Agenda Item: 6.

Memo to: Programs, Projects, and Operations Subcommittee

Subject: Mopac Trail (Platte River Trail Project - Hwy 50 to Lied Bridge) Construction Engineering Agreement with Ehrhart Griffin & Associates

Date: February 4, 2013

By: Gerry Bowen

The attached Resolution and Project Agreement is for Construction Engineering (CE) Services for the Mopac Trail (Platte River Trail Project - Hwy. 50 to the Lied Bridge). The agreement is between the District and Ehrhart Griffin & Associates (EGA). The resolution needs to be adopted by the Board, which authorizes the General Manager to execute the agreement.

NDOR prepared the agreement after a scope of services and proposed fee schedule (included in the agreement) were negotiated with EGA. Cost estimates were prepared by EGA and the District with differences negotiated to the final form. NDOR staff assisted with this process and approval from FHWA was received into the final form as attached. The not to exceed amount of the CE agreement is $364,358.00, with the District’s share 20% of this amount, or $72,871.60.

As you may recall, in November, 2012, the District approved a construction contract with M. E Collins Contracting Company in the amount of $2,592,463.43. The start date for construction is April 1, 2013. It is anticipated that construction will continue throughout the spring and summer with completion sometime in late fall.

- It is recommended that the Subcommittee recommend to the Board that the Board adopt the resolution authorizing the General Manager to execute the attached Task Order between the District and Ehrhart Griffin & Associates for Construction Engineering Services for the Mopac Trail (Platte River Trail Project - Highway 50 to Lied Bridge) for actual work performed with a not-to-exceed amount of $364,358.
Platte River Trail (Mopac Trail - Hwy 50 to Lied Bridge)
RESOLUTION

SIGNING OF A PROFESSIONAL SERVICES AGREEMENT – BK1308

Papio Missouri River Natural Resource District

County

Resolution No. ______

Whereas: Papio Missouri River Natural Resource District is developing a transportation project for which it intends to obtain Federal funds;

Whereas: Papio Missouri River Natural Resource District as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project;

Whereas: Papio Missouri River Natural Resource District and Ehrhart Griffin & Associates wish to enter into a Professional Services Agreement to provide construction engineering services for the Federal-aid project.

Be It Resolved: by the Board of Directors of Papio Missouri River Natural Resource District that:

Rick Kolowski, Chair of the Papio Missouri River Natural Resource District Board of Directors, is hereby authorized to sign the attached construction engineering services agreement between Papio Missouri River Natural Resource District and Ehrhart Griffin & Associates.

NDOR Project Number: STPB-77(49)

NDOR Control Number: 22191

NDOR Project Description: Platte River Trail – Phase 1

Adopted this ______ day of ______________, 2013 at ______________ Nebraska.

(Month) (Year)

The Board of Directors of Papio Missouri River Natural Resource District

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

Board/Council Member:

Moved the adoption of said resolution

Member ________ Yes ________ No ________ Abstained ________ Absent

Roll Call: ________ Yes ________ No ________ Abstained ________ Absent

Resolution adopted, signed and billed as adopted

Attest:

______________________________________________________________

Signature
PROFESSIONAL SERVICES, CONSULTANT
LPA PROJECTS
CONSTRUCTION ENGINEERING SERVICES

PAPIO MISSOURI RIVER NATURAL RESOURCE DISTRICT
EHRHART GRIFFIN & ASSOCIATES
PROJECT NO. STPB-77(49)
CONTROL NO. 22191
PLATTE RIVER TRAIL, PHASE 1

THIS AGREEMENT, made and entered into by and between the Papio Missouri River
Natural Resource District in Nebraska hereinafter referred to as the "LPA", and Ehrhart Griffin &
Associates, hereinafter referred to as the "Consultant", and collectively referred to as the
"Parties."

WITNESSETH:

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

WHEREAS, the LPA’s federal-aid project is designated as Project No. STPB-77(49), and

WHEREAS, the project identified above is solely the responsibility of the LPA; the
State’s involvement in this project is for the sole purpose of acting as the representative of the
Federal Highway Administration (FHWA) for eligibility of the project for federal funding, and

WHEREAS, the LPA used a qualification based selection process to select the
Consultant to provide Construction Engineering services, hereinafter referred to as Services, 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, LPA and Consultant wish to enter into this agreement to specify the duties
and obligations of the parties for the Services described herein, and

WHEREAS, Consultant is willing to perform 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
project related program requirements, so that Consultant’s costs of Construction Engineering
will be eligible for federal reimbursement, and

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

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

WHEREAS, the State has let or will let a construction contract for the project on behalf of the LPA, and

WHEREAS, the Consultant is required to use the State provided construction recordkeeping system (TransPort Site Manager), for the Services provided under this agreement.

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

SECTION 1. DEFINITIONS

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

“LPA” for this agreement LPA means Papio Missouri River Natural Resource District. In this agreement, LPA may also be used to refer to all Local Public Agencies, collectively. 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.

“CONSULTANT” means the firm of Ehrhart Griffin & Associates and any employees thereof, whose business and mailing address is 3552 Farnam Street, Omaha, NE 68131.

“SUBCONSULTANT/SUBCONTRACTOR” means the firm of Theile Geotech, Inc. and any employees thereof, whose business and mailing address is 13478 Chandler Rd, Omaha, NE 68138 and the firm of Kenneth D. Lathrum & Associates, P.C., and any employees thereof, whose business and mailing address is 1901 North 81st Street, Omaha, NE 68114 and the firm of Big Muddy Workshop, Inc. and any employees thereof, whose business and mailing address is 4502 South 42nd Street, Omaha, NE 68107.

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

“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.
“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
subrecipient of federal funds and any reference to the “State” in this agreement shall mean the
State on behalf of the United States Department of Transportation.

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

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

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

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

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

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

SECTION 2. 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 LPA and will end upon:
(1) the waiver of an audit review or (2) the final completion of an audit review by the State or its
authorized representative, and the resolution of all issues identified in the audit report.

SECTION 5. SCOPE OF SERVICES

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

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

Consultant and LPA have agreed that Exhibit "A" sets out the Services reasonably necessary and the costs reasonably estimated for Consultant Services to adequately observe, monitor, inspect, measure, manage, document and report so that LPA's project is constructed by the contractor in compliance with the Construction Contract Documents (definition below), the Manuals (definition below), State and Federal law, rule or regulation and policy. The Consultant agrees to provide the services listed on Exhibit "A" for Project STPB-77(49), Control No. 22191, in Sarpy County, Nebraska.

General Scope of Services:

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

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

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

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

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

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

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

Additional Requirements:

A. The Consultant shall advise the LPA when it appears any Disadvantaged Business Enterprise (DBE) working on the project is in need of assistance.

B. The Consultant shall make every effort to assist the Contractor or any Subcontractor in interpreting Project Plans, Special Provisions, Standard Specifications, other Construction Contract Documents, or the Manuals.

C. The Consultant will be present at the project site or available at LPA's Offices beginning on the date specified in the LPA's notice to proceed to the contractor, unless project work has not begun at the site; or, with at least 24 hours notice, at any prior date (1) when contract work begins or when materials are delivered to the project that need to be tested, sampled or inspected to verify conformance to the requirements of the Construction Contract Documents.

D. The Consultant will promptly review and approve or reject all construction work on the project, with the right, but not the duty, for the State and FHWA to review for compliance or funding eligibility.

E. All reports of field tests performed by the Consultant will be submitted weekly to the State Representative (two copies). Consultant will take prompt and appropriate action to reject or cause Contractor to remedy the work or materials that do not conform to the contract documents.

F. The Consultant shall comply with all Federal, State and local laws, rules or regulations, policies or procedures, and ordinances applicable to the work contemplated in this agreement.
G. Project time delays attributed solely to the Contractor will constitute a basis for a request for an equivalent extension of time for the Consultant. The parties understand that federal reimbursement of extra compensation must be approved in advance as described in the Fees and Payments Section of this agreement.

H. The sampling and testing type, method and frequency must be completed by Consultant according to the current State of Nebraska Manuals, including the Materials Sampling Guide and the State Standard Methods of Tests (www.dor.state.ne.us), and the Construction Contract Documents. For sampling or testing issues or situations that are not covered in the Construction Contract Documents or the Manuals, Consultant shall notify LPA, provide its advice and request that LPA decide what testing type, method or frequency should be applied for this project. Any test methods or procedures that are proposed to be used and are not covered by NDOR procedures must receive prior concurrence for use from NDOR and FHWA.

SECTION 6. STAFFING PLAN

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 field services for the work 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 “A” and is incorporated herein by this reference. During construction, the Consultant may make occasional temporary changes to the primary team. However, any permanent change to the primary team will require prior written approval from the LPA.

Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended services. Failure on the part of the Consultant to provide acceptable replacement personnel or qualified new personnel to keep the services on schedule will be cause for termination of this agreement and the Master 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. The form is available on the Department of Roads website at www.transportation.nebraska.gov/psitools/_foreign.htm.

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

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

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

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

SECTION 9. FEES AND PAYMENTS

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

For performance of the services under the terms of this agreement, the Consultant will be paid a fixed-fee-for-profit of $35,410.82 and up to a maximum amount of $328,947.18 for actual costs in accordance with Exhibit "B". The total agreement amount is $364,358.00.

SECTION 10. PROFESSIONAL PERFORMANCE (LPA CE Agreement)

The Consultant understands that the LPA will rely on the professional training, experience, performance and ability of the Consultant. Examination by the LPA, State, or FHWA, or acceptance or use of, or acquiescence in the Consultant's work product, will not be considered to be a full and comprehensive examination and will not be considered approval of the Consultant's work product which would relieve the Consultant from liability or expense that would be connected with the Consultant's sole responsibility for the propriety and integrity of the professional work to be accomplished by the Consultant pursuant to this 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 product of the Consultant is found to be in error or there are omissions therein revealed during or after the construction of
the project and revision, reconsideration or reworking of the Consultant's work product is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the notice of any errors, omissions or negligence within 24 hours and give immediate attention to necessary corrections. If the Consultant discovers errors, omissions, or negligence in its work, it shall notify the LPA within 24 hours. Failure of the Consultant to notify the LPA will constitute a breach of this Master 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 this 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 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 an 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.

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

SECTION 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 State or 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 11/4/11):
"CONFIDENTIAL INFORMATION: Federall 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 State of Nebraska [or 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 State or LPA 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 or 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 State or 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 State or the LPA for any liability that may ensue on the part of the State or 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 LPA or 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 services in effect at the time of the work.
SECTION 18. DISPUTES

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

SECTION 19. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE (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 (CE Agreements)

To the extent the work requires engineering services, the Consultant shall affix and sign the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all applicable documents, plans, specifications, and reports 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 sub agreements 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.
SECTION 27. SUBLETTING, ASSIGNMENT, OR TRANSFER

The Subconsultants/Subcontractors will provide structural engineering, landscape architectural and geotechnical services.

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

The Consultant shall enter into an agreement with its Subconsultants/Subcontractors for work covered under this agreement. All Subconsultant/Subcontractor agreements for work covered under this agreement must contain similar provisions to those in this agreement. No right-of-action against the LPA will accrue to any Subconsultant/Subcontractor by reason of this agreement.

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 LPA'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 LPA may terminate this agreement for cause or default.
   d. The Consultant shall provide immediate written notice to the LPA if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
   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 LPA 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 LPA 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 entire agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

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

EXECUTED by the Consultant this ___ day of ____________, 2013.

EHRHART GRIFFIN & ASSOCIATES
Daniel J. Dolezal

______________________________
Project Manager

STATE OF NEBRASKA )
)ss.
DOUGLAS COUNTY )

Subscribed and sworn to before me this ______ day of ____________, 2013.

______________________________
Notary Public

EXECUTED by the LPA on _________________________, 2013.

PAPIO MISSOURI RIVER
NATURAL RESOURCE DISTRICT
John Winkler

______________________________
General Manager

Subscribed and sworn to before me this ___ day of ____________, 2013.

______________________________
Clerk

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

______________________________
Date

Project No. STPB-77(49)
Control No. 22191
Platte River Trail - Phase 1
Template Revised 6-12-12

- 20 - Agreement No. BK1308
A. PROJECT DESCRIPTION

This scope provides for construction engineering services for the Platte River Trail in Sarpy County, Nebraska. The project consists of the following improvements: Construction of a 4 mile long, 10’ wide recreational trail with pedestrian bridge, grading and associated drainage improvements and culvert extensions.

Ehrhart Griffin & Associates (Consultant) shall serve as agent for Papio-Missouri River Natural Resources District, (LPA), representing the LPA in all matters related to construction engineering services for this project.

It shall be the responsibility of the Consultant to administer, monitor, and inspect construction such that the project is constructed in conformity with the plans, specifications, and special provisions.

The Consultant shall inspect the Contractor’s work to determine the progress and quality of work, identify discrepancies, report significant discrepancies to the LPA and Department, and direct the Contractor to correct such observed discrepancies.

B. APPLICABLE PUBLICATIONS

Work shall be done in accordance with the following materials as currently adopted at the time of letting:

1. AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing
2. The ASTM Standards
3. NDOR Materials Sampling Guide
4. NDOR Construction Manual
5. NDOR Standard Specifications for Highway Construction
6. Project Plans
8. Manual on Uniform Traffic Control Devices (MUTCD) and NDOR’s supplement to the MUTCD.
10. NDOR Standard Method of Tests for Laboratory and Field

C. LPA SHALL PROVIDE

The LPA, on an as needed basis, will furnish the following documents for the project.

1. Project description
2. Electronic Construction Plan files including current aerial photographs with project alignment, existing and new rights-of-way (ROW) and easements, and LOC, if available
3. Three copies of the Plans and Special Provisions
4. Roadside safety guidelines (Survey Crew Traffic Control Policy, see NDOR website)
5. Survey Field Books with control points and bench marks
6. NEPA Document
7. Site Manager NDOR software

These documents may be provided in either paper or electronic format.
D. CONSULTANT SHALL PROVIDE

1. Project Management and Coordination. This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices and monthly progress reports; prepare project correspondence with the LPA and/or NDOR; maintain project records; and perform other duties of the Project Manager as defined in the NDOR Standard Specifications for Highway Construction.

   1.1 Project Management activities shall include the following:

   - Contract negotiation with the LPA
   - Project Management – Provide management of project including staffing, scheduling, invoicing, progress reports, and coordination with designer.
   - Prepare Change Orders and submit copies to the appropriate parties for approval and full execution.
   - Maintain detailed Project Records and keep them current. All records shall be available at the LPA’s office.
   - Generate contractor’s progress and final Estimates in Site Manager
   - Review Contractor’s Construction Schedule
   - Coordinate with LPA and RC regarding all project activities.
   - Make entries of project data and diary information into Site Manager on a daily basis. Insure that inspectors and lab personnel are maintaining appropriate daily work reports and all material records.

2. Meetings. Project staff will meet with the LPA, the Contractor, and NDOR when requested by the State, and prepare minutes of the meeting. For some projects, a public meeting may be held and the consultant’s attendance may be required.

   2.1 Construction Inspection Planning Meeting - The LPA shall coordinate this meeting prior to start of construction to ensure roles and responsibilities are clear. Attendees should include the LPA RC, construction inspection personnel and NDOR State Representative.

   2.2 Pre-Construction Meeting - Prepare the agenda, attend, and distribute meeting notes.

   2.3 Construction Progress Meetings - Prepare the agenda, attend, and conduct periodic progress meetings with the LPA and/or NDOR personnel, contractor, sub-contractors, utility personnel, and other agencies affected by the project. FHWA shall be included for full Federal oversight projects. There will be approximately 27 weekly meetings.

   2.4 Public Meeting is NOT required.

   2.5 Assume 27 trips to the project site for meetings.

3. Traffic Control Plan. Consultant shall prepare a traffic control plan for the project site. These plan sheet(s) are to be signed by a Professional Engineer licensed in the State of Nebraska. Traffic Control plans shall be reviewed by the State Representative prior to placing in service (Owner will use checklist 12-72 to audit and document the Consultant’s completion of this activity). Once the plans are completed, they are to be submitted to the Person of Responsible Charge (RC).

   3.1 Prepare Traffic Control Plan in accordance to NDOR Standard Plans, MUTCD and the NDOR Supplement to the MUTCD. Sign and seal plans.

   3.2 Review and approve Traffic Control Plan (if Completed by Contractor) for conformance to the Contract’s Special Provisions.

   3.3 Submit Plans to the RC for their records.

4. SWPPP Inspections/Manual Updates. Consultant shall conduct inspections bi-weekly and after every 1/4" or greater rain event according to permit regulations. The Stormwater Pollution Prevention Plan (SWPPP) Manual shall be updated according to NDOR and/or LPA requirements.
4.1 Conduct 50 Inspections
4.2 Update SWPPP Manual and Temporary Erosion Control Plan
4.3 Assume 50 trips to the project site for SWPP inspections.

5. Construction Survey/Staking. The following tasks are required if the Consultant is providing Construction Surveying and Staking. This work shall be done in accordance with the NDOR Construction Manual.

5.1 Provide coordination of staking needs with Contractor.
5.2 Consultant shall verify and re-establish if necessary the survey control used during the preliminary engineering.
5.3 Stake limits of construction throughout project.
5.4 Mark removals including pavement removal limits. Stake right-of-way and construction easements.
5.5 Provide slope stakes for grading
5.6 Provide paving hubs. For structures storm sewer and pipe culverts; the consultant will provide grade stakes.
5.7 Provide cross-sections for new culverts before providing a Culvert Order List to Contractor.
5.8 Stake fence relocation and guardrail.
5.9 Stake silt fence.
5.10 Verify existing tie-in elevations and locations and adjust new pavement grades to meet existing pavement.
5.11 Assume 58 trips to the project site for construction survey/staking.

All items will be staked one time. Except for re-staking required for staking done incorrectly, re-staking will be considered out-of-scope. Consultant will invoice the LPA for the re-staking. If re-staking is required because of the activities of the Contractor, the fee for re-staking will be withheld from Contractor payment.

6. Construction Consultation/Site Manager & Daily Work Report (DWR). Consultant shall contact RC/Designer as needed to obtain plan clarifications/interpretations. Maintain and review project materials and promptly enter information into Site Manager. A copy of the Site Manager software will be provided to the Consultant.

6.1 Construction Consultation/Site Manager & Daily Work Report (DWR)
- Review and Enter Data into Site Manager
- Maintain Project Field Diaries, Files, and Record data in Site Manager
- Document and Review Daily Work Reports (DWRs)

7. Girder Shim Surveying. Not used

8. Perform Bearing Calculations. If pile driving is required on the project, the Consultant shall perform bearing capacity calculations in accordance with the NDOR Construction Manual.

8.1 Perform Bearing Calculations

9. Construction Inspection. Consultant shall perform material sampling and testing and complete inspection work and project management in accordance with the references list in Section B of this Exhibit. Consultant shall assume the duties of “Inspector,” (also referred to in the NDOR Construction Manual as “Construction Technician”); “Project Manager,” and also “Engineer” (unless the context of use of the term “Engineer” would otherwise require), as those terms are defined and duties set out in the Standard Specifications for Highway Construction. Consultant shall assume that it is responsible for all duties of the “Engineer” unless notified otherwise by RC on behalf of LPA.

9.1 Construction Inspection: Duties for construction inspection will include, but are not limited to, the following items:
- Conduct wage rate interviews and review payrolls for correctness and Davis-Bacon Wage Rate compliance
• Verify that the performance of the work is in conformance with the plans, specifications, and special provisions.
• Conduct reviews for compliance with Disadvantaged Business Enterprise (DBE) commitments
• The Consultant is required to create checklists to document assessment and compliance with all environmental commitments for the project. An Environmental Compliance Inspection Audit will be conducted by NDOR personnel. (NDOR will use checklist 12-20 to document the audit of the Consultant.) The environmental check list is to monitor and document construction activities for compliance with NEPA (Environmental Review Checklist, Section 404, NPDES, SWPPP, Threatened and Endangered Species, etc.)
• NDOR will provide the Initial Threatened and Endangered Species surveys required as outlined in the conservation conditions, and follow up survey training for the Consultant’s environmental inspection personnel. Follow-up surveys as may be required will be the responsibility of the Consultant. Any required surveys for compliance with the Migratory Bird Treaty Act will also be the responsibility of the Consultant. NDOR will not conduct these surveys.
• The Consultant will provide NDOR 30 days advance notice of the need for the initial T&E surveys so that NDOR personnel can be scheduled to perform this work.
• Review work zone traffic control devices daily and, at a minimum weekly interval, conduct a nighttime drive through review of temporary traffic control devices (per ATSSA Quality Standards for Work Zone Traffic Control Devices). Perform reflectivity check (CR form 431) of temporary devises at the start of construction activities and at six (6) month intervals or as conditions warrant.
• Collect, sign/date, and file all delivery tickets and material certifications. All required material certifications shall be submitted to NDOR Materials & Research Division accompanied by a completed DR-12 sample ID form or Site Manager Sample Record ID.
• Consultant shall forward shop drawings to the RC for review and approval by the design engineer. Shop drawing review is not part of the scope of services for this construction engineering agreement.
• Draft and review change order or time extension request including explanation of the issue and resolution and the justification for accepted prices and forward to RC. Once reviewed by NDOR and FHWA, proceed with the approval process. Forward a signed hardcopy to NDOR for further processing.
• Communicate and coordinate plan revisions and change orders with the Designer.
• Prepare a field checked culvert order list
• Prepare guardrail order list
• Generate periodic progress estimates using SiteManager and forward to RC for further approval.
• Review critical path schedule prepared by the Contractor for appropriateness and Current Controlling Operation (CCO) designation.
• On bridge projects, the Inspector shall take periodic survey shots with the assistance of one of the Contractor’s to ensure compliance with the plans.
Locate permanent pavement markings

9.2 Measure, calculate, and document quantities of pay items
9.3 Keep all records and data up-to-date so that all necessary information appears on the Weekly Report of Working Days when they are generated at mid-week.
9.4 Assume 235 trips to the site for construction inspection

10. Perform Material Sampling and Testing. The Consultant shall perform material testing as required in accordance with the references list in Section B of this Exhibit. All testing and sampling personnel shall be certified to perform these duties in accordance with the NDOR Materials Sampling Guide section 28. All non-NDOR Laboratories shall be pre-qualified by
NDOR’s Materials and Research Division to conduct the testing they are contracted to perform.

NDOR SHALL PROVIDE:

Typical testing done by NDOR Materials and Research’s Central lab (sampling and delivery for these materials is done by Consultant and submitted to NDOR):

All Aggregate
- Quality and Soundness acceptance testing
- Gradation verification testing

PG Binders & Emulsions
- All required acceptance testing

All Steel Products
- All testing required for heat number pre-approval and acceptance testing

Chemical Lab
- All required source pre-approval and acceptance testing

Smoothness
- NDOR will run all 10% verification testing for projects with Smoothness
- Specifications for pavement. NDOR will perform bridge smoothness testing on bridges receiving pavement on either side of the bridge

CONSULTANT SHALL PROVIDE:
(List of tests to be provided by NDOR)
10.1 Collect, verify, document and deliver all samples to testing lab
10.2 Collect, verify, document and deliver a copy of all required material certifications to the NDOR Materials and Research Central Lab.
10.3 Review and document test results of all samples and coordinate with owner for acceptance and incorporation into the project.
10.4 Assume 28 trips to the project site for Material Sampling and Testing.

11. As-Built Drawings. Prepare as-built drawings according to the LPA manual and the current directions from the NDOR Final Review Section.

11.1 As-Built Drawings

12. Final Inspections. Consultant shall prepare a punch list of items for the project site and conduct a final project walk-through inspection with the LPA RC and NDOR State Representative to verify that corrective work identified on the punch list has been completed.

12.1 Walkthrough of Site and Preparation of Punch List
12.2 Review Project to verify that Punch List work has been completed (Owner will use LPA Manual checklist 12-75 to audit and document the Consultant’s completion of this activity)

13. Project Closeout. Assist RC with compiling project construction records as requested. Assemble and transmit Final Construction Records to LPA RC in paper format (printed single sided), including:

13.1 Project Closeout activities shall include the following:
- Project Manager’s Final Estimate
- Copy of Consultant PM’s (representing LPA) Concurrence/Non-Concurrence Letter w/ Certified Mail Receipt Enclosed
- Copy of Contractor’s signed Concurrence/Non-Concurrence Letter
- Memo of Major Item Review
• Memo of Time Allowance Review (Required only if the Contractor has overrun on the Contract Time Allowance.)
• Borrow Site Memo
• City Agreement Letter
• Project Completion Memo - The Consultant’s PM should perform this in an e-mail to the NDOR Rep with the required information – check with the NDOR Rep for this. The Consultant should ensure that the LPA RC sends a letter of Tentative Acceptance (per NDOR format) to the Contractor – send copies to the NDOR Rep.
• Sign Deduction Memo (If required)
• Material Review Memo
• SiteManager PM Diary Report
• SiteManager Contract Item Report for all Contract Items
• All NDOR Spreadsheets and Workbooks used for Contract Item supportive documentation.
• All Contractor-provided Asphalt QA/QC Test Results (asphalt projects)
• Project Culvert Field Book with information per the NDOR Construction Manual
• Signed and stamped As Built Plans (full size)
• Copy of Evaluation(s) of Contractor
• LPA CE Project Closeout Checklist (LPA Manual Checklist 14-10)
• Deliver Final Construction Records to LPA RC, including Form DR-299 - Project Construction Conformity Certification and ensure that the LPA RC completes the LPA RC Project Closeout Checklist (LPA Manual checklist 14-20 and includes it in the Final Records provided to the NDOR State Representative for review)

14. **Other** (Additional project specific tasks may be added here)

14.1 Other
14.2 Other

E. **SCHEDULE**

1. Notice to Proceed: February 17, 2013
2. The Consultant shall provide a schedule of activities and deliverables upon award
# Revised #2 COST ESTIMATE

Papio-Missouri River NRD Trail

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<td><strong>Bridge @ STA 114+92</strong></td>
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<td>Level III Technician (hr.)</td>
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<td>14,657.00</td>
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</table>

**Other Services**

Any item or category not listed will be billed at our normal Fee Schedule rate in effect at the time of service.

---

Thiele Geotech Inc

Exhibit "A"
Page 1 of 1
SubConsultant

Thiele Geotech
Ehrhart-Griffin and Associates  
ATTN: Dan Dolezal  
3552 Farnam  
Omaha, NE  68131

PROJECT: Platte River CM  
RE: Scope of Services – Construction Phase

Dear Dan:

Please see below as an estimate of the structural engineering fees for the construction phase of the project. I am also enclosing my hourly 2011 rate schedule.

1. Culvert Extension at Station 167 + 45:
   (a) Field observation/report to observe footing rebar;  
       4 hrs. Engineer ($96 x 4)  
       1 hrs. Secretary ($40 x 1)  
       Site trip mileage (50 miles RT x $ .55/m)  
       $384.00  
       40.00  
       27.50  
       $451.50

   (b) Field observation/report to observe walls rebar;  
       Hours as outlined above in (a)  
       $451.50

   (c) Field observation/report to observe top slab rebar;  
       Hours as outlined above in (a)  
       $451.50

Estimated fee for Culvert at Station 167 + 45  
$1,354.50

Culvert Extension at Station 25 + 65:
   Tasks/hours same as outlined in Culver #1:

Estimated fee for Culvert at Station 25 + 65  
$1,354.50

Culvert Extension at Station 198 + 00:
   Tasks/hours same as outlined in Culver #1:

Estimated fee for Culvert at Station 198 + 00  
$1,354.50
2. Bridge Structures:
   (a) Field observation/report to observe re-steel in walls;
       4 hrs. Principal ($110 x 3.5) $385.00
       1 hrs. Secretary ($40 x 1)  40.00
       Site trip mileage (50 miles RT x $.55/m)  27.50
       $452.50
   (b) Field observation/report to observe re-steel in ties and deadman;
       Hours as outlined above in (a)  $452.50
   (c) Field observation/report to observe re-steel in abutments and slabs;
       Hours as outlined above in (a)  $452.50
   Estimated fee for bridge structures site observations:  $1,357.50

3. Shop Drawing Review:
   Shop drawings will be reviewed for the following items:
   (a) Rebar at culverts
   (b) Rebar at bridge
   (c) Railings
   (d) Structural steel
   (e) Bridge steel
       17 hrs. Principal ($110 x 17) $1,870.00
       6 hrs. Secretary ($40 x 6)   240.00
       $2,110.00
   Estimated fee for project shop drawings review:  $2,110.00

4. Record Drawings:
   1 hr. Principal ($110 x 1)  $110.00
   5 hrs. Technician ($70 x 5) 350.00
   1 hr. Secretary ($40 x 1)   40.00
   $510.00
   Estimated fee for project record drawings:  $510.00

5. Addendums and Bidding Quotes:
   4 hrs. Principal ($110 x 4)  $440.00
   2 hrs. Technician ($70 x 2)  140.00
   1 hr. Secretary ($40 x 1)   40.00
   $620.00
   Estimated fee for project addendums/bidding:  $620.00

1901 NORTH 81ST STREET • OMAHA, NEBRASKA 68114 • PHONE (402) 391-5861 • FAX (402) 391-5887

Exhibit "A"
Page 2 of 4
SubConsultant
Kenneth Lathrum & Assoc
6. Field Response for Contractor Errors:
   
   6 hrs. Principal ($110 x 6)  $660.00
   4 hrs. Technician ($70 x 4)  280.00
   2 hrs. Secretary ($40 x 2)  80.00
   Site trip mileage (50 miles RT x $ .55/m) (possible 2 trips)  55.00
   
   Estimated fee for field response for contractor error:  $1,075.00

Estimated GrandTotal - Scope of Services Construction Phase  $9,736.00

Sincerely,

[Signature]
Kenneth D. Lathrum
Structural Engineer

KDL/mjm

encl; 2011 Rate Schedule
HOURLY RATE SCHEDULE
PLATTE RIVER TRAIL

All Structural Engineering performed on an hourly basis will be charged in accordance with this rate schedule.

Principal $44.24/hr.
Engineer $37.40/hr.
Technician I $24.60/hr.
Administrative $15.70/hr.

Overhead Rate: 245.00% Fee for Profit Rate: 13.00%

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<td><strong>$3,674.52</strong></td>
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Exhibit "A"
Page 4 of 4
SubConsultant
Kenneth Lathrum & Assoc
An Agreement For The Provision Of Limited Professional Services
for
Ehrhart Griffin & Associates, Inc
Platte River Trail Construction Engineering
Sarpy County, Nebraska

This agreement is for limited professional landscape architectural services (hereinafter referred to as "Agreement") to be provided by the Big Muddy Workshop, Inc. (hereinafter referred to as "A/E") for Ehrhart Griffin & Associates, Inc. (hereinafter referred to as "Prime A/E") on the project detailed under Article 1.

ARTICLE 1
SCOPE OF SERVICES

This Scope of Services outlines the professional services required to provide limited construction engineering services associated with construction of the Platte River Trail which is to follow Nebraska Highway 31 from Highway 50 to the parking lot for the Lied Bridge located near Schramm State Park. The A/E’s work will primarily involve construction observation services and submittal review for the trail signage and seeding. The A/E will answer questions and provide clarifications to the Contractor during construction for the trail signage and seeding.

The project Owner is the Papio-Missouri River Natural Resources District.

Construction Engineering Services:
1.1 Pre-Construction Conference. The A/E will attend and participate in a pre-construction conference with the Owner, Prime A/E and Contractor to discuss construction requirements and issues. The Prime A/E will provide record meeting notes documenting the items discussed.
Deliverable: None

1.2 Construction Observation - Seeding. The A/E will provide two construction observation visits to review seed bed preparation and seeding installation in accordance with Article 3.9 of this Agreement. The A/E will document their observations and provide notes to the Prime A/E for distribution to the Owner and Contractor.
Deliverable: Construction observation record meeting notes

1.3 Construction Observation – Trail Signage. The A/E will provide one construction observation visit to review the location of proposed trail signs in the field prior to installation. The A/E will document their observations and provide notes to the Prime A/E for distribution to the Owner and Contractor.
Deliverable: Construction observation record meeting notes

1.4 Walk-Through at Substantial Completion. The A/E will conduct a site visit once the seeding and trail signage work has been completed to determine if the work has been installed in accordance with the contract documents. The A/E will document their observations and provide notes to the Prime A/E for distribution to the Owner and Contractor.
Deliverable: Construction observation record meeting notes

Exhibit “A”
Page 1 of 4
Subconsultant
Big Muddy Workshop
1.5 Final Walk-Through w/FHWA. The A/E will participate in a meeting on site with the Owner, Prime A/E and Federal Highway Administration representatives to review the completed project. 
Deliverable: None

1.6 Shop Drawing Review. The A/E will review shop drawings and submittals for trail signage and landscape seeding in conformance with Article 3.10 of this Agreement and the Project Manual. 
Deliverable: Shop drawing review forms for signage and seeding

1.7 Construction Coordination. The A/E will coordinate with the Prime A/E and Contractor in matters pertaining to the project throughout the construction process. The A/E will answer questions and provide clarification to the Contractor during construction for the trail signage and seeding. 
Deliverable: None

Additional Services
Any services required in addition to those listed in the Scope of Services will be performed upon written authorization from the Prime A/E at the A/E’s prevailing standard hourly billing rates plus reimbursable expenses as shown on Attachment “A”.

Excluded Services
Services not set forth above as Basic Services or Additional Services and listed in Article 1 of this Agreement are excluded from the A/E’s Scope of Services and the A/E assumes no responsibility to perform such services.

ARTICLE 2
FEE ARRANGEMENT

2.1 Professional Fees. The A/E agrees to provide the above services on a lump sum basis of Six thousand, seven hundred fifty-five dollars and no cents ($6,755.00).

2.2 Payment. The A/E will bill the Prime A/E on a monthly basis. Billings will be provided on dates necessary to meet the Prime A/E’s billing schedule. Payment terms are Prime A/E will pay A/E within three business days of receiving payment from the Owner. If Prime A/E elects not to bill the Owner monthly, the Prime A/E will pay the A/E in 30 days net. If payment is not received by the A/E as outlined in this Article, the Prime A/E shall pay as interest an additional charge of one-and-one-half (1.5) percent of the PAST DUE amount per month.
## Scope of Services

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<td>1.2 Const. Observation - Seeding (2 trips)</td>
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<td>1.3 Const. Observation - Trail Signage (1 trip)</td>
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<td>1.4 Walk-Through at Substantial Completion</td>
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<td>1.5 Final Walk-Through w/ PhWA</td>
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<td>1.6 Shop Drawing Review - Seeding &amp; Signage</td>
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<td>1.7 Construction Coordination</td>
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### Reimbursable Expenses:

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<td>Mileage</td>
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**Total Reimbursable Expenses**: $275

**BMW Inc. LUMP SUM FEE**: $6,755
# Big Muddy Workshop, Inc. Staffing Plan

Consultant: Big Muddy Workshop, Inc.  
ProjectNo.: STPB-77(49)  
ControlNo.: 22191  
ProjectName: Platte River Trail

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<td>Project Manager</td>
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<td>Designer/CADD Technician</td>
<td>Ryan Bentley</td>
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<td>Katie Swanson</td>
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*Salary Rate does not include Profit

**NOTES:** Overhead Rate 186.6%  
Fee for Profit Rate 13%

### Labor Costs

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<tr>
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<th>Salary Rate</th>
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Exhibit "A"  
Page 4 of 4  
Subconsultant  
Big Muddy Workshop
# CONSTRUCTION ENGINEERING SERVICES
## Project Cost

**Project Name:** PLATTE RIVER TRAIL  
**Project Number:** S70A-77169  
**Control Number:** 22191  
**Location (City, County):** LOUISVILLE, NEBRASKA, SARPY COUNTY  
**Firm Name:** EHRHART GRIFFIN & ASSOCIATES  
**Consultant Project Manager:** DAN DOLEZAL  
**Phone/Email:** 402-961-2314, ddolezal@ehrhartgriffin.com  
**LPA Responsible Charge:** GERRY BERINER, PAPIO - MISSOURI RIVER NATURAL RESOURCES DISTRICT  
**Phone/Email:** 402-315-1704, gberiner@papio.org  
**NDOR Project Coordinator:**  
**Phone/Email:**  
**Date:** December 17, 2012

### Direct Labor Costs:

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<th>Personnel Classification</th>
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**TOTALS:** 4667 $197,305.52

### Direct Expenses:

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**TOTALS:** $23,857.86

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**PROJECT COST:** $364,358.00
CONSTRUCTION ENGINEERING SERVICES
Consultant’s Estimate of Hours

Project Name: PLATTE RIVER TRAIL
Project Number: STPB-77(49)
Control Number: 22191
Location (City, County): LOUISVILLE, NEBRASKA, SARPY COUNTY
Firm Name: EHRAHRT GRIFFIN & ASSOCIATES
Consultant Project Manager: DAN DICKER

LPA Responsible Charge: GERRY DOYEN, PAPIO - MISSOURI RIVER NATURAL RESOURCES DISTRICT
Phone/Email: 402-315-1704, poyen@papio.org
NDOR Project Coordinator:
Phone/Email: 

Date: December 17, 2012

TASKS

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<td>3. Traffic Control Plan</td>
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Consultants Fee Proposal for CE Services
Estimate of Hours

Exhibit "A"
Page 2 of 5
### CONSTRUCTION ENGINEERING SERVICES

**Direct Expenses**

**Project Name:** PLATTE RIVER TRAIL  
**Project Number:** 2TP-77149  
**Control Number:** 22101  
**Location (City, County):** LOUISVILLE, NEBRASKA, SARPY COUNTY  
**Firm Name:** EHHRHART GRIFFIN & ASSOCIATES  
**Consultant Project Manager:** DAN DOLETAL  
**LPA Responsible Charge:** GERRY BOWEN, PAPIO - MISSOURI RIVER NATURAL RESOURCES DISTRICT  
**NDOR Project Coordinator:**  
**Phone/Email:** 402-315-1716, grbown@papioed.org  
**Date:** January 20, 2013

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<th>Unit Cost</th>
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**Printing and Reproduction:**

- **RFI responses:** | Quantity | Unit Cost | Amount |
- Total Subtotal: $2,000.00

**Mileage/Travel:**

- **272 trip at 28 m/trop @ 50.500ml** | 370 | $0.95 | $349.50 |

Total Subtotal: $349.50

**Lodging/Meals:**

- **NONE**

Subtotal: 0

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**Other Miscellaneous Costs:**

- **Mac Postage, Mailing, Deliveries by Messenger** | | | $500.00 |

Subtotal: $500.00

**TOTAL DIRECT EXPENSES**

$33,857.00
# CONSTRUCTION ENGINEERING SERVICES

## Staffing Plan

**Project Name:** PLATTE RIVER TRAIL  
**Project Number:** 01-211  
**Control Number:** 20191  
**Location (City, County):** LOUISVILLE, NEBRASKA, SARPY COUNTY  
**Firm Name:** EHRLART GRIFFIN & ASSOCIATES  
**Consultant Project Manager:** DAN DOLEZAL  
**Phone Email:** 402-881-2314, ddolezal@ehrlartgrippinc.com  
**LPA Responsible Charge:** CERVI SOWEL, RAPID - MISSOURI RIVER NATURAL RESOURCES DR  
**Phone Email:** 402-315-1704, cssowel@sowelnet.org  
**NDOR Project Coordinator:**  
**Phone Email:**

| Date: | December 17, 2012 |

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**Overhead Rate:** 175.00%  
**Fee for Profit Rate:** 12.00%

*Enter firms most recent Audited Overhead Rate, and Fee for Profit Rate calculated from the NDOR Fixed Fee Worksheet (available on the NDOR website).

**CLASSIFICATIONS:**

- **PR** = Principal  
- **FM** = Senior Engineering Manager  
- **ENG** = Engineering Project Manager  
- **EC** = Engineering Technician I  
- **SSC** = Survey Crew Party Chief  
- **SSM** = Survey Technician  
- **INSPECTION** = Construction Observer I  
- **ADM** = Office Manager  
- **DES** = Design Engineer  
- **DE** = Design Engineer  

**For User-Defined Classifications, you will need to edit the Classifications Legend located above. To enter a new classification, replace "UD" with its abbreviation (ex. GD) and replace "User Defined 1" with the corresponding title (ex. Graphic Artist). Once the user-defineds are edited, they will self-populate in the Labor Costs Table, as well as the remaining sheets.

**Blended Rates Table**

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Consultant's Fee Proposal for CE Services  
Labor Rates  
Exhibit "A"  
Page 4 of 5
## Construction Engineering Services
### Cost by Task

**Project Name:** PLATTE RIVER TRAIL  
**Project Number:** STP8-77(49)  
**Control Number:** 22191  
**Location (City, County):** LOUISVILLE, NEBRASKA, SARPY COUNTY  
**Firm Name:** EHRHART GRIFFIN & ASSOCIATES  
**Consultant Project Manager:** DAN DOLEZAL  
**Phone/Email:** 402-561-3314, ddolezal@ehrhartgriffin.com  
**LPA Responsible Charge:** GERRY BOWEN, PAPIO - MISSOURI RIVER NATURAL RESOURCES DISTRICT  
**Phone/Email:** 402-315-1764, gbowen@papiohr.org  
**NDOR Project Coordinator:**  
**Phone/Email:**  
**Date:** December 17, 2012

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### State of Nebraska Department of Roads

Required Document List

**Contract ID**: 2191  
**Control Number**: 33393.000  
**Project Number**: 7790-7740  
**Location**: PLATTE RIVER TRAIL - PHASE I  
**Type Of Work**: GR CONCRETE CURB & FENCE SENCH  
**Letting Date**: Oct. 30th, 2012

**DISCLAIMER**: This document may not include all material requirements for this project. Please refer to the Material Sampling Guide for a comprehensive list of the material requirements. This document will not reflect any changes made to the project after the project letting.

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**Legend**

- **TOS**: Test or Sample  
- **CC**: Contractor's Certification  
- **MC**: Manufacturer's Certification  
- **CDC**: Certification of Compliance  
- **DOT**: Certification of Test  
- **APL**: Approved Products List  
- **PMV**: Project Manager's Verification  
- **SP**: Special Provisions  
- **SDS**: Nebraska Standard Specification  
- **SR**: Shipping Reports  

Exhibit "A" Required Document List
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State of Nebraska Department of Roads
Required Document List

Contract ID 2191
Control Number 31569-000
Project Number SPFW-776(E)
Location PLATTE RIVER TRAIL - PHASE 1
Type of Work GR CONE PAVE CURL IR FENCE SIGN
Setting Date Oct. 25th, 2022

DISCLAIMER: This document may not include all material requirements for this project. Please refer to the Material Sampling Guide for a comprehensive list of the material requirements. This document will not reflect any changes made to the project after the project letting.

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*REFER TO THE SAMPLING GUIDE, PROJECT PLANS, SPECIAO PROVISIONS AND ROADWAY DESIGN DIVISION POLICY LETTER #04(597-01) REGARDING THE REQUIREMENTS FOR THE VARIOUS TYPES OF PIPE THAT CAN BE USED.
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**Payroll Summary**

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</table>

**Compliance Information**

- [Compliance Details]
- [Compliance Details]
- [Compliance Details]
FEES AND PAYMENTS

EXHIBIT “B”

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 $35,410.82 and up to a maximum amount of $328,947.18 for actual costs as defined in paragraph “H” of this section. The total agreement amount is $384,358.00. 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.
 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#forms2. 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 additatives 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 “12.00%”. 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:
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.
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.