.5.8 Submit quarterly reports to OWNER describing project progress and compliance with project schedule. Address any project delays and any other factors related to the project schedule.

1.6 POST-CONSTRUCTION PHASE - Not Applicable

1.7 ADDITIONAL SERVICES REQUIRING OWNER'S AUTHORIZATION IN ADVANCE

If authorized in writing by OWNER, and with AGENCY concurrence, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1.7.1. Preparation or review of additional environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction

over the anticipated environmental impact of the Project.

1.7.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

1.7.3. Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control; redesign to reduce Project costs to within the funds available.

1.7.4. Preparing documents for alternate bids requested by OWNER for Contractor's work which is not executed or documents for out-of-sequence work.

1.7.5. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of detailed cash flow and economic evaluations and appraisals; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed audits or inventories required in connection with construction performed by OWNER.

1.7.6. Furnishing services of ENGINEER's Consultants for other than Basic Services.

1.7.7. Services attributable to more than two prime construction contracts.

1.7.8. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.

1.7.9. Assistance in connection with Bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services. Rebidding or renegotiating contracts to reduce the contract costs to funds available shall not be considered Additional Services.

1.7.10. Providing construction surveys and staking to enable Contractor to perform work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

1.7.11. Providing Construction Phase Services beyond the Contract Times set forth in Attachment B.

1.7.12. Preparation of operating, maintenance and staffing manuals to supplement Basic Services.

1.7.13. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.

1.7.14. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

1.7.15. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a

significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

1.7.16. Legal Survey as required for the acquisition of property.

1.7.17. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement

1.7.18. Grant administration, consisting of any requested paperwork for EDA compliance, pertaining to the labor standards requirements as well as other OWNER regulatory requirements pertaining to the funding.

1.8 PROJECT SCHEDULE

The timetable of the project is as follows:

- | | |
|--|---------------|
| 1. Completion of preliminary drawings and associated cost estimates | February 2012 |
| 2. Completion of final drawings specifications and associated cost estimates | March 2012 |
| 3. Securing required State and local approvals | March 2012 |
| 4. Advertising / Bidding Phase | April 2012 |
| 5. Preconstruction Conference / Construction | May-Sept 2012 |

This Attachment A supersedes all prior written or oral understandings of the Scope of Services, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

For OWNER, **City of Lexington,**

dated this _____ day of _____, 20 _____,

By: _____
Name Title

For ENGINEER, **Miller & Associates, Consulting Engineers, P.C.**

dated this _____ day of _____, 20 _____,

By: _____
Name Title

ATTACHMENT B

This Attachment is to the AGREEMENT between **Miller & Associates, Consulting Engineers, P.C., 1111 Central Avenue, Kearney, NE 68847** ("ENGINEER"), and **City of Lexington, P.O. Box 70, 406 East 7th Street, Lexington, NE 68850** ("OWNER") for a PROJECT generally described as: *Southeast Addition Infrastructure Improvements - South Business Park*

ARTICLE 2. COMPENSATION

Compensation by OWNER to ENGINEER will be as follows:

A. LUMP SUM

For design services enumerated in ATTACHMENT A, Sections 1.1 through 1.4.2, inclusive, the lump sum fee is as follows:

Ninety-eight Thousand Six Hundred Dollars (\$98,600.00)

B. HOURLY CONSTRUCTION PHASE SERVICES

Construction phase services, as outlined in ATTACHMENT A, Section 1.5, required and requested by the OWNER will be invoiced at an hourly fee in accordance with the schedule shown below. The hourly fee amount will not exceed the maximum of \$66,800 for 135 consecutive calendar days of service. This hourly fee is in addition to the above outlined fee in Article 2, Part A. Maximum fee is based on 50-hour per week construction observation.

Hourly Costs used as a basis for payment mean rates as outlined for all ENGINEER's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel. For the purposes of this Agreement the principals of ENGINEER and their current hourly fees are:

| Employee Classification | Rate |
|--------------------------------|--------------|
| Professional Engineer | \$90.00/hour |
| Professional Architect | \$85.00/hour |
| Project Manager | \$80.00/hour |
| Licensed Land Surveyor | \$75.00/hour |
| Senior Engineering Technician | \$65.00/hour |
| Survey Crew | \$85.00/hour |
| CAD Draftsperson | \$45.00/hour |
| Mileage | \$0.40/mile |

C. ADDITIONAL SERVICES

Additional Services are defined in ATTACHMENT A, Section 1.7, paragraphs 1.7.1 through 1.7.18. Additional Services will be compensated on the basis of scheduled hourly fees and associated non-labor expenses agreed upon by the Owner.

D. RENEGOTIATION OF COMPENSATION

The fee is based on immediate authorization to proceed and timely completion of the PROJECT. If the PROJECT timing deviates from the assumed schedule for causes beyond ENGINEER's control, ENGINEER reserves the right to request renegotiation of those portions of the lump sum affected by the time change.

This Attachment B supersedes all prior written or oral understandings of the Compensation, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

For OWNER, **City of Lexington,**

dated this _____ day of _____, 20 _____,

By: _____
Name Title

For ENGINEER, **Miller & Associates, Consulting Engineers, P.C.,**

dated this _____ day of _____, 20 _____,

By: _____
Name Title