

# Construction Proposal and Agreement

Projects under \$50,000

|  |               |   |       |
|--|---------------|---|-------|
| Submitted to:<br>Administrative Services – State Building Division “AS/SBD”  |               | Submitted by:   |       |
| 1526 K Street PO Box 98940<br>Suite 200  |               | Street  |       |
| City, State and Zip<br>Lincoln, NE 68508 Lincoln, NE 68509-8940  |               | City, State and Zip   |       |
| Contact:   |               | Contact:  |       |
| Phone  | Email         | Phone   | Email |
| Project Name   |               | Project Location  |       |
| Consultant   | Date of Plans | Date of Quote   |       |
| <p>We hereby submit a quotation for the above described project as follows:</p>  |               |   |       |
| <p>We propose to furnish material and labor, complete in accordance with the above plans and/or specifications, for the sum of : _____ Dollars ( _____ )</p>   |               |   |       |
| <p><input type="checkbox"/> <b>NEBRASKA CONTRACTOR AFFIDAVIT:</b><br/>Bidder hereby attests that bidder is a Nebraska contractor. “Nebraska contractor” shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this RFP.</p> |               |   |       |
| <p><b>Payment Terms:</b> Payment will be made by the AS/SBD in conjunction with the State of Nebraska Prompt Payment Act Neb. Rev. Stat. §81-2401 through 2408. The State may request payment be made electronically instead of by State warrant.</p>  |               |   |       |
| <p><b>General Conditions:</b> This agreement shall be governed by the terms and conditions contained in the AS/SBD General Conditions of the Contract for Small Projects, included with this Construction Agreement Proposal as pages (2 of 5) through (5 of 5).</p>   |               | <p>Authorized Signature _____<br/><b>Contractor</b></p> <p>Note: This proposal may be withdrawn if not accepted within 45 days of Date of Quote, above.</p> |       |
| <p><b>Acceptance of Proposal:</b> The above prices, specifications and conditions are satisfactory and are accepted. The Contractor is authorized to do the work as specified.</p>   |               | <p>Authorized Signature _____<br/>Rodney Anderson, Administrator</p> <p>Date of Acceptance _____</p>  |       |

**Administrative Services State Building Division  
General Conditions of the Contract for Small Projects**

**1. Definitions**

- 1.1 "Approved" or "As Selected" means approval or selection by Consultant or Architect/Engineer.
- 1.2 "Architect/Engineer" is the Architect or Engineer of Owner. He or she may act personally or by and through such assistants as may be duly authorized to act for the Architect or Engineer; however, in this Contract where the term Architect or Engineer is used, it shall be understood as referring to the Architect or Engineer appointed by the Owner and not to an assistant.
- 1.3 "Consultant" is the consulting architect or engineer that the Owner may have employed to perform professional services required for the planning and construction of the Project.
- 1.4 "Plans" or "Drawings" are used synonymously in this Contract.
- 1.5 "Subcontractor" includes any person, firm, partnership or corporation having a direct contract with Contractor to supply labor, materials or both for Work of the Contractor, but does not include those who merely furnish materials not fabricated to a special design according to the Plans and specifications of this Work.
- 1.6 "Surety" includes any person, firm, partnership or corporation that has executed, as Surety, the Contractor's performance bond securing the performance of the Contract.
- 1.7 "Work" or "Work of the Contractor" includes labor or materials or both, equipment, transportation, and other facilities necessary to complete the Contract.

**2. Contract Documents.** The Contract Documents consist of the accepted Proposal, Conditions of the Contract (Supplementary and other Conditions), Drawings, Specification, Addenda issues prior to the Proposal Acceptance, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. These Documents form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

2.1 The Agreement is this executed Department of Administrative Services Standard Form Contract Agreement between Owner and Contractor.

**3. Work of this Contract.** Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**4. Reserved.**

**5. Notice.** Where in any of the Contract Documents there is any provision with respect to the giving of notice, such notice shall be deemed to have been given; as to the Owner, when written notice shall be delivered to the Administrator of the Owner, or shall have been placed in the United States Mail, first class postage prepaid, addressed to the Administrator of the Owner; as to the Contractor, when written notice shall be delivered to the representative of the Contractor named in this Agreement or by mailing such written notice in the United States Mail, first class postage prepaid, addressed to the Contractor at the place stated as the address in this Agreement; as to the Surety on the performance bond, when a written notice is placed in the United States Mail, first class postage prepaid, addressed to the Surety at a home office of such Surety or to its agent or agents who executed such performance bond on behalf of such surety.

**6. Termination or Suspension.**

- 6.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause, or for insufficient appropriation or allocation of funds.
- 6.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience or insufficient appropriation or allocation of funds, Contractor shall:
- 6.2.1 cease operations as directed by Owner in the notice;
- 6.2.2 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- 6.3 In case of such termination for the Owner's convenience, or for insufficient appropriation or allocation of funds, the Contractor shall be entitled to receive payment for Work executed, and reasonable costs incurred as a direct result of such termination. However, in no case shall Contractor receive payment for any Work not executed, and Contractor shall not receive payment for overhead and profit on the Work not executed.

**7. Authority of Consultant or Architect/Engineer**

The AS/SBD may for professional service required for certain projects employ consulting architects or engineers -- in these documents referred to as the Consultant. The AS/SBD on certain other projects may direct that the professional services be performed by the staff of the AS/SBD under the direction of the Architect/Engineer. It will clearly be stated in the Proposal Form whether professional services are being performed by a Consultant or the Architect/Engineer.

The Consultant or Architect/Engineer has prepared the plans and specifications and shall make written interpretations of them. He or she shall approve all samples of material which are specified to be submitted for approval, approve the use of any equipment offered in lieu of that mentioned in the specifications and shall check and approve all shop drawings and details. He or she shall make periodic inspections of the project work and shall decide the quality of the work and material incorporated therein. He or she shall decide all questions which may arise as to the fulfillment of the Contract by the Contractor.

**8. Contractor's Superintendent**

During the course of the work on the site, the Contractor shall employ a competent superintendent and any necessary assistants, all satisfactory to the Consultant or the Architect/Engineer. The Superintendent shall not be changed except with the consent of the Consultant or the Architect/Engineer, unless the Superintendent proves to be unsatisfactory to the Contractor and ceased to be in his employ. The Superintendent shall represent the Contractor in his absence and all directions given by him shall be as binding as if given by the Contractor. Important decisions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

**9. Plans and Specifications -- Correlation**

The work shall be executed in strict conformity with the plans and specifications. Plans, drawings, and specifications are cooperative and supplementary. Portions of the work which can best be illustrated by the plans and drawings may not be included in the specifications and

portions of the work best described by the specifications may not be depicted on the plans or drawings. All items necessary to construct or erect a complete improvement, project, building or structure shall be furnished whether called for in the specifications or shown on the plans and drawings. Special conditions shall take priority over General Conditions: Detailed Specifications shall take priority over General Specifications and large scale drawings shall take priority over small scale drawings. In case of disagreement between the plans, drawings and specifications, or within any document itself, the better quality or quantity of work shall be estimated and the matter drawn to the attention of the Consultant or Architect/Engineer for decision.

**10. Shop Drawings**

All work on which shop drawings are required must be in strict accordance with such drawings when approved and no work for which shop drawings are required is to be started until after the approval of said drawings. Each shop drawing shall be submitted to the Consultant or Architect/Engineer in the quantity specified by the Consultant or Architect/Engineer. Sufficient quantity shall be submitted to provide three sets of all approved submittals to the Owner.

All shop drawings must be checked and completed in every respect, numbered consecutively, have the name of the project printed thereon, and each lot must be submitted accompanied by a letter of transmission referring to the number of drawings and the name of project for identification and especially drawing the Consultant's or Architect/Engineer's attention to any modification of plans and specifications that may have been made.

The Contractor shall make any corrections required by the Consultant or Engineer and resubmit corrected sets to him for approval in the same quantity as the initial submittal.

After the shop drawings have been approved, any portion of shop drawings which modify the plans shall be rejected as soon as such modification is discovered unless said modification has been specifically pointed out to the Consultant or Architect/Engineer as stipulated above and specific approval secured. The approval of such shop drawings will be only general in character and shall in no way relieve the Contractor from any responsibility for the accuracy of the shop drawings or from proper fitting and construction of the work, or from the necessity of furnishing all materials and workmanship required by the drawings and specifications which may not be indicated on shop drawings when approved.

**11. Materials -- Tests and Standards**

Samples of materials selected by the Consultant or Architect/Engineer to be tested must be furnished by the Contractor. Tests will be made at no cost to the Contractor. Where not otherwise specified, all materials shall meet the A.S.T.M. Standard or tentative specifications for that material. The Contractor, when requested, shall furnish a sample of all material which shall be kept on the job as basis for comparison of material incorporated in the Work.

**12. Obsolete Equipment**

The AS/SBD may award contracts to be protected as much as possible against the discontinuance of the make of equipment to be purchased, and that repair parts, and services of expert factory representatives, be made available if desired. Under these conditions the Contractor shall not furnish equipment not currently in production.

**13. Patents**

The Contractor and his Surety shall hold harmless the AS/SBD, its officers, agents, and employees from liability of any nature or kind including costs and expenses, for or on account of any patented invention, articles or appliances manufactured or used in the performance of this Contract unless otherwise specifically stipulated in this Contract.

**14. Other Contracts**

The AS/SBD may award contracts for additional work and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under the other contracts as may be directed by the Consultant or Architect/Engineer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

**15. Assignment of Contract**

The Contractor shall not assign this Contract or any part hereof without the written consent of the AS/SBD. No assignment of this Contract shall be valid unless it contains a provision that the funds to be paid to the Assignee under the Assignment are subject to a prior lien for services rendered or materials supplied for the performance of work called for in said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

**16. Subcontracting**

The Contractor shall be fully responsible to the AS/SBD for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them. The Contractor shall be responsible for assigning, coordinating, and achieving completion of all subcontracted work to satisfy all requirements of the Contract Documents in a timely and proper manner. All subcontracted work shall be subject to all requirements of the Contract Documents except those legal contractual duties for which only the Contractor has exclusive responsibility as specifically assigned by the Contract Documents. Nothing contained in the Contract shall create any Contractual relation between any subcontractor and the AS/SBD. The attention of the Contractor and subcontractors are called to the Contract Documents which are part of this Contract. The Contractor must notify the AS/SBD of each subcontract he intends to award, giving:

| Name and address of subcontractor | Branch of work concerned | Total price of subcontract |
|-----------------------------------|--------------------------|----------------------------|
|-----------------------------------|--------------------------|----------------------------|

**17. Contractor's Insurance**

The Contractor shall not commence work under this Contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the Owner nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Owner (or Contractor). Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

**(a) WORKER'S COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this Contract the statutory Workers' Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

**(b) PUBLIC LIABILITY INSURANCE AND AUTOMOBILE INSURANCE**

The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operation be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

**(c) INSURANCE-BUILDER'S RISK**

Unless otherwise provided, the Contractor shall purchase and maintain Builder's Risk Insurance for the entire value of the project and work site, from a company or companies lawful authorized and licensed to do business in the jurisdiction in which the Project is located. This insurance shall be written on an "all-risk" policy form and shall include interests of the Owner, the Contractor, and Sub-contractors in the Work, and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief. A loss insured under Contractor's property insurance shall be adjusted with the Owner and made payable to the Owner as fiduciary for the insured, as their interests may appear.

(d) **INSURANCE COVERAGE AMOUNTS REQUIRED**

- |   |                                |
|---|--------------------------------|
| 1) Workers' Compensation and Employer's Liability   |                                |
| State   | Statutory                      |
| Applicable Federal  | Statutory                      |
| Employer's Liability  | \$100,000 per Accident         |
| 2) Comprehensive General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operations, Broad Form Property Damage): |                                |
| Bodily Injury   | \$1,000,000 Each Occurrence    |
| \$2,000,000 Aggregate   |                                |
| Property Damage   | \$1,000,000 Each Occurrence    |
| \$2,000,000 Annual Aggregate  |                                |
| 3) Contractual Liability  |                                |
| Bodily Injury   | \$1,000,000 Each Occurrence    |
| Property Damage   | \$1,000,000 Each Occurrence    |
| \$2,000,000 Aggregate   |                                |
| 4) Personal Injury  |                                |
| With Employment Exclusion deleted   | \$1,000,000 Aggregate          |
| 5) Comprehensive Automobile Liability (including owned, non-owned, and hired vehicles)  |                                |
| Bodily Injury   | \$1,000,000 Each Person        |
| \$1,000,000 Each Occurrence   |                                |
| Property Damage   | \$1,000,000 Each Occurrence    |
| 6) Umbrella Excess Liability Over primary insurance   | \$1,000,000                    |
| 7) Property Insurance (Builders Risk).  | 100% of work completed values. |

**18. Evidence of Coverage**

The Contractor shall furnish the Owner with documentary evidence of insurance coverage which shall be in the form of signed certificates submitted in duplicate. These certificates shall include the name of the company, serial number of the policy, effective dates, dates of expiration and amounts and types of coverage afforded.

The State of Nebraska shall be named additional insured on all policies applicable to the project and following clauses and endorsements must be added to the certificates for the respective types of insurance. If the clause or endorsement is placed on the reverse side of such certificate, it should be followed by the signature of the official of the company who signs the certificate. All certificates must contain the following two clauses of endorsement:

"The insurance contract referred to herein provides complete coverage within the limits stated for the type of insurance mentioned covering all the insured's operations in connection with the insured's contract on the \_\_\_\_\_ (Project Name)."

"Said insurance contract also provides that it cannot be canceled by the insurer in less than ten days after the insured has been given written notice of such cancellation."

**19. Protection of Persons and Property**

The Contractor shall take all reasonable and proper precautions to protect persons and property from injury or damage resulting from his or her operation under this Contract. The requirements of the Nebraska Safety Codes adopted by the Nebraska State Department of Labor shall be applicable.

The Contractor shall protect all existing buildings, roadways, landscaping, and utilities against damage or interruption of services. It shall be the responsibility of the Contractor to correct health or safety hazards and repair property damage that results from their work. Such corrections shall be performed to restore conditions to at least the quality that existed at the time of commencement of this Work.

**20. Prosecution of the Work and Completion Date**

The work embraced in this Contract shall be started on the earliest possible date after the signing of contracts by both parties, and shall be carried on regularly and uninterruptedly thereafter, with such forces and by such means as will insure final completion of the entire Contract on or before the completion date set in the documents. The time of beginning, rate of progress and time of completion are essential conditions of the Contract.

The Contractor expressly agrees that in undertaking to complete the work within the Contract period fixed in the Contract Documents, he has taken into consideration and made allowances for all delays and hindrances incidental to such work, whether growing out of delays in securing materials or workmen, or otherwise.

Should the Contractor be delayed in the prosecution and completion of the work by a cause beyond his control, he shall have no claim or right of action for damages from the Owner for any such cause or delay unless the cause or delay is the result of active interference by the Owner. The Contractor will in such case be granted an extension of time specified for completion of the work as the Owner may award in writing on account of such delay; provided however, that claim for extension of time is made by the Contractor to the Owner, through the Consultant or Architect/Engineer, in writing, within two weeks from the time when such alleged cause for delay occurred. The Owner reserves the right to withhold granting of any time extensions until the stipulated Contract period is about to expire.

The Owner, at his discretion, may waive the above requirements and grant extensions of time for any reasons he deems valid. Time extensions will not be granted for rain, wind, flood, or other natural phenomenon of normal intensity (what is normal intensity for a flood or wind or rain?) for the locality where the work is performed.

An extension of the Contract period may be granted by the Owner for any of the following reasons:

- (a) Additional work resulting from modification of the plan for the project.
- (b) Delays caused by the Owner.
- (c) Other reasons beyond the control of the Contractor which in the Owners' judgment would justify such extension.

No extension of the Contract period will be allowed for variation between contract quantities and actual quantities which cannot be predetermined and which amount to less than twenty-five percent (25%) of the contract quantities.

**21. Reserved**

**22. Use of Job Site**

The Contractor shall confine his or her equipment, apparatus, the storage of materials, and operations of his or her workers to limits indicated by law, ordinance, permits, or directions of the AS/SBD and shall not unnecessarily encumber the premises with his materials.

The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce the Consultant's or Architect/Engineer's instructions regarding signs, advertisement, fires, and smoke.

**23. Labor**

All labor shall be performed in best and most workmanlike manner by mechanics skilled in their respective trades. The standards of the work required throughout shall be of such quality as will produce only first class results.

Mechanics whose work is unsatisfactory to the Consultant or Architect/Engineer, or are considered to be unskilled or otherwise objectionable, shall be instantly dismissed from the work upon notice to the Contractor from the Consultant or Architect/Engineer.

Contractors and subcontractors employed upon the work shall be required to conform to the labor laws of the State of Nebraska, and the various acts amendatory and supplementary thereto; and all other laws, ordinances, and legal requirements applicable thereto.

**24. Inspection**

The AS/SBD, through its authorized representatives and agents, shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and any data and records.

The Architect/Engineer shall, at all times, have access to the work and the premises used by the Contractor and to all places of manufacture where materials are being made for use under this Contract, and shall have full facilities for determining that such materials are being made strictly in accordance with the plans and specifications.

**25. Defective Work or Material**

Work or material not in accordance with the Plans and Specifications, or in any way defective shall be removed at once on order of the Consultant or Architect/Engineer. The Contractor shall replace or rebuild at Contractor's own expense with satisfactory material and in a workmanlike manner any work so removed and shall reimburse the AS/SBD or any expense that it is put to by reason of extra work, and shall reimburse any other contractor who may incur expense caused by removal of the defective work.

**26. Termination for Breach**

In event that any of the provisions of this Contract are violated by the Contractor or any of his subcontractors, the AS/SBD may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor such violation shall cease and satisfactory arrangements for correction be made, the Contract shall, upon the expiration of said ten (10) days cease and terminate. In the event of any such termination, the AS/SBD shall immediately serve notice thereof upon the Surety and the Contractor. The Owner may take over the work and prosecute the same to completion of Contract for the account and at the expense of the Contractor. The Contractor and his Surety shall be liable to the AS/SBD for any excess cost occasioned the AS/SBD thereby and in such event the AS/SBD may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore. Neither the Owner nor any member or employee thereof shall be in any way liable or accountable to the Contractor or his surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid therefore.

**27. Reserved.**

**28. Payment**

So long as the work herein contracted for is carried out in accordance with the provisions of the Contract, the Contractor may, on or before the 25th day of each month, make an appropriate estimate of the value of the work performed during the month and the materials suitably stored on the work site, and shall prepare an Application And Certification For Payment and the Continuation Sheet and submit them to the Consultant. After such Application and Certification for Payment is approved by the Consultant or Architect/Engineer, the AS/SBD will pay to the Contractor in State warrants and in accordance with the payment provisions in the contract, ninety percent (90%) of the amount thereof. The AS/SBD may at any time reserve and retain payment. However, prior to final payment, the total paid to the Contractor shall not exceed ninety percent (90%) of the estimated value of the work performed and materials stored at the site.

The Contractor shall pay:

- (1) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered;
- (2) for all articles, tools, and other expendable equipment for at least 90% of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered to and properly stored at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in which such materials, tools, and equipment are incorporated or used; and
- (3) to each of his subcontractors not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of each such subcontractor's interest therein.

**29. Extra, Additional, or Omitted Work – Payment For**

The AS/SBD shall have the right, at any time and without notice to the Sureties, to alter and modify the Plans and Specifications, thus making specific changes in the construction, details, or execution of the work. All changes in plans and specifications will be made by the AS/SBD in writing. The Contractor shall make such alterations as may thus be ordered by the AS/SBD and in case these changes increase or decrease the amount of work to be done under this Contract, equitable amounts in price and time will be added to or deducted from the Contract price and Contract time. The amount of such increase or decrease to be agreed upon between the Owner and the Contractor before the changes are made.

When directed in writing by the Consultant or Architect/Engineer and with approval of the AS/SBD, the Contractor shall furnish all material and labor not otherwise provided for by the terms of this Contract, but which may be connected with or necessary to the proper completion of the Work. Such material and labor shall be furnished and completed as part of this Contract and subject to its provisions. The payment for any such work shall be determined by agreement between the Owner and the Contractor before the extra work is commenced, either on the basis of the unit price, or a lump sum price, or on a limited cost-plus basis not to exceed the specified limit.

The payment for extra, additional or omitted work to be performed by the contractor or subcontractors using their own forces shall be as follows: for all labor and foreman in direct charge of the specific operations, including liability and workers' compensation, the Contractor shall receive the wage rate agreed upon in writing before starting such work, for each hour that said labor, teams and foreman are actually engaged in such work, to which shall be added an amount for profit and overhead combined equal to 10% of the sum thereof. The wages of any foreman or time keeper who is employed partly on "cost-plus" work and partly on other work, shall be prorated between the two classes of work according to the number of employees employed on each class of work as shown by the payroll.

For all materials being permanently incorporated or installed into the Work, the Contractor shall receive the actual cost of such material delivered to the Work, including freight and handling charges as shown by original receipted bills, to which cost shall be added a sum equal to an amount of 10% thereof for profit and overhead combined as agreed to in advance by the Owner.

If it is necessary for the Contractor to rent equipment in the performance of such work, he will be allowed the actual rental price paid, if reasonable, for the actual time that such equipment is in use on the work and to which sum 10% shall be added for profit and overhead combined.

For contractors and subcontractors, prices submitted by their respective subcontractors for labor, materials, rentals, overhead and profit may be marked up a maximum of 5%.

No claims for extra work will be allowed unless accompanied by a written change order from the Consultant or Architect/Engineer and approved by the AS/SBD authorizing such extra work and defining the agreed basis of payment.

The Contractor shall, immediately after completing extra work, file with the Architect/Engineer, in writing, all claims for extra work performed. If the Contractor shall fail to make such claims within 30 days, Contractor's right to extra pay for such work shall be deemed to have been waived and forfeited and he or she shall not be entitled to any payment on account of such extra work.

### 30. Contractor's Payments for Labor and Materials

The Contractor shall pay for all labor and materials used or furnished in the performance of this Contract. Before final payment, the Contractor must certify that all bills for labor and materials have been paid. In event he is requested and fails to furnish satisfactory evidence, the AS/SBD may withhold any payments until it is satisfied that all such claims have been paid.

### 31. Owner's Right to Withhold Payment and Make Application Thereof

In addition to the payment to be retained by the AS/SBD under the preceding provisions of these General Conditions, the AS/SBD may withhold a sufficient amount of any payment otherwise due to the Contractor to cover:

- (a) payments that may be earned or due for just claims for labor or materials furnished in and about the performance of the work on the project under this Contract;
- (b) for defective work not remedied, and for damage to existing conditions or new work not remedied; and
- (c) for failure of the Contractor to make proper payments to his subcontractor.

The AS/SBD shall disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. The AS/SBD will render to the Contractor a proper accounting of all such funds disbursed on behalf of the Contractor.

### 32. Clean Up

On or before the completion of the work, the Contractor shall clean all parts of the Work under his Contract. He or she shall remove all rubbish and all his materials, tools, and equipment from the construction site, leaving the site in a condition as good or better than that existing at commencement of the Work.

The Contractor shall from time to time clean up and remove from the project rubbish and debris resulting from his work, and shall at completion of the Work remove all construction materials and equipment, leaving the project and site clean.

### 33. Final Inspection

When the work has been substantially completed, the Contractor shall notify the Consultant or Architect/Engineer, in writing, that the work is ready for final inspection and testing on a definite date and time as stated in such notice. The notice shall be given at least ten (10) days in advance of said date.

After the final inspection has been completed, the Consultant or Architect/Engineer shall present to the Contractor and the AS/SBD a report ("punch list") listing all deficiencies found in the inspection of the Contractor's work which are to be corrected. The Contractor shall immediately make the required corrections to remove the deficiencies reported by the Consultant or Architect/Engineer. When the deficiencies have been removed, the Contractor shall request in writing a reinspection of the work by the Consultant or Architect/Engineer.

### 34. Final Payment

As soon as practical after completion and acceptance of the Work, the Consultant or Architect/Engineer shall prepare a final payment statement showing the final payment due. After approval by the Contractor and the AS/SBD, the final payment shall be processed in accordance with the payment provisions in the contract.

### 35. Guarantee of Work

(a) Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one year from the date of final completion of the Contract.

(b) If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which, in the opinion of the Consultant or Architect/Engineer are rendered necessary as a result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the Contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner:

- (1) Place in satisfactory condition all of such guaranteed work, correct all defects therein, and
- (2) Make good all damages to the building or project work, or equipment or contents thereof, which, in the opinion of the Consultant or Architect/Engineer is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- (3) Make good any work or materials, or the equipment and contents of said building or project work disturbed in fulfilling any such guarantee.

(c) In any case where fulfilling the requirements of the Contract, and guarantees, the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Consultant or Architect/Engineer and guarantee such restored work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, after notice, fails to proceed promptly (a number of days to perform is preferable to "promptly") to comply with the terms of the guarantee, the Owner may have defects corrected and the Contractor and his Surety shall be liable for all expenses incurred.

(e) All special guarantees applicable to definite parts of the work that may be required by the Contract Documents shall be subject to the terms of this paragraph.

### 36. Unemployment Compensation Fund

The Contractor shall make payments to the Unemployment Compensation Fund of the State of Nebraska all contributions and interest due under the provisions of Section 48-601 to 48-669, Revised Reissue Statute of Nebraska, on wages paid to individuals employed in the performance of this Contract as required by Section 48-657, Revised Reissue Statute of Nebraska.

Under the requirements of Section 48-657, Revised Reissue Statute of Nebraska, the AS/SBD cannot make payment to the Contractor on the final three percent (3%) of the Contract without first receiving from the Contractor a written clearance from the Commissioner of Labor certifying that all payments then due for contributions or interest which may have arisen under such Contract have been made by the Contractor, or his subcontractors, to the Unemployment Compensation Fund.

### 37. Preconstruction Conference

A preconstruction conference shall be scheduled before starting construction, no later than 15 days after the date of the Agreement. It shall be held at the project site, or other convenient location. The meeting shall review responsibilities and personnel assignments of the Owner, Contractor, and the Consultant.

Authorized representatives of the Owner, Contractor, and the Consultant shall attend the preconstruction conference, as will the Contractor's superintendent, major subcontractors, manufacturers, suppliers, and other parties integral to the completion of the Work. All participants shall be familiar with the project and authorized to make decisions for the entities they represent.

The preconstruction conference will include discussion of items necessary for project progress and successful completion, such as: construction scheduling; critical work sequencing; designation of responsible personnel; procedures for processing field decisions and change orders; procedures for processing Applications for Payment; distribution of Contract Documents; submission of Shop Drawings and product data a samples; preparation of record documents; use of the premises; parking availability; office, work, and storage areas; equipment deliveries and priorities; safety and first aid procedures; security; housekeeping; working hours; and other matters deemed important by the Owner.

### 38. Miscellaneous Provisions.

38.1 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

38.2 The State of Nebraska, its officers and employees shall be held harmless from claims arising from the actions or omissions of Contractor, its sub-contractors, agents or employees. Contractor agrees to indemnify the State for any such claims.

38.3 Contractor affirms that it complies with and will continue to comply with the Nebraska Fair Employment Practice Act and Title VI of the Civil Rights Act of 1964, as amended. Contractor affirms that no person (including employees or applicants for employment) shall, on the grounds of age, creed, sex, physical handicap, race or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under this Contract or in any other project, program or activity supported by this Contract. The Contractor agrees that in performance of this Contract neither he nor his subcontractors will discriminate against any of their employees or applicants for employment concerning the employees' hire, tenure, terms, conditions or privileges of employment based on the employees' or applicant's race, color, religion, sex, marital status, age, disability, or national origin. Contractor agrees to comply with all applicable provisions of the Federal Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990, as amended, Section 5043 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended, and the Nebraska Fair Employment Act, as amended. Contractor agrees to comply with amendments to these laws effective during the term of the agreement. Contractor further agrees to include similar provisions in all subcontractors for services allowed in connection with this Contract.

38.4 Contractor certifies that as a conditions of the Agreement, neither the Contractor nor the employees of the Contract shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. The Department of Administrative Services reserves the right to request a copy of the Contractor's Drug Free Work Place policy at any time. Contractor further agrees to insert a provision similar to this statement in all sub-contracts for services required under this Agreement.

38.5 This Agreement shall be governed by the laws of the State of Nebraska. Contractor agrees to comply with all applicable Federal, State and local rules, regulations, ordinances, and laws.

38.6 As per requirements of Neb. Rev. Stat. §§ 81-1716 through 81-1719, Contractor warrants that he or she has not employed or retained any company or person, other than bona fide employees working for Contractor, to solicit or secure this Agreement and that he or she has not paid, or agreed to pay, any person, company, corporation, partnership, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award for the making of this Agreement.

38.7 The Contractor is required and hereby 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. 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.

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

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

38.9 If awarded this contract, bidder hereby grants permission to the State of Nebraska and/or its Agencies to reprint or republish any and all copyrighted documents related to this response to Request for Proposal and any and all figures, illustrations, photographs, charts, and other supplementary material online pursuant to Neb. Rev. Stat. §84-602. This waiver does not apply to any and all proprietary information properly submitted in a separate sealed package that is clearly marked "Proprietary."

38.10 Bidder Represents and warrants that the content of this response to Request for Proposal And all figures, illustrations, photographs, charts, and other supplementary material herein are original and do not libel anyone or infringe upon any patent, copyright, proprietary right, or any other right whatsoever of any other party. Bidder represents and warrants that he/she has full power and authority to execute this Copyright Release and to grant the State of Nebraska and/or it's agencies the right granted herein.

38.11 Bidder agrees to indemnify, defend, and hold harmless the State of Nebraska and/or its agencies against any and all claims, suits, and/or judgments, including costs, expenses, damages, and reasonable legal fees based upon and arising from Bidder's violation of the rights of others and/or by reason of a breach of any of the foregoing warranties.

38.12 Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect Statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

**END OF CONTRACT**