

E N G I N E E R I N G A G R E E M E N T

(1)
NEBRASKA DEPARTMENT OF ROADS
PROJECT NO. (2)
CONTROL NO. (3)
(4)
(5)

THIS AGREEMENT, entered into by and between the Nebraska Department of Roads, hereinafter referred to as the "State", and (1), hereinafter referred to as the "Consultant".

WITNESSETH

WHEREAS, the State desires to engage the Consultant to render professional services for the above named project at the location shown on EXHIBIT "A", which is attached and hereby made a part of this agreement, and

WHEREAS, the Consultant is certified by the Nebraska Secretary of State as a Corporation eligible to operate in the State of Nebraska, and

WHEREAS, the Consultant is willing to perform such work in accordance with the terms hereinafter provided, and does represent that it is in compliance with the Nebraska statutes relating to the registration of professional engineers, and hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

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

I. DEFINITIONS

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

"CONSULTANT" means (1), whose business and mailing address is (6).

(7) USE/DELETE

"SUBCONSULTANT/SUBCONTRACTOR" means (8), whose business and mailing address is (9).END OF (7)

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, the Director of the department, or an authorized representative.

"FHWA" means the Federal Highway Administration, 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 State 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 State 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 State 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 State.

II. GENERAL DESCRIPTION OF SCOPE AND CONTROL OF THE WORK

The Consultant shall provide (5) for project (2), (4), in (10) County, Nebraska.

Upon receiving a notice to proceed, the Consultant shall perform all work required under this agreement as outlined in EXHIBIT "B", Schedule of Services, and (11) USE/DELETE EXHIBIT "(12) END OF (11)", Consultant's Proposal, which are attached and hereby made a part of this agreement.

The Consultant has furnished a personnel chart or list in EXHIBIT "(12)". Any major deviation from or revision in the classifications or personnel shown in the chart or list must receive the prior approval of the State. All personnel replacements must be made with persons of equal ability or experience and failure to provide capable replacements to keep the work on schedule will be cause for termination of this agreement, with settlement to be made as provided in Section VII hereof.

III. STANDARD PRACTICES AND REQUIREMENTS

It is mutually agreed that the State and FHWA have continuing rights of work progress inspections. Any additions, deletions, changes, elaborations, or modifications of the services performed under the terms of this agreement, which may from time to time be determined by the State as desirable or preferable, will be controlling and governing.

IV. TIME OF BEGINNING AND COMPLETION

The State issued the Consultant a written Notice-to-Proceed effective (13). Any work or services performed on the project prior to the Notice-to-Proceed date is not eligible for reimbursement.

The Consultant shall do all the work according to the schedule in attached EXHIBIT "B" and shall complete all work required under this agreement in a satisfactory manner by (14). (15) USE/DELETE The work under this agreement will be considered done at the completion of the public hearing. END OF (15)

Any costs incurred after the deadline are not eligible for reimbursement unless the State has approved an extension of time.

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

State authorized changes in the scope of work, which increase or decrease workhours or services required of the Consultant, will provide the basis for a change of time and/or changes to the Consultant's fee.

V. FEES AND PAYMENTS

- A. For performance of the work as outlined in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$(16), as defined in paragraph D of this section, and up to a maximum amount of \$(17) for actual costs as defined in paragraph E of this section, that are allowable subject to the terms of this agreement and the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$(18).
- B. The Consultant is responsible for determining if its actual costs will exceed the maximum amount stated above. If at any time during this project, the Consultant determines that its costs will exceed, or have exceeded the maximum amount stated above, the Consultant must immediately notify the State in writing and describe which costs are causing the overrun and the reason. The Consultant must also estimate the additional costs needed to complete the work. The State will then determine if the maximum amount is to be increased, and a supplemental agreement will be prepared if needed.
- C. The State is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in Section IV of this agreement.
- D. The fixed-fee is computed upon the direct salary or wage costs, indirect salary costs, indirect non-salary costs, and direct payroll additives. The fixed-fee is not allowable upon direct non-salary costs.
- E. 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 is based on the compensation received during the pay period that the work is performed, and dividing that compensation by the hours paid. For salaried employees, the hourly earnings rate is determined by dividing the employee's fixed annual compensation by the number of hours normally expected to be worked that year. In those pay periods which

the employee works more hours than normally expected and does not receive additional compensation at least equal to the normally expected hourly rate, the rate for that pay period will be determined by dividing the actual compensation by the actual hours reported.

(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 charges in this category include per diem expenses for personnel away from their base of permanent assignment, communication costs, reproduction and printing costs, computer charges, special equipment and materials required for the project, special insurance premiums if required solely for this agreement, and such other similar items. Payment for these items must be made on receipted invoices whenever possible, or on certified billings of the Consultant. For purposes of standardization on this agreement, the following expenses will be reimbursed at the rates indicated.

Company Automobile	48.5 cents per mile
Company Survey Vehicle	51.0 cents per mile
Privately Owned Vehicle	Actual costs, not to exceed 48.5 cents per mile for automobiles and 51.0 cents per mile for survey vehicles
Automobile Rental	Actual reasonable cost
Computer	Not to exceed \$20.00 per hour (Consultant must have on file with the State an approved methodology for calculating this rate.)
Air fare	Actual reasonable cost, giving the State all discounts
Lodging	Actual cost, not to exceed \$60.00 per person daily
Meals	Actual cost not to exceed:
Breakfast	\$ 6.00
Lunch	\$ 8.00
Dinner	<u>\$16.00</u>
	\$30.00 (Includes tax and gratuity)

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

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(3) _____
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- 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 is not required to provide the State with meal receipts, but shall note the actual 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 \$30.00 per person.

- (3) Overhead Costs include indirect salary costs, indirect non-salary costs, and direct salary 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, but not to exceed 160 percent of direct labor. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in paragraph A of this section. When an audit is performed by the State at the completion of the work, the actual allowable overhead rate, subject to the 160 percent limitations, for the year the project labor was incurred will be applied to the direct labor costs for that year. If a particular year's actual overhead has not yet been computed or approved by the State, the most recent year's accepted rate, subject to the 160 percent limitations, will be applied. The audit may result in additional funds due to the Consultant or a cost due from the Consultant to the State.
- (4) Fixed Fee for Profit. A maximum of 12 percent is allowed unless the Consultant's overhead is less than 150 percent, then 13 percent is allowed.

F. The Consultant should submit invoices to the State at monthly intervals. The invoices must present actual direct labor, actual overhead, and actual direct non-labor costs, as well as a prorated amount of the fixed-fee based upon the actual direct labor and overhead costs billed for that period relative to the Consultant's estimated total direct labor and indirect overhead costs, until 100 percent of the fixed-fee has been billed. The fixed-fee amount on the final invoice should be the difference between 100 percent of the agreed-upon fee and the total amount previously billed. The invoices must identify 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.

Monthly invoices must be substantiated by progress reports which indicate the percent of work completed. If the Consultant does not submit a monthly invoice, it shall submit its progress report by the fifth day of each month.

G. The State will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the State determines that the work 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 and fixed-fee. After the Consultant has completed all work required under this agreement, a final bill must be sent to the State. Upon acceptance by the State, a final audit of all invoiced amounts will be completed by the State or its authorized representative.

The acceptance by the Consultant of the final payment will constitute and operate as a release to 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. The Consultant agrees to reimburse the State for any overpayments discovered by the State or its authorized representative.

H. The Consultant shall maintain, (19) USE/DELETE and also require that its Subconsultants/Subcontractors maintain, END OF (19) 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 payment 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.

VI. PROFESSIONAL PERFORMANCE

The Consultant understands that the State will rely on the professional performance and ability of the Consultant. Any examination by the State or the FHWA, 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 State or of payment, partial or final, will not constitute a waiver of any rights of the State 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 State. The Consultant shall respond to the State'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 State. If the Consultant discovers errors in its work, it shall notify the State of the errors within seven days. Failure of the Consultant to notify the State will constitute a breach of this agreement. The Consultant's legal liability for all damages incurred by the State caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the State.

VII. CHANGE OF PLAN, ABANDONMENT, SUSPENSION, AND TERMINATION

Additions to the schedule of services, if approved in writing, will require negotiation of a supplemental agreement. For any work beyond the schedule of services, the Consultant shall document the additional work, estimate the cost to complete the work, and receive written approval from the State before the Consultant begins the work. Any such work performed by the Consultant prior to written approval of the State will be done at the expense of the Consultant.

The State 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 State can suspend or terminate this agreement at any time. Such suspension or termination may be affected by the State giving the Consultant seven days written notice.

If the State abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the Consultant will 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 agreement or for tender of improper work, the State can suspend payments, pending the Consultant's compliance with the provisions of this agreement. In determining the percentage of work completed, the State 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, documents, etc., completed or partially completed at the time of such termination or abandonment will be retained by the State and the Consultant shall immediately deliver all project plans, documents, etc., to the State.

VIII. OWNERSHIP OF DOCUMENTS

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

State 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 State's sole risk and without legal exposure or liability to Consultant.

IX. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

Certain information provided by 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 NDOR that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an

NDOR employee and the Legal Division. 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 State.

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 State 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 State agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information:

CONFIDENTIAL INFORMATION: This Document Is Exempt From Discovery Or Admission In Court Under 23 U.S.C. §409. The State Of Nebraska Has Not Waived Any Privilege It May Assert During Litigation Proceedings By The Dissemination Of This Document, And Is Not Responsible For Further Disbursement Of This Document To Anyone Other Than The Intended Recipient.

The Consultant agrees to obtain the written approval of the Consultant Coordinator 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 State 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 State for any damages that may occur as a result of the unauthorized dissemination. The Consultant agrees to hold harmless, indemnify, and release the State for any liability that may ensue on the part of the State for any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant.

X. 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 State 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.

XI. NON-RAIDING CLAUSE

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

XII. GENERAL COMPLIANCE WITH LAWS

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

XIII. 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 Director of the State or a duly authorized representative, whose decision in the matter will be final and conclusive on the parties to this agreement.

XIV. RESPONSIBILITY FOR CLAIMS AND LIABILITY

A. The Consultant agrees to save harmless the State from all claims and liability due to the negligent activities of the Consultant or those of the Consultant's agents or employees in the performance of work under this agreement. In this connection, the Consultant shall for the life of this agreement, carry insurance of the following types in at least the following amounts:

- | | |
|---|---------------------------|
| (1) Bodily Injury and Property
Damage with a combined
single unit of liability of | \$500,000 each occurrence |
| <u>or</u> Bodily Injury | |
| General and Automobile | \$250,000 each person |
| General and Automobile | \$500,000 each occurrence |
| Property Damage | |
| General and Automobile | \$250,000 each occurrence |
| General | \$500,000 aggregate |
| (2) Workers' Compensation | Statutory |

- | | |
|------------------------|--------------------------------|
| (3) a) Valuable Papers | The insurance must be |
| b) Electronic Data | in the amount of the total fee |
| Processing Coverage | in this agreement with the |
| | State named as the loss payee. |

(20) USE/DELETE

- | | |
|----------------------------|-------------------------------|
| (4) Professional Liability | \$(21) with |
| (\$500,000 Minimum) | \$(22) deductible.END OF (20) |

B. The insurance referred to in (1) above must be written under comprehensive general and comprehensive automobile liability policy forms, including coverage for all owned, hired, and non-owned automobiles. The Consultant may, at its option, provide the limits of liability, as set out above, by a combination of the above described policy forms and excess liability policies. The Consultant shall furnish proof of insurance coverage to the State.

XV. 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.

XVI. SUCCESSORS AND ASSIGNS

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

XVII. DRUG-FREE WORKPLACE POLICY

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

XVIII. 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.

XIX. 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.

XX. 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 State or such remedy as the State deems appropriate. Section XXI of this agreement further explains the Consultant's responsibility in ensuring that disadvantaged business enterprises have the maximum opportunity to compete for subagreements.

XXI. 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 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 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 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 State or FHWA 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 State enter into such litigation to protect the interests of the State and, in addition, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

XXII. SUBLETTING, ASSIGNMENT, OR TRANSFER

(23) USE/DELETE

The Subconsultant/Subcontractor will provide (24).END OF (23)

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

(25) USE/DELETE

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, in excess of \$10,000, must contain similar provisions to those in this agreement. No right-of-action against the State will accrue to any Subconsultant/Subcontractor by reason of this agreement.END OF (25)

As outlined in Section XIX 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.

XXIII. CONFLICT OF INTEREST

By signing this agreement, the Consultant certifies that it has no financial or other interests in the outcome of this project.

XXIV. CONSULTANT CERTIFICATION

The Consultant hereby certifies that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, current, and subject to adjustment, if required, as provided by Neb.Rev.Stat. 81-1701 through 81-1721.

After being duly sworn on oath, I do hereby certify that except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:

- a) has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
- b) has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- c) has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

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

Instructions for Certification

1. By signing this agreement, the Consultant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. 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.

3. 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.

4. 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.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

6. 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.

7. 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.

8. 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.

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

10. Except for transactions authorized under paragraph six 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.

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

A. The Consultant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(2) 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;

(3) 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.(2) of this certification; and

(4) 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.

XXV. NEBRASKA DEPARTMENT OF ROADS CERTIFICATION

After being duly sworn on oath, I, (26), by signing this agreement 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 certificate is to be furnished to 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.

XXVI. 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.

STATE OF (27))
)ss.
(28) COUNTY)

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 _____, 20__.

(1)
(29)

(30)

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

EXECUTED by the State this _____ day of _____, 20__.

NEBRASKA DEPARTMENT OF ROADS
(26)

(31)

AGRS

Project No. (2)
(3) _____
(4) _____
(5) _____