

**LPA – CONSULTANT  
PROFESSIONAL SERVICES AGREEMENT**  
PRELIMINARY ENGINEERING, ENVIRONMENTAL DOCUMENTATION  
AND FINAL DESIGN SERVICES

CITY OF LINCOLN, NEBRASKA  
THE SCHEMMER ASSOCIATES, INC.  
PROJECT NO. ENH-55(177)  
CONTROL NO. 13213  
LINCOLN STONEBRIDGE TRAIL

THIS AGREEMENT, made and entered into by and between the City of Lincoln, Nebraska, hereinafter referred to as the Local Public Agency or LPA, and The Schemmer Associates, Inc., hereinafter referred to as the Consultant.

WITNESSETH

WHEREAS, the LPA used a qualification based selection process to select 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 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 agrees to comply with all federal, state, and local laws and ordinances applicable to this agreement, and agrees to comply with all applicable federal-aid transportation related program requirements, so that Consultant's costs under this agreement will be fully eligible for federal reimbursement, and

WHEREAS, the LPA and Consultant intend that the services under this agreement be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual (See definition in Section 1), and

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

WHEREAS, the parties understand that the State of Nebraska, Department of Roads is involved in this federal-aid project on behalf of the FHWA only for issues related to the eligibility of the project for reimbursement of project costs with federal-aid funds.

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 following meaning:

"LPA" stands for Local Public Agency, and in this agreement means the City of Lincoln, Nebraska, unless the context otherwise requires. LPA may also be used to refer generally to other Local Public Agencies. Local Public Agencies include, but are not necessarily limited to; Nebraska Cities, Villages, Counties, Political Subdivisions, Native American Tribes, and other entities or organizations found to be eligible sub recipients of federal funds for transportation projects, and

"CONSULTANT" means the firm of The Schemmer Associates, Inc. and any employees thereof, whose business and mailing address is 1044 North 115<sup>th</sup> Street, Suite 300, Omaha, Nebraska 68154-4436, and

"SUBCONSULTANT/SUBCONTRACTOR" means the firm of O'Malley Drilling, Inc., and any employees thereof, whose business and mailing address is P.O. Box 426, Blair, Nebraska 68008 and the firm of EA Engineering, Science, and Technology, Inc., whose business and mailing address is 221 Sun Valley Boulevard, Suite D, Lincoln, Nebraska 68528, and

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

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

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

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

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

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

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

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, and

SECTION 2. THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 3. THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 4. TERM OF THE AGREEMENT

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

SECTION 5. SCOPE OF SERVICES

LPA and Consultant understand that the Services provided by Consultant must be completed in accordance with all federal-aid reimbursement requirements and conditions. The Consultant agrees to provide preliminary engineering, environmental documentation, and final design services for Project No. ENH-55(177), Control No.13213, in Lancaster County, Nebraska, as set out in Exhibit "B", entitled Scope of Services and Fee Proposal, which are attached and hereby made a part of this agreement.

Exhibit "B" is the result of the following process:

- (1) LPA provided Consultant with a document describing the detailed proposed Scope of Services for this project
- (2) Consultant made necessary and appropriate proposed additions, deletions, and revisions to LPA's detailed Scope of Services document
- (3) LPA and Consultant together reviewed the proposed Scope of Services, the proposed revisions and negotiated the final detailed Scope of Services and Fee Proposal document, which is attached as Exhibit "B".

The LPA has the absolute right to add or subtract from the scope of services at any time and such action on its part will in no event be deemed a breach of this agreement. The addition or subtraction will become effective seven days after mailing written notice of such addition or subtraction.

SECTION 6. STAFFING PLAN (For PE Services)

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

Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended services. Failure on the part of the Consultant to provide acceptable replacement personnel or qualified new personnel to keep the services on schedule will be cause for termination of this agreement, with settlement to be made as provided in the SUSPENSION, ABANDONMENT, OR TERMINATION section of this agreement.

SECTION 7. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. The Consultant hereby agrees to contractually require any Subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The undersigned duly authorized representative of the Consultant, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

**Neb.Rev.Stat. § 4-114.** I certify compliance with the provisions of Section 4-114 and, hereby certify that this Consultant shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all Subconsultants, by contractual agreement, to require the same registration and verification process.

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

1. The Consultant must complete the United States Citizenship Attestation form, and attach it to this agreement. This form is available on the Department of Roads website at [www.transportation.nebraska.gov/projdev/#save](http://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 8. NOTICE TO PROCEED AND COMPLETION DATE (PE)

The LPA will issue the Consultant a written Notice-to-Proceed when LPA determines that federal funding approval has been obtained for the project, upon full execution of the agreement and upon State concurrence that the form of this agreement is acceptable for federal funding eligibility. Any services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed will not be eligible for reimbursement.

The Consultant shall complete all the services according to the schedule in attached Exhibit "B" and shall complete all services required under this agreement in a satisfactory manner.

Any costs incurred by Consultant after the completion date are not eligible for reimbursement unless the Consultant has received a written extension of time from LPA.

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

## SECTION 9. FEES AND PAYMENTS

The general provisions concerning payment under this agreement are set out on the Exhibit "D", attached hereto and hereby made a part of this agreement.

For performance of the services as described in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$10,315.43 and up to a maximum amount of \$83,733.97 for actual costs in accordance with Exhibit "D". The total agreement amount is \$94,049.40.

## SECTION 10. PROFESSIONAL PERFORMANCE (LPA PE)

The Consultant understands that the LPA will rely on the professional training, experience, performance and ability of the Consultant. Examination by the LPA, State or FHWA, or acceptance or use of, or acquiescence in the Consultant's work product, will not be considered to be a full and comprehensive examination and will not be considered an approval of the Consultant's work product 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 services to be accomplished by the Consultant pursuant to this agreement. The Consultant further understands that acceptance or approval of any of the work of the Consultant by the LPA or concurrence by the State/FHWA or of payment, partial or final, will not constitute a waiver of any rights of the LPA to recover from the Consultant, damages that are caused by the Consultant due to error, omission, or negligence of the Consultant in its work. That further, if due to error, omission, or negligence of the Consultant, the work project of the Consultant is found to be in error or there are omissions therein revealed during or after the construction of the project and revision, reconsideration, or reworking of the Consultant work product is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the LPA's or State's notice of any errors or omissions within 24 hours and give immediate attention to necessary corrections to minimize any delays to the project. This may involve visits by the Consultant to the project site, if directed by the LPA. If the Consultant discovers errors in its services, it shall notify the LPA and State 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 11. SUSPENSION, ABANDONMENT OR TERMINATION (2/8/12)

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

agreement. The LPA will give the Consultant seven days written notice of such suspension, abandonment, or termination. Any necessary change in Scope of Services shall follow the Consultant Work Order Process outlined in the FEES AND PAYMENTS section above.

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

#### SECTION 12. OWNERSHIP OF DOCUMENTS (11/17/11)

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

LPA acknowledges that such data may not be appropriate for use on an extension of the services covered by this agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at the LPA's sole risk and without legal exposure or liability to Consultant.

Further, Consultants' time sheets and payroll documents shall be kept in Consultants' files for at least three years from the completion of final cost settlement by FHWA and project closeout by the State.

#### SECTION 13. CONFLICT OF INTEREST LAWS

The Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for the LPA's project to remain fully eligible for Federal funding. By signing this agreement, the Consultant certifies that Consultant is not aware of any financial or other interest the Consultant has that would violate the terms of these federal provisions.

#### SECTION 14. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

Certain information provided by the LPA or 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 State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an LPA or State employee and Legal Counsel. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately design the project at hand on behalf of the LPA or 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 LPA or 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 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 (Approved 3/16/11):

**"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 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 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 as a result of the unauthorized dissemination. The Consultant agrees to hold harmless, indemnify, and release the LPA for any liability that may ensue on the part of the LPA for any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant.

#### SECTION 15. 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 16. NON-RAIDING CLAUSE

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

#### SECTION 17. GENERAL COMPLIANCE WITH LAWS

The Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work.

#### SECTION 18. DISPUTES

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

#### SECTION 19. RESPONSIBILITY FOR CLAIMS AND LIABILITY (PE) (1-24-12)

The Consultant agrees to save harmless the LPA from all claims and liability due to the error, omission, or negligence of the Consultant or those of the Consultant's agents or employees in the performance of services under this agreement. Further, it is expected that in carrying out the work under this agreement, Consultant will make various decisions and judgments and Consultant will determine what actions are required by Consultant and by others to properly complete the work. Nothing in this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to LPA in carrying out the work under this agreement.

Finally, 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 20. 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 21. SUCCESSORS AND ASSIGNS

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

SECTION 22. DRUG-FREE WORKPLACE POLICY

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

SECTION 23. 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 24. 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 25. 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 26. 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 LPA 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, 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 LPA enter into such litigation to protect the interests of the LPA and, in addition, the Consultant may request that the State and United States enter into such litigation to protect the interests of the State and United States.

**SECTION 27. SUBLETTING, ASSIGNMENT, OR TRANSFER**

The Subconsultant/Subcontractor will provide drilling and sampling services, and wetland delineation 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, in excess of \$10,000, 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 DISADVANTAGED BUSINESS ENTERPRISES 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 28. CONSULTANT CERTIFICATIONS**

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

- A. Neb. Rev. Stat. § 81-1715(1).** I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum or actual cost-plus-a-fixed fee professional service contract, I hereby certify that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, and current as of the date of this agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the LPA determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- B. Neb. Rev. Stat. §§ 81-1717 and 1718.** I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below neither I nor any person associated

with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:

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

**C. Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions.** Section C1 below contains 10 instructions that consultant agrees to follow in making the certifications contained in C2.

**1. Instructions for Certification**

- a. By signing this agreement, the Consultant is providing the certification set out below.
- b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the State's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the State determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the State may terminate this agreement for cause or default.
- d. The Consultant shall provide immediate written notice to the State if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- f. The Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the State before entering into this agreement.

- g. The Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. The Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
- i. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if the Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the State may terminate this agreement for cause or default.

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

- a. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - ii. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph a.ii above; and
  - iv. Have not within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- b. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this agreement. I acknowledge that this certification is to be furnished to the State and the FHWA in connection with this agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.

SECTION 29. 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 agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

SECTION 30. 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.

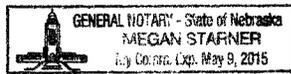
EXECUTED by the Consultant this 2 day of November, 2012.

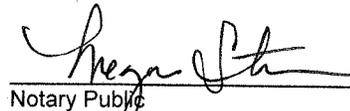
THE SCHEMMER ASSOCIATES, INC.  
Steve Kathol

  
Principal

STATE OF NEBRASKA )  
                                  )ss.  
DOUGLAS COUNTY    )

Subscribed and sworn to before me this 2nd day of November, 2012.



  
Notary Public

EXECUTED by the LPA this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF LINCOLN, NEBRASKA  
Chris Beutler

\_\_\_\_\_  
Mayor

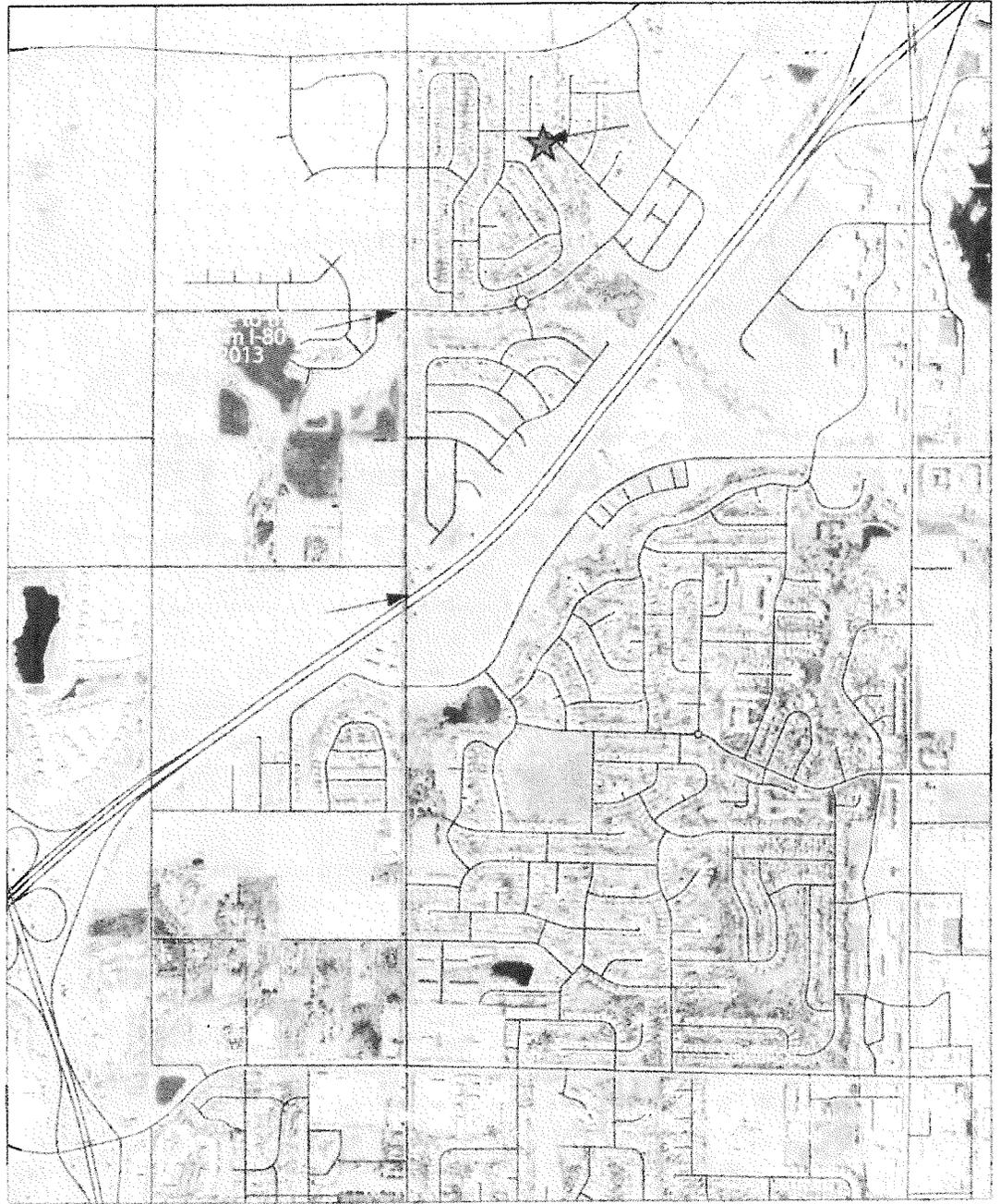
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Clerk

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Form of Agreement Approved for  
Federal Funding Eligibility:

\_\_\_\_\_

\_\_\_\_\_  
Date



### Stonebridge Trail

\*No scale, for illustrative purposes only

Existing Trail

Future Trail (2011-12)

Proposed Stonebridge Trail

Future Connection (By Others)

Growth Tier 1A

Growth Tier 1B



Project No. ENH-55(177)  
 Control No. 13213  
 Lincoln Stonebridge Trail

EXHIBIT "A"

**SCOPE OF SERVICES**  
FOR  
CITY OF LINCOLN, NE  
STONEBRIDGE TRAIL

NEPA EVALUATION AND PRELIMINARY/FINAL ENGINEERING  
October 3, 2012

(A) PROJECT DESCRIPTION AND LOCATION

This scope of services provides for the Consultant to prepare design plans for the Stonebridge Trail which will begin along Humphrey Avenue just east of N. 14<sup>th</sup> Street and extend east to approximately 500 feet west of Redstone Road. The trail then turns north through the outlot and extends to Alvo Road. The trail then turns west and runs along Alvo Road to the existing trail at the north entrance to Kooser Elementary School. The concrete surface trail will be 10 feet wide and 6 inches thick. The total trail length is approximately 7300 feet.

Work includes project management, public involvement, preliminary survey, NEPA evaluation, geotechnical engineering, preparing preliminary and final plans for trail, utility coordination, and other recapped design tasks.

(B) CITY TO

1. Provide existing city-owned utility locations in CADD format, GIS data and aerial photos, if available.
2. Other information, as available, pertinent to this project
3. Make arrangements for public information meeting venue and logistics.
4. Prepare responses to comments submitted at Public Information Meeting or other times during the project. Consultant to provide assistance.

(C) APPLICABLE PUBLICATIONS

The Consultant shall follow the criteria of the current applicable publications of the American Association of State Highway and Transportation Officials and design criteria furnished by the State. These publications and others which the Consultant shall use in this work are:

1. 2012 Guide for the Development of Bicycle Facilities (AASHTO)
2. Designing Sidewalks and Trails for Access Part II of II: Best Practices Design Guide (U.S. DOT)
3. 2010 ADA Standards for Accessible Design (U.S. Department of Justice)
4. State of Nebraska, Department of Roads, Standard Specifications for Highway Construction
5. Current Edition of the Manual on Uniform Traffic Control Devices (FHWA)
6. State of Nebraska MUTCD Supplement (NDOR)
7. Nebraska Transportation Enhancement Bicycle Trail Design Requirements
8. Draft Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-way (Federal Access Board-PROWAG)
9. LPA Guidelines Manual for Federal-Aid Projects. NDOR, April 2009.
10. The Process for Obtaining Environmental Concurrences and Completing NEPA Documents for Local Public Agency (LPA) Federally Funded Transportation Projects. NDOR, December 2009.
11. Instructions for Completing the Probable Class of Action DR-53 Form for Local Federal-Aid Transportation Projects. NDOR, August 2010.
12. Guidelines for Completing the CE Documentation Form. NDOR, November 2008.

13. Guidelines for completing the Project Description Section of NEPA Determination and CE Forms. NDOR, May 2009.
14. Instructions to Complete Section 106 Concurrence Request Form. NDOR, December 2009.
15. Wetland and Water Resources Review Procedures for Federal Aid Projects. NDOR, October 2010.
16. Memorandum on Qualifications and Documentation Requirements for LPA Project Wetlands Reviews. NDOR, November 2009.
17. Instructions for Completing the Wetland Determination Checklist. November 2009.
18. NDOR Wetland Determination Checklist
19. US Army Corps of Engineers (USACE) Wetlands Delineation Manual, Technical Report Y-87-1. Environmental Laboratory, Department of the Army Waterways Experiment Station, USACE, Vicksburg, Mississippi. 1987.
20. Interim Regional Supplement to the US Army Corps of Engineers Wetland Delineation Manual: Midwest Region, ERDC/EL TR-08-27. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi. 2008.
21. Interim Regional Supplement to the US Army Corps of Engineers Wetland Delineation Manual: Great Plains Region, ERDC/EL TR-08-12. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi. 2008.
22. Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification. US Army Corps of Engineers. 2005.
23. Cowardin et al. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31. Biological Services Program, Fish and Wildlife Service, US Department of the Interior. 1979.
24. Nebraska Wetland Subclasses (Attachment K, Wetland Mitigation Banking, Standard Operating Procedures in Nebraska)
25. Instructions for Completing Biological Evaluation Form for Local Federal Aid Projects. NDOR, October 2009.
26. Endangered Species Review Training Manual. NDOR, June 2010.
27. Guidelines for Completing Green Sheets for the NDOR Local Project Section. NDOR, September 2009.

(D) PROJECT PLANS FORMAT, CONVENTIONAL AND CADD

1. The Consultant shall prepare plan and profile plan sheets on a scale of 1"=40'.
2. All plan sheets shall be half-size (11"x17") except full-size for PS&E submittal. Two copies will be provided to the City of Lincoln and NDOR per submittal.
3. The Consultant will utilize MicroStation CADD software and NDOR procedures and guidelines in preparing the project plans.

(E) DATA TRANSFER

1. The Consultant shall transfer all GRAPHIC files to the City in PDF format.
2. Final design files will be submitted to City of Lincoln in Microstation and PDF format.

(F) SCHEDULE

Upon notice-to-proceed, the Consultant shall provide services as outlined in the attached schedule.

Week of:

Notice to Proceed  
Kickoff Meeting  
30% Design Submittal  
Plan-in-Hand  
Public Meeting  
Submittal of Environmental Document  
Environmental Approval  
90% Submittal to NDOR  
Approval to Acquire ROW

(G) PROJECT MANAGEMENT

1. Kickoff Meeting (1), including meeting agenda and minutes
2. NDOR/FHWA Coordination Meetings (2), including meeting agenda and minutes
3. Progress Meetings (2), including meeting agenda and minutes
4. Agency Coordination (includes NDOR, FHWA)
5. Plan-in-Hand Meeting (1), including plan-in-hand report and revisions, agenda and minutes
6. Contract Administration/Scheduling & Coordination of Design Professionals
7. Monthly Progress Reporting and Invoicing

(H) FIELD SURVEY

1. The Consultant shall perform complete preliminary survey work, tying of field located land monuments to the project survey control, and do the profiling, cross-sectioning and topography. The approximate limits of the survey are as follows:
  - 50 ft. strip along Humphrey Avenue from 14<sup>th</sup> Street to 500 feet west of Redstone Road
  - 100 ft. strip in outlet from Humphrey Avenue to Alvo Road
  - 75 ft. strip along Alvo Road
  - 150 foot strip along N. 14<sup>th</sup> Street from Alvo Road south for 200 feet.Survey of right-of-way lines and property corners within the survey limits are included with this scope of work.
2. The Consultant shall tie the project control to existing pavement, intersecting public roads and drives, and tie the survey to adjacent land monuments.
3. The Consultant shall establish and tie the control monuments to at least three permanent topographic features by point-to-point measurement for use in later relocating the monuments. In the event permanent topographic features are not available within 100 feet, the Consultant shall use appropriately marked stakes.
4. The Consultant shall set control points or centerline monuments to be visible directly from one control point to the next control point.
5. The Consultant shall run bench levels by direct leveling methods (no side shots are permitted).
6. The Consultant shall assure that the levels close within an allowable error of 0.05 feet times the square root of the length of the level loop in miles.
7. The Consultant shall record by coordinates the topographic features within the project corridor, both natural and man-made above ground including all utilities.
8. The Consultant shall reference all survey to the City of Lincoln benchmarks and Lancaster County coordinates.

(I) GEOTECHNICAL ANALYSIS

1. The Consultant shall provide four (4) soil borings. The depths for the soil borings shall be 10 feet along the proposed trail alignment through the outlot between Humphrey Avenue and Alvo Road.
2. The Consultant shall conduct geotechnical evaluation of the soil borings for use in designing the trail subgrade. Engineering report will provide recommendations for trail subgrade and specifications for construction material testing.

(J) ENVIRONMENTAL STUDIES

The City of Lincoln has belief that the proposed project will be classified as a Type II Categorical Exclusion (Justified CE) pursuant to 23 CFR 771.117(d). As such, Consultant will prepare an Environmental Determination Form and supporting documentation in compliance with the NDOR LPA Manual for Preparing Categorical Exclusions for Local Federal Aid Projects, and in compliance with the National Environmental Policy Act (NEPA), and all applicable State and Federal laws, Executive Orders, and regulations. The Determination Form and supporting documentation will provide a level of analysis commensurate with the level of impact of the proposed action and its alternatives.

In general, the Consultant shall provide (but not be limited to) environmental services as follows:

1. Project Coordination - In-house coordination and coordination with City of Lincoln, NDOR, and FHWA personnel
2. Prepare and submit Biological Evaluation Form to NDOR. Draft will be reviewed by the Responsible Charge (RC)
3. Prepare and submit SHPO Concurrence Request Form to NDOR. Paperwork will be submitted to the RC for review and then to NDOR for coordination with SHPO. Assumed determination is no adverse effect.
4. Resource Review. Using the Form and NDOR guidance, Consultant will review relevant resources. Some resources will likely require more evaluation than others. At a minimum, the following resources are considered to require evaluation: right-of-way acquisition, relocations and easements (temporary and permanent), Section 106 cultural and historic resources, Section 4(f) resources (e.g. parkland and wildlife refuges), Section 6(f) resources, air quality, noise, wetlands, floodplains, streams, rivers, threatened and endangered species, environmental justice, farmland and hazardous waste.

Some projects require evaluation of public interest, permits and special provisions, and alternatives analysis, as well as impacts to utilities and railroads, socio-economic considerations, Platte River depletions, migratory birds, well head protection areas, construction impacts, aesthetics or other values.

5. Draft Purpose & Need statement for review by the RC
6. Wetland Delineation. Complete a jurisdictional wetland evaluation of the wetland and waters of the U.S. for the project site. Wetlands identified during the investigation will be delineated in accordance with the U.S. Army Corps of Engineers (COE) 1987 Wetlands Delineation Manual and the Midwest Regional Supplement, and wetland boundaries will be located by sub-meter accuracy GPS in the field. Data on soils, hydrology, and vegetation will be collected. Color photographs of the wetland and upland areas will be taken, and data sheets will be filled out at locations that will allow wetland boundaries to be determined. Areas that are not wetlands but meet the definition of "waters of the U.S." will be identified on maps only and not delineated in the field. A wetland report will be prepared documenting the findings. This task (Wetland Delineation) to be performed by EA Engineering, Science & Technology (Subconsultant).
7. Section 4(f) & 6(f)
  - (a) Prepare Section 4(f) Evaluation for Stonebridge Park. For scoping purposes, it is assumed the project will meet the "Net Benefits" programmatic agreement.

- (b) Describe existing activities, features, and attributes of the existing park. Describe right-of-way considerations and land ownership.
  - (c) Identify alternatives and why the use of Section 4(f) property is sensible; describe minimization of harm techniques.
  - (d) Obtain concurrence from the official with jurisdiction (City of Lincoln)
  - (e) Prepare display for use at public meeting
  - (f) Provide research to ensure 6(f) property is not within project impact area.
8. Categorical Exclusion (CE) Form
    - (a) Compile information from team members. Research and prepare the CE Form. Submit CE Form to the RC for review; incorporate comments. Submit CE Form to NDOR.
  9. Green Sheet
    - (a) Prepare initial Green Sheet, submit to the RC, and revise as necessary. Consultant will send Green Sheet to NDOR LPD Project Coordinator at PS&E submittal.
    - (b) Schemmer will incorporate revisions as necessary during the NDOR review process

(K) PUBLIC INVOLVEMENT

1. Preparation of Aerial Exhibits and Meeting Displays
2. One (1) Public Meetings – assumes two (2) Consultant personnel to attend and facilitate public meeting. Consultant to prepare public notices and other invitations for public meeting.
3. Two (2) Stakeholder Meetings, including meeting minutes. Stakeholder meetings are assumed to be with the neighborhood association and Kooser Elementary School.

(L) PRELIMINARY DESIGN

1. Consultant to submit 30% plans to NDOR. In general, the Consultant shall provide design services for:
  - (a) Site Inspections (1)
  - (b) Data Collection and Review
  - (c) N. 14<sup>th</sup> Street Crossing Evaluation
    - Option 1: Consultant to develop a memorandum to NDOR/FHWA requesting incorporation of Rectangular Rapid Flashing Beacon (RRFB).
    - Option 2: Consultant to review the feasibility and impacts of installing the trail crossing south of the multi-lane roundabout a minimum of 100 feet.
  - (d) Horizontal and Vertical Alignment
  - (e) Geometric Design
  - (f) Typical Section
  - (g) Drainage Design
    1. Consultant to design the size of culverts to pass drainage beneath the proposed trail. Scope assumes four (4) culverts will pass beneath the trail.
  - (h) Special designs, modification/replacement
  - (i) Limits of construction
  - (j) Estimate of Earthwork Quantity
  - (k) Plan and profile
  - (l) Construction and removals
  - (m) Quantities/Cost Estimate

(M) FINAL DESIGN

1. Consultant to submit 90% and PS&E package to NDOR. In general, the Consultant shall prepare the following plan sheets:

- (a) Title sheet
- (b) Typical section (2T)
- (c) Summary of Quantities
- (d) Aerial (2A) sheets
- (e) Horizontal alignment and control points (2H)
- (f) General Information sheet (2N)
- (g) Construction and removal sheets (2L)
- (h) Geometric sheets (2L)
- (i) Signing/Striping sheets (2L)
- (j) Plan and profile sheets
- (k) Culvert Cross-sections
- (l) Right-of-way Sheets (assume five tracts)
- (m) Cross-section sheets

2. Additional tasks to be performed during final design include:

- (a) Special designs, modification/replacement
- (b) Estimate of Earthwork Quantity
- (c) Quantities/Cost Estimate (on NDOR Form 343E at each submittal and annually)
- (d) Erosion control design
- (e) Special Provisions
- (f) Status of Utilities
- (g) Individual Quantity Spreadsheets for PS&E Submittal on required NDOR Forms
- (h) Prepare Storm Water Pollution Prevention Plan (SWPPP) and NOI permit application.
- (i) Prepare 404 permit application and address comments

(N) UTILITY COORDINATION

The Consultant shall draft existing utilities, both overhead and underground, on the project plan sheets, print and distribute to the utility companies for verification. All communication will be forwarded to the NDOR for documentation.

The Consultant shall coordinate directly with the utility companies and others to verify location and ownership of all existing overhead and underground utilities on the project.

- 3. The Consultant shall address specific utility conflicts with utility.
- 4. The Consultant shall analyze the utility constraints and be available to discuss the design of the project with affected utilities and shall attempt to eliminate or minimize conflict with utilities.
- 5. The Consultant will submit the plans to the utilities for their review. The affected utilities will, in turn, submit their rehabilitation plans and estimates back to the Consultant. Consultant shall document all coordination and submit to NDOR.

(O) COMPLETED FINAL PLANS AND DOCUMENTS (FINAL)

- 1. The Consultant shall stamp, sign and date all plans by the engineer registered in Nebraska.

(P) PROJECT DELIVERABLES

- 1. Meeting Minutes
- 2. Topographic Base Map
- 3. Plan-In-Hand Report
- 4. 30% Plans
- 5. Approved NEPA Document
- 6. Geotechnical Report

7. 90% Plans
8. NPDES Permit & SWPPP
9. Special Provisions
10. Status of Utilities
11. Summary of Quantities (at each submittal and annually)
12. PS&E Package
13. Green Sheets

**Exhibit B**  
**Stonebridge Trail**  
City of Lincoln

NDOR Project No. ENH-55(177); C.N. 13213  
Preliminary, NEPA and Final Design

FEE SUMMARY SCHEDULE

October 15, 2012

Direct Salary Costs

PROJECT TASK & PERSONNEL CLASSIFICATION	ESTIMATED HOURS	RATE	ESTIMATED LABOR CHARGE	TASK COST	
<b>I. Project Management</b>					
PRINCIPAL	5	\$56.92	\$284.61	\$14,319.18	
PROJECT MANAGER	65	\$47.19	\$3,067.49		
SENIOR PROJECT ENGINEER	0	\$46.67	\$0.00		
REGISTERED DESIGN ENGINEER	26	\$36.77	\$956.11		
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00		
ENGINEERING TECHNICIAN	0	\$21.62	\$0.00		
REGISTERED SURVEYOR	0	\$37.59	\$0.00		
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00		
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00		
NEPA SPECIALIST	8	\$43.13	\$345.07		
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00		
<b>II. Field Survey</b>					
PRINCIPAL	0	\$56.92	\$0.00		\$11,188.25
PROJECT MANAGER	0	\$47.19	\$0.00		
SENIOR PROJECT ENGINEER	0	\$46.67	\$0.00		
REGISTERED DESIGN ENGINEER	0	\$36.77	\$0.00		
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00		
ENGINEERING TECHNICIAN	0	\$21.62	\$0.00		
REGISTERED SURVEYOR	13	\$37.59	\$488.63		
PARTY CHIEF SURVEYOR	81	\$27.51	\$2,228.39		
ASSOCIATE SURVEYOR	45	\$20.42	\$918.81		
NEPA SPECIALIST	0	\$43.13	\$0.00		
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00		
<b>III. Geotechnical Analysis</b>					
PRINCIPAL	0	\$56.92	\$0.00	\$3,015.92	
PROJECT MANAGER	0	\$47.19	\$0.00		
SENIOR PROJECT ENGINEER	11	\$46.67	\$513.33		
REGISTERED DESIGN ENGINEER	0	\$36.77	\$0.00		
ENGINEER/ SENIOR TECHNICIAN	18	\$24.82	\$446.74		
ENGINEERING TECHNICIAN	0	\$21.62	\$0.00		
REGISTERED SURVEYOR	0	\$37.59	\$0.00		
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00		
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00		
NEPA SPECIALIST	0	\$43.13	\$0.00		
ADMINISTRATIVE ASSISTANT	1	\$20.01	\$20.01		
<b>IV. Environmental Studies</b>					
PRINCIPAL	1	\$56.92	\$56.92		\$11,076.38
PROJECT MANAGER	12	\$47.19	\$566.31		
SENIOR PROJECT ENGINEER	0	\$46.67	\$0.00		
REGISTERED DESIGN ENGINEER	0	\$36.77	\$0.00		
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00		
ENGINEERING TECHNICIAN	0	\$21.62	\$0.00		
REGISTERED SURVEYOR	0	\$37.59	\$0.00		
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00		
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00		
NEPA SPECIALIST	69	\$43.13	\$2,976.25		
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00		
<b>V. Public Involvement</b>					
PRINCIPAL	0	\$56.92	\$0.00	\$3,261.29	
PROJECT MANAGER	11	\$47.19	\$519.11		
SENIOR PROJECT ENGINEER	0	\$46.67	\$0.00		
REGISTERED DESIGN ENGINEER	10	\$36.77	\$367.74		
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00		
ENGINEERING TECHNICIAN	8	\$21.62	\$172.97		
REGISTERED SURVEYOR	0	\$37.59	\$0.00		
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00		
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00		
NEPA SPECIALIST	0	\$43.13	\$0.00		
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00		
<b>VI. Preliminary Design</b>					

PRINCIPAL	0	\$56.92	\$0.00	
PROJECT MANAGER	12	\$47.19	\$566.31	
SENIOR PROJECT ENGINEER	20	\$46.67	\$933.32	
REGISTERED DESIGN ENGINEER	84	\$36.77	\$3,088.98	
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00	
ENGINEERING TECHNICIAN	98	\$21.62	\$2,118.86	
REGISTERED SURVEYOR	0	\$37.59	\$0.00	
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00	
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00	
NEPA SPECIALIST	0	\$43.13	\$0.00	
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00	
<b>VII. Final Design</b>				\$23,279.69
PRINCIPAL	0	\$56.92	\$0.00	
PROJECT MANAGER	17	\$47.19	\$802.27	
SENIOR PROJECT ENGINEER	2	\$46.67	\$93.33	
REGISTERED DESIGN ENGINEER	92	\$36.77	\$3,383.17	
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00	
ENGINEERING TECHNICIAN	152	\$21.62	\$3,286.40	
REGISTERED SURVEYOR	0	\$37.59	\$0.00	
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00	
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00	
NEPA SPECIALIST	0	\$43.13	\$0.00	
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00	
<b>VIII. Utility Coordination</b>				\$2,579.82
PRINCIPAL	0	\$56.92	\$0.00	
PROJECT MANAGER	2	\$47.19	\$94.38	
SENIOR PROJECT ENGINEER	0	\$46.67	\$0.00	
REGISTERED DESIGN ENGINEER	12	\$36.77	\$441.28	
ENGINEER/ SENIOR TECHNICIAN	0	\$24.82	\$0.00	
ENGINEERING TECHNICIAN	14	\$21.62	\$302.69	
REGISTERED SURVEYOR	0	\$37.59	\$0.00	
PARTY CHIEF SURVEYOR	0	\$27.51	\$0.00	
ASSOCIATE SURVEYOR	0	\$20.42	\$0.00	
NEPA SPECIALIST	0	\$43.13	\$0.00	
ADMINISTRATIVE ASSISTANT	0	\$20.01	\$0.00	
	889		\$29,039.48	
<b>Subtotal Direct Salary Costs</b>			\$29,039.48	
<b>Overhead Costs</b>		172.2%	\$50,005.99	
<b>Subtotal Labor Charges + Overhead</b>			\$79,045.47	
<b>Fixed Fee</b>		13.05%	\$10,315.43	
<b>Subtotal Labor Charges + Overhead + Fixed Fee</b>			\$89,360.90	
<b>DIRECT NON-SALARY COSTS:</b>	No.	Rate (\$)		
Printing - full-size	40	\$ 2.50	\$ 100.00	
Mileage	300	\$ 0.555	\$ 166.50	
Survey Mileage	400	\$ 0.580	\$ 232.00	
Misc. Expense	1	\$ 100.000	\$ 100.00	
Geotech (Field Drilling Subcontractor)	1	\$ 890.00	\$ 890.00	
Geotech (Lab Reimbursable)	1	\$ 200.00	\$ 200.00	
Lodging	0	\$ -	\$ -	
Title Search	5	\$ 120.00	\$ 600.00	
Wetland Delineation (Subconsultant)	1	\$ 2,400.00	\$ 2,400.00	
Per Diem	0	\$ -	\$ -	
<b>Sub-Total Direct Non-Salary Costs</b>			\$ 4,688.50	
<b>TOTAL ESTIMATED FEE</b>			\$ 94,049.40	

City of Lincoln - Hour Estimate Form  
 Preliminary, NEPA and Final Design  
 Stonebridge Trail  
 City of Lincoln

NDOR Project No. ENH-55(177); C.N. 13213

October 15, 2012

ITEM NO.	TASK DESCRIPTION	PRIN	PROJ MGR	SEN PROJ ENGR	REG DESIGN ENGR	ENGR/ SEN TECH	ENGR TECH	SEN REG SURVEYOR	PARTY CHIEF SURVEYOR	ASSOC SURVEYOR	NEPA SPECIALIST	ADMIN ASST	TOTAL PER TASK
<b>I. Project Management</b>													
I.a	Kickoff Meeting (1)		2		4								6
I.b	NDOR/FHWA Coordination Meetings (2)		6								8		14
I.c	Progress Meetings (2)		4		8								12
I.d	Agency Coordination		8		8								16
I.e	Plan In-lane Meeting (1)		3		8								11
I.f	Contract Administration/Scheduling & Coordination of Design Professionals		6	28									34
I.g	Monthly Progress Reporting and Invoicing			18									18
<b>II. Field Survey</b>													
II.a	Topographic Field Survey							8	34	34			76
II.b	Horizontal and Vertical Control						2	8	8				18
II.c	Existing Utilities						1	3	3				7
II.d	Grading New File						2	38					40
<b>III. Geotechnical Analysis</b>													
III.a	Project Preparation			2									2
III.b	Soil Boring/Field Log			3									3
III.c	Laboratory Testing of Retrieved Samples					6							6
III.d	Analysis of Test Data			4		8							12
III.e	Report			2		4						1	7
<b>IV. Environmental Studies</b>													
IV.a	Project Coordination		2								8		10
IV.b	Prepare Biological Evaluation Form		0								2		2
IV.c	Prepare SHPO Concurrence Request Form		0								2		2
IV.d	Resource Review		1								8		9
IV.e	Draft Purpose and Need Statement		1								2		3
IV.f	Coordinate and review wetland delineation		1								1		2
IV.g	Section 401 Evaluation		2								12		14
IV.h	Prepare Categorical Exclusion Form		1	4			0				30		35
IV.i	Green Sheet Preparation		1								6		7
<b>V. Public Involvement</b>													
V.a	Preparation of Aerial Exhibits and Meeting Displays		1		2		4						7
V.b	Public Meeting (1)		4		8								12
V.c	Stakeholder Meetings (2)			6									6
<b>VI. Preliminary Design</b>													
VI.a	Rise Inspections (1)				4								4
VI.b	Plan Collection and Review				8								8
VI.c	N. 14th Street Crossing Evaluation		2	20	8								28
VI.d	Horizontal and Vertical Alignment		2		18		12						30
VI.e	Geometric Design		1		8		8						17
VI.f	Typical Sections		1		8		8						17
VI.g	Drainage Design		1		4		2						7
VI.h	Special Designs, modification/replacement		1		4		4						10
VI.i	Limits of Construction				2		4						6
VI.j	Estimate of Earthwork Quantity				2		2						4
VI.k	Plan and profile (13 sheets)		2		8		28						38
VI.l	Construction and removals (13 sheets)		2		8		28						38
VI.m	Quantities/Cost Estimate		1		8		8						16
<b>VII. Final Design</b>													
VII.a	Title Sheet						1						1
VII.b	Typical Section (2)				1		2						3
VII.c	Summary of Quantities		1		1		4						6
VII.d	Detail (24) sheets		1		4		8						13
VII.e	Horizontal alignment and control points (26)				1		8						9
VII.f	General Information Sheet (2)						2						2
VII.g	Construction and Removal Sheets (2)		2		13		20						35
VII.h	Geometric sheets (2)		2		8		17						27
VII.i	Special/Drainage sheets (2)			2			6						10
VII.j	Pipe and Profile sheets		1		4		12						17
VII.k	Culvert Cross-sections				4		8						12
VII.l	Right-of-way Sheets		2		10		15						27
VII.m	Cross-section sheets				8		8						16
VII.n	Special designs, modification/replacement		1		4		4						9
VII.o	Estimate of Earthwork Quantity				2		4						6
VII.p	Quantities/Cost Estimate		1		4		8						13
VII.q	Erosion Control		1		4		8						13
VII.r	Special Provisions		2		4		8						14
VII.s	Status of Utilities		1		4		4						9
VII.t	Quantity Spreadsheets for PS&E Submittal				4		12						16
VII.u	SWPPP and NPDES NOI Permit Application		1		8		8						17
VII.v	404 Permit Application		2		8		4						14
<b>VIII. Utility Coordination</b>													
VIII.a	Existing Utility Verification		1		4		8						13
VIII.b	Conflict Resolution		1		8								9
VIII.c	Utility Plan Submittal				2		6						8
<b>TOTALS</b>			6	119	33	224	16	272	13	81	45	1	888

THE SCHEMMER ASSOCIATES INC.  
STAFFING PLAN  
Stonebridge Trail Connection

	2012 Individual Rates	Average Rate	Estimated 2013 Individual Rates	Percent of Work In: 2012	Percent of Work In: 2013	Weighted Rate for Contract
PRINCIPAL		\$54.47	\$57.19	10%	90%	\$56.92
	Steve Kathol	\$54.47				
PROJECT MANAGER		\$45.16	\$47.42	10%	90%	\$47.19
	Doug Holle	\$45.16				
SENIOR PROJECT ENGINEER		\$44.66	\$46.89	10%	90%	\$46.67
	Doug Holle	\$45.16				
	Loras Klostermann	\$43.13				
	Mark Lutjeharms	\$45.68				
REGISTERED DESIGN ENGINEER		\$35.19	\$36.95	10%	90%	\$36.77
	Darin Brown	\$35.87				
	Marie Stamm	\$37.00				
	Adam Sleeper	\$32.70				
ENGINEER/ SENIOR TECHNICIAN		\$23.75	\$24.94	10%	90%	\$24.82
	Heath Cutler	\$22.25				
	Jon Goldie	\$25.25				
ENGINEERING TECHNICIAN		\$20.69	\$21.72	10%	90%	\$21.62
	Megan Starnier	\$20.00				
	Terry Nocita	\$21.38				
REGISTERED SURVEYOR		\$36.67	\$38.50	50%	50%	\$37.59
	Mark Fredrickson	\$36.67				
PARTY CHIEF SURVEYOR		\$26.84	\$28.18	50%	50%	\$27.51
	Cory Gross	\$28.63				
	Pat Kirk	\$25.05				
ASSOCIATE SURVEYOR		\$19.92	\$20.92	50%	50%	\$20.42
	Dustin Shropshire	\$19.92				
NEPA SPECIALIST		\$41.08	\$43.13	0%	100%	\$43.13
	Marie Stamm	\$37.00				
	Doug Holle	\$45.16				
ADMINISTRATIVE ASSISTANT		\$19.15	\$20.11	10%	90%	\$20.01
	Jill Lafierriere	\$18.30				
	Megan Starnier	\$20.00				

**O'Malley Drilling, Inc.**

PO Box 426 \* Blair, NE 68008  
Office 402-426-5791 \* Fax 402-426-5692 \* Cell 402-670-0896

October 16, 2012

Schemmer Associates  
Attn: Doug Holle  
928 Valley View Dr  
Suite 12  
Council Bluffs, IA 51503

Dear Doug,

O'MALLEY DRILLING, INC. appreciates the opportunity to submit this proposal for the drilling & sampling Stonebridge Trail, Lincoln, NE

Prices are as follows:

Mobilization	\$ 450.00
Drill & sample 4 borings to 10ft	\$ 440.00
<b>Total</b>	<b>\$ 890.00</b>

If you have any questions, please contact me at 402-670-0896.

Sincerely,

Mike O'Malley  
O'Malley Drilling, Inc

## Scope of Work

This Scope of Work is incorporated into the Consulting Services Contract referenced above between EA Engineering, Science, and Technology, Inc. and The Schemmer Associates.

EA will prepare a wetland delineation report for a proposed trail in Lincoln, NE. EA will conduct the following activities for this project:

- Perform a site visit and conduct a wetland delineation. The site is located in the attached figure.
- EA will submit a draft wetland delineation report with GIS layer for review. EA will incorporate comments into the final wetland delineation report.

### ASSUMPTIONS

In executing this scope of work, EA has priced this project on the following assumptions:

- EA will submit the draft wetland delineation report 10 days after completion of the site visit and the final wetland delineation report within 5 days after comments are provided to EA.
- Submittal and assistance with a 404 permit to the US Army Corps of Engineers has not been included. In the event that 404 permit assistance becomes necessary, EA can provide a separate cost proposal to provide assistance with 404 permitting activities including correspondence with USACE project managers.
- Boundaries of any wetlands will be identified by EA and surveyed using a sub-meter GPS unit. EA will provide an ArcMap shape file containing the wetland boundaries to The Schemmer Associates.
- EA assumes that wetland mitigation will not be necessary and a wetland mitigation plan has not been included. Should wetland mitigation become necessary, EA can provide a separate cost proposal to provide a wetland mitigation plan.

Project No. ENH-55(177)  
Control No. 13213  
Lincoln Stonebridge Trail

EXHIBIT "B"  
Page 1 of 2  
Subconsultant Fee



### **Price Schedule**

The following project price and/or rates apply to the services provided by EA Engineering, Science, and Technology, Inc. for the project and contract referenced above.

EA proposes to perform the requested services as outlined for a fixed price of **\$2,400.00**. The labor and other direct costs necessary to complete work are included in the fixed price.

Project No. ENH-55(177)  
Control No. 13213  
Lincoln Stonebridge Trail

EXHIBIT "B"  
Page 2 of 2  
Subconsultant Fee



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

**Consultant agrees to:**

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

**General Liability –**

Limits of at least:

\$ 1,000,000 Per Occurrence

\$ 2,000,000 General Aggregate

\$ 2,000,000 Completed Operations Aggregate (if applicable)

\$ 1,000,000 Personal/Advertising Injury

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

- Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended, please refer to the following section entitled "Pollution Coverage.")
- **Pollution Coverage –**
- In the event that the standard pollution exclusion as provided by CG0001 has been amended, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of \$1.0 million per occurrence or claim and \$1.0 million aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Consultant.

**Automobile Liability –**

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

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

**Workers' Compensation –**

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

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

\$100,000 Disease – Per Person

\$500,000 Disease – Policy Limit

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

**Professional Liability –**

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

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

**Electronic Data and Valuable Papers –**

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

\$25,000 Valuable Papers

**Umbrella/Excess –**

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

- Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
- The LPA, shall be an "Additional Insured".
- Consultant agrees to waive its rights of recovery against the LPA. Waiver of subrogation

in favor of the LPA shall be provided.

**Additional Requirements –**

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

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

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

## FEES AND PAYMENTS

### EXHIBIT "D"

- A. **Payment Method.** Payment under this agreement will be made based on Actual Costs plus a Fixed Fee for profit.
- B. **Total Agreement Amount.** For performance of the services as described in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$10,315.43 and up to a maximum amount of \$83,733.97 for actual costs as defined in paragraph "H" of this section. The total agreement amount is \$94,049.40. The Consultant's compensation shall not exceed this maximum amount without prior written approval of the LPA.
- C. **Ineligible Costs.** The LPA is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date set out in the NOTICE TO PROCEED AND COMPLETION section of this agreement or as provided in a written time extension notification.
- D. **Federal Cost Principles.** For performance of Services under the terms of this agreement, the Consultant will be paid subject to the terms of this agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31).
- E. **Federal-aid.** (2-1-12) LPA will not make payments directly to Consultant for services performed under this agreement. Instead, the State will serve as a paying agent for LPA, and will pay Consultant directly for properly submitted and approved invoices using both LPA and Federal funds based on the applicable project federal cost participation percentage. The following process shall apply whenever the LPA, the State or the FHWA determines that certain costs, previously paid to Consultant, should not have been paid with federal funds by the State to Consultant. Consultant shall immediately repay the State the federal share of the previously paid amount and may invoice LPA for the costs repaid to the State. LPA shall promptly pay the full amount of the invoice from its own funds unless LPA, in good faith, disputes whether the Consultant is entitled to the payment under the agreement or the amount of the invoice. In the event of a dispute between LPA and Consultant, the dispute resolution process of Section 18 herein shall be used by the parties.
- F. **Subconsultant Over-runs and Under-runs.** The Consultant shall require any subconsultant to notify Consultant if at any time the subconsultant determines that its costs will exceed its negotiated fee estimate. The Consultant shall not allow any

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

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

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

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

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

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

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

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

(a) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's straight time hourly rate for the pay period in which the work was performed. If overtime hours are worked on this project, the premium pay portion of those hours is not allowable as a direct labor cost.

For salaried employees, the hourly earnings rate shall be their actual hourly rate as recorded in the Consultant's accounting books of record.

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

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

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

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

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

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

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

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

Breakfast:

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

Lunch:

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

Dinner:

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

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

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

(3) Overhead Costs include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with 48 CFR 31. Overhead costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable overhead rate. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in this agreement.

I. **Fee for Profit (Actual Cost Plus Fixed Fee).** The Fixed Fee for Profit was computed upon the negotiated direct labor and overhead costs. The Fee for Profit is not allowable upon direct non-labor costs. For monthly or progress invoices, the Fee for Profit is calculated by multiplying the sum of the direct labor and overhead costs billed by the negotiated Fee for Profit Rate of "13.05%". Upon completion of the work under this agreement, the Consultant shall invoice the LPA any remaining Fixed Fee for Profit. If all of the work under this agreement is not completed for any reason, fixed fee for profit will be adjusted based on the LPA's determination of the actual percentage of work completed.

J. **Invoices and Progress Reports.** The Consultant shall submit invoices to the LPA no more frequently than at monthly intervals and in accordance with the "LPA Reimbursement Procedures" which can be found on the State's website at: <http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html#policies4>. The invoices must present actual direct labor, actual overhead, actual direct non-labor costs, as well as the Fee for Profit based upon the actual direct labor and overhead costs billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed.

Each monthly invoice must include a completed "Cost Breakdown Form" (see State's webpage at <http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html>) and must be substantiated by a progress report which is to include/address, as a minimum:

1. A description of the work completed for that period
2. A description of the work anticipated for the next pay period
3. Information needed from the LPA
4. Percent of work completed to date

Consultant shall submit a progress report monthly even if Consultant does not submit a monthly invoice.

K. **Progress Payments.** Payments will not be made unless the monthly progress reports provide adequate substantiation for the work and the LPA and the State determine that the work has been properly completed. The State, on behalf of the LPA, will make a reasonable effort to pay the Consultant within 30 days of receipt of the Consultant invoices.

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

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

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

M. **Final Payment.** Upon determination by the LPA and the State that the work was adequately substantiated and completed in accordance with this agreement, payment will be made in the amount of the approved final invoice. The acceptance by the Consultant of the final payment will constitute and operate as a release to the LPA and the State for all claims and liability to the Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the services rendered by or in connection with this agreement or any part thereof.

N. **Audit and Final Cost Adjustment.** Upon acceptance by the LPA and the State, the State, or its authorized representative, may complete an audit review of the payments made under this agreement. The Parties understand that the audit may require an adjustment of the payments made under this agreement. The Consultant agrees to reimburse the State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

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