

**MEMORANDUM OF UNDERSTANDING FOR  
CITY OF LINCOLN and LANCASTER COUNTY, NEBRASKA  
COOPERATIVE CONTRACT  
MOU033**

**Contract Title: On-Call Guardrail Repair and Replacement Services**

**Lead Entity and Contract Number: Nebraska Department of Transportation**

**Contract No. QH1804**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is hereby issued to **Garcia-Chicoine Enterprises, Inc., PO Box 703, Milford, NE 68405** hereinafter called "Contractor", from the City of Lincoln, Nebraska, a municipal corporation, and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska hereinafter called the "Owners" for the purpose of the Contractor and the Owners agreeing to the terms and conditions provided in this MOU

The Contractor and the Owners hereby agree to the following supplemental Terms and Conditions from those in the Lead Contract listed above:

## **TERMS AND CONDITIONS**

### **A. PARTICIPATING TERM**

The Owners shall participate in the Lead Contract from September 1, 2018 through August 31, 2019. Upon conclusion of the initial term, the Owner has the option of renewing under the same terms and conditions according to the renewals allowed by the Lead Contract for five (5) additional one (1) year terms.

### **B. SCOPE**

The Contractor shall provide the same scope of services and provide the same products as set forth in the Lead Contract.

### **C. PRICING**

Pricing for these goods and/or services shall be pursuant to the Lead Contract, a copy thereof is attached to this Memorandum

### **D. CONFLICTING TERMS**

To the extent other terms and conditions attached hereto conflict with the terms and conditions stated herein, the parties agree that conflicts among the documents comprising this Memorandum shall be resolved according to priority, and that a document's priority shall be determined according to the order in which the document appears in the list below in section "E. Memorandum of Understanding Documents".

### **E. MOU DOCUMENTS**

**The following documents comprise the Memorandum of Understanding:**

1. This Memorandum of Understanding and associated Terms and Conditions;
2. Copy of NDOT Contract No. QH1804
3. Insurance Requirements/Certificate of Insurance;
4. Tax Forms

### **F. LAWS**

The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this Memorandum of Understanding. During the term of the MOU, the Contractor shall perform all services and/or supply all goods in accordance with the established and applicable standards and in accordance with applicable State and Local laws.

### **G. IMPLIED REQUIREMENTS**

All products and services not specifically mentioned in this document or the Lead Contract, but which are necessary to provide the functional capabilities described in the Lead Contract, shall be included.

### **H. CONTRACT MODIFICATION**

The MOU shall be modified only by a written MOU amendment and approval of the parties. No alteration or variation of the terms and conditions of this Memorandum shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

### **I. TERMINATION**

This MOU may be terminated by the following:

1. Termination for Convenience. Either party may terminate this MOU upon thirty (30)

- days written notice to the other party, for any reason, without penalty.
2. Termination for Cause. The Owners may terminate this MOU for cause if the Contractor:
    - a. Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or products pursuant to the Lead Contract or;
    - b. Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders or;
    - c. Otherwise commits a substantial breach or default of any provision of the Lead Contract or this MOU. In the event of a substantial breach or default the Owners will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the MOU shall terminate.
  3. In the event that funding is not available to continue with services as written, the Owner(s) reserve the right to terminate use of the MOU for convenience with no financial obligation to the Contractor, Subcontractors or other stakeholders except for any amount due for services rendered or products supplied prior to notice of cancellation.

The Owner(s) may terminate this MOU in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the Owner(s). In the event of unavailability of funds to pay any amounts due under the MOU, the Owner(s) shall immediately notify the Contractor and the MOU shall terminate without penalty or expense to the Owner(s). Upon termination, the Owner(s) shall pay the Contractor for any approved and documented services or products completed or purchased up to the date of termination, but not to exceed the maximum amount allowed by the Lead Contract or this MOU.

**J. SEVERABILITY**

If any provision of this MOU is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the MOU shall not be affected and each provision of the MOU shall be enforced to the fullest extent permitted by law.

**K. ASSIGNMENT**

This MOU shall not be transferred to/or assigned to another Contractor without prior written consent confirming approval by the Owners. Any assignment without such prior written consent shall be absolutely void.

**L. FORCE MAJEURE**

Neither party shall be liable for any costs or damages from its inability to perform any of its obligations under the MOU due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the Lead Contract or this MOU. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Owners may grant relief from performance of the MOU if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest on the Contractor. To be released based on a Force Majeure Event, the Contractor shall file a written request for relief with the City of Lincoln/Lancaster County Purchasing Division. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the Contract.

**M. ATTORNEY'S FEES**

In the event of any litigation, appeal, or other legal action to enforce any provision of the MOU, the Contractor agrees to pay all expenses of such action, as permitted by law, including Attorney's fees and costs, if the Owner is the prevailing party.

**N. OWNER INCLUSION**

It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln, Lancaster County, Nebraska and Lincoln-Lancaster County Public Building Commission. Whenever in the Contract documents, a singular entity is referenced (i.e., "the City" or "the County" or "Building Commission") it shall mean the "Owners" encompassing the City of Lincoln, Lancaster County and Lincoln-Lancaster County Building Commission. Notwithstanding the foregoing, the duties and obligations of the City, the County, and the Building Commission pursuant to the MOU shall be treated as divisible and severable duties and obligations, and default by any one of the City, the County, or the Building Commission shall not be attributed to any other of the Owners, but shall remain the sole obligation of the defaulting entity.

**O. PAYMENT**

Unless stated otherwise, the Owners will initiate payment within thirty (30) calendar days after:

1. All work has been performed and all equipment or other merchandise has been delivered.
2. All such labor and equipment and other materials have met all MOU specifications.
3. All such work has been approved by the Owner.
4. An invoice has been submitted which corresponds with the MOU amount and any subsequent changes approved by the Owners.

**P. INSURANCE**

The Contractor agrees to the insurance provisions required for all City/County and Building Commissions contracts (see *Insurance Requirements for City, County, and Building Commission*).

**Q. TAXES AND TAX EXEMPTION CERTIFICATE**

The Owners are generally exempt from any taxes imposed by the State or Federal government. A Tax Exemption Certificate will be provided as applicable.

The Water Division of the City of Lincoln is taxable per Reg. 066.14A and no exemption certificate will be issued.

**R. INDEPENDENT CONTRACTOR**

Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

**S. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin,

ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

**T. LIVING WAGE**

The Contractor agrees to pay all employees employed in the performance of the MOU according to the City Living Wage per Section 2.81 of the Lincoln Municipal Code. The wages listed in Section 2.81 are subject to change every July. This provision is only applicable to City of Lincoln projects.

**U. E-VERIFY**

In accordance with Neb. Rev. Stat. 4-108 through 4-114, the Contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C 1324 a, otherwise 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 pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, [go to www.uscis.gov/everify](http://www.uscis.gov/everify).

**V. CITY AUDIT ADVISORY BOARD**

All parties doing business with the Owners shall be subject to audit (City of Lincoln - Chapter 4.66 of the Lincoln Municipal Code) and shall make available to a Contract Auditor copies of all financial and performance related records and materials germane to the MOU/purchase order, as allowed by law.

**W. INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the Owners from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the MOU that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the Owners for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the Owners.

In any and all claims against the Owners or any of its elected officials, members, officers or employees by an employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation listed herein shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

**X. WAIVER**

Owners' failure or neglect to enforce any of its rights under this Memorandum will not be deemed to be a waiver of the Owners' rights.

**Y. THIRD PARTIES**

This Memorandum is not intended to, and does not, create any rights or benefits on behalf of any person, whether an individual or an entity, other than the Parties involved. Owners shall not be obligated or liable hereunder to any person, whether an individual or an entity, other than Contractor.

**Z. AUDIT**

This MOU shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and all parties shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

The Contractor and the Owners hereby agree that all the terms and conditions of this MOU shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

The Contractor hereby agrees to this MOU upon completion of signatures on the Vendor Signature Page.

Vendor Signature Page

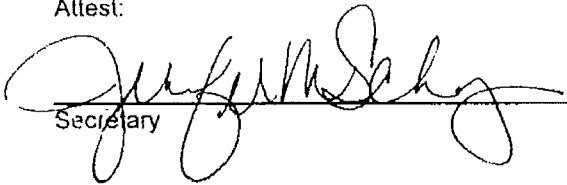
COOPERATIVE CONTRACT  
On-Call Guardrail Repair and Replacement Services  
Nebraska Department of Roads Contract No. QH1804  
MOU033

City of Lincoln and Lancaster County, Nebraska  
Garcia-Chicoine Enterprises, Inc.

EXECUTION BY CONTRACTOR

IF A CORPORATION:

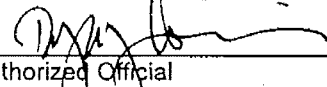
Attest:

 Seal  
Secretary

**Garcia-Chicoine Enterprises, Inc.**

Name of Corporation

**P.O. BOX 703**  
**MILFORD, NE 68406**  
Address

By:   
Duly Authorized Official

**Tyler J. Chicoine Vice President**  
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

Address

By: \_\_\_\_\_  
Member

By: \_\_\_\_\_  
Member

IF AN INDIVIDUAL:

Name

Address

Signature

**City of Lincoln Signature Page**

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**COOPERATIVE CONTRACT  
On-Call Guardrail Repair and Replacement Services  
Nebraska Department of Roads Contract No. QH1804  
MOU033  
City of Lincoln and Lancaster County, Nebraska  
Garcia-Chicoine Enterprises, Inc.**

**EXECUTION BY THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
Public Works and Utilities Director

Approved by Directorial Order No. \_\_\_\_\_

dated \_\_\_\_\_



## Lancaster County Signature Page

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**COOPERATIVE CONTRACT**  
**On-Call Guardrail Repair and Replacement Services**  
**Nebraska Department of Roads Contract No. QH1804**  
**MOU033**  
**City of Lincoln and Lancaster County, Nebraska**  
**Garcia-Chicoine Enterprises, Inc.**

**EXECUTION BY LANCASTER COUNTY, NEBRASKA**

Contract Approved as to Form:

The Board of County Commissioners of  
Lancaster, Nebraska

\_\_\_\_\_  
Deputy Lancaster County Attorney

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

dated \_\_\_\_\_

# NEBRASKA DEPARTMENT OF TRANSPORTATION

## SERVICE CONTRACT AWARD

PAGE 1 of 4		CONTRACT NUMBER QH1804	
CONTRACTOR # 1242		BUYER Gloria Ryken	
<b>VENDOR NAME AND ADDRESS:</b> Garcia-Chicoine Enterprises, Inc. P.O. Box 703 Milford, NE 68405			
VENDOR CONTACT INFORMATION		DESCRIPTION OF SERVICE	
Name: Tyler J. Chicoine Phone: 402-761-4460 Cell: 402-432-9396 Fax #: 402-761-4464 E-mail: <a href="mailto:Tyler.chicoine@garciachicoineent.com">Tyler.chicoine@garciachicoineent.com</a>		On-Call Guardrail Repair and Replacement Services for District 1, 3, 5, 6, and 7	

Nebraska Department  
 Of Transportation  
 Operations Division  
 5001 S. 14<sup>th</sup> Street  
 Lincoln, NE 68512

**EFFECTIVE DATES OF CONTRACT**

September 1, 2018 through August 31, 2020. This contract is effective for the period specified, so long as it is signed by both parties on or before September 1, 2018.

**EXPIRATION DATE**

This contract will expire two (2) years from the effective date.

**RENEWALS**

This contract may be renewed for two (2) additional two (2) year periods when mutually agreeable to the Contractor and the Nebraska Department of Transportation (NDOT).

**EXTENSION PERIOD**

State reserves the right and sole discretion to extend this contract beyond the expiration date.

**NON-EXCLUSIVITY**

This contract is not an exclusive contract to furnish the services shown below, and does not preclude the purchase of similar services from other sources.

**ORIGINAL BID DOCUMENT: RFP #R01-19**

**SCOPE OF THE CONTRACT**

Contractor(s) shall be responsible for providing all labor, tools, equipment, transportation; traffic control devices, fuel, insurance, and materials necessary for the removal and disposal, installation and repair/replacement of damaged, deficient guardrail within each NDOT District on an "on-call" basis (see Attachment A-District Maps). Installations/replacements and/or repairs of damaged, deficient guardrails will meet or exceed requirements in accordance to Sections 902.01-902.03, 903.01-903.03, and 1066-1067 of the Nebraska Standard Specifications for Highway Construction, 2017 edition at: <https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.aspx>, and as directed by the designated NDOT District personnel.

Additionally, the Contractor shall be responsible for ensuring compliance with any other related sections in the Nebraska Standard Specifications for Highway Construction, 2017 edition that are relevant to the requirements of RFP #R01-19.

The NDOT District designated personnel shall notify Contractor(s) of any guardrail replacement and repair services needed, and the designated work site(s). NDOT contact information shall be provided to the

Contractor at the commencement of the contract. All state roadways located within each District are identified in Attachment A, District maps.

  
 NDOT, Operations Division Manager / Date  
 8.20.18  
 RK 8/20/18

  
 Contractor (Signature) / Date  
 Tyler J. Chicoine Vice President  
 8/18/18

**Incorporation:**

This contract and the following documents constitute the entirety of the contract:

1. Request for Proposal and Addenda;
2. Amendments to the RFP;
3. Questions and Answers;
4. Contractor's proposal (RFP and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. Amendments/Addendums to the Contract.

**Order of Precedence:**

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to RFP and any Questions and Answers, 4) the original RFP document and any Addenda, and 5) the Contractor's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

**DELIVERABLES/CONTRACT LINE ITEMS:**

**DISTRICT 1**

Description	Estimated Annual Qty.	Unit of Measure	Bid Price Per Unit of Measure	Total
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	290	hours	\$400.00	\$116,000.00
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	2130	miles	\$25.00	\$53,250.00
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	61	hours	\$425.00	\$25,925.00
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	75	hours	\$45.00	\$3,375.00

**Total: \$198,550.00**

**DISTRICT 3**

<b>Description</b>	<b>Estimated Annual Qty.</b>	<b>Unit of Measure</b>	<b>Bid Price Per Unit of Measure</b>	<b>Total</b>
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	200	hours	\$425.00	\$85,000.00
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	1000	miles	\$80.00	\$80,000.00
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	50	hours	\$675.00	\$33,750.00
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	50	hours	\$45.00	\$2,250.00

**Total: \$201,000.00****DISTRICT 5**

<b>Description</b>	<b>Estimated Annual Qty.</b>	<b>Unit of Measure</b>	<b>Bid Price Per Unit of Measure</b>	<b>Total</b>
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	200	hours	\$425.00	\$85,000.00
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	1000	miles	\$115.00	\$115,000.00
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	50	hours	\$600.00	\$30,000.00
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	50	hours	\$45.00	\$2,250.00

**Total: \$232,250.00**

**DISTRICT 6**

<b>Description</b>	<b>Estimated Annual Qty.</b>	<b>Unit of Measure</b>	<b>Bid Price Per Unit of Measure</b>	<b>Total</b>
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	180	hours	\$425.00	\$76,500.00
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	1875	miles	\$60.00	\$112,500.00
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	150	hours	\$600.00	\$90,000.00
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	66	hours	\$45.00	\$2,970.00

**Total: \$281,970.00****DISTRICT 7**

<b>Description</b>	<b>Estimated Annual Qty.</b>	<b>Unit of Measure</b>	<b>Bid Price Per Unit of Measure</b>	<b>Total</b>
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	25	hours	\$425.00	\$10,625.00
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	200	miles	\$80.00	\$16,000.00
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	5	hours	\$600.00	\$3,000.00
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	50	hours	\$45.00	\$2,250.00

**Total: \$31,875.00****Total Estimated Contract Value: \$945,645.00**

## ADDENDUM TWO, REVISED SCHEDULE OF EVENTS

Date: July 24, 2018

To: All Bidders

From: Gloria Ryken, Buyer  
Nebraska Department of Transportation

RE: Addendum for Request for Proposal Number R01-19, Guardrail Repair and Replacement Services

### Schedule of Events

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change. It is the Bidder's responsibility to check the Nebraska Department of Transportation website for all addenda or amendments.

	Activity	Date/Time
4.	Proposal opening Location: Nebraska Department of Transportation, Operations Division 5001 S. 14th Street Lincoln, NE 68512	<del>July 24, 2018, 3:00 PM Central Time</del>  July 31, 2018, 3:00 P.M. Central Time
5.	Review for conformance to RFP requirements	July 24, 2018 July 31, 2018
6.	Evaluation period	July 24 through 27, 2018 July 31, 2018 through August 3, 2018
7.	Post "Intent to Award" to Internet at: <a href="http://dot.nebraska.gov/business-center/business-opp/procure-service-opp/">http://dot.nebraska.gov/business-center/business-opp/procure-service-opp/</a>	July 30, 2018  August 6, 2018
8.	Contract finalization period	July 30 through August 31, 2018 August 6 through August 31, 2018
9.	Contract award	TBD
10.	Contractor start date	TBD

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.

## ADDENDUM ONE QUESTIONS and ANSWERS

Date: June 25, 2018

To: All Bidders

From: Gloria Ryken, Buyer  
Nebraska Department of Transportation

RE: Addendum for Request for Proposal Number R01-19 Guardrail Repair and Replacement Services

### Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Request for Proposal (RFP). The questions and answers are to be considered as part of the Request for Proposal. It is the Bidder's responsibility to check the Nebraska Department of Transportation website for all addenda or amendments.

Question Number	Question	State Response
1.	Concerning District #2, can all repairs be conducted using normal daylight working hours, or will there be limitations to Non-Peak hours only, etc.?	<p><b>For District 2</b>, all repairs requiring a lane closure in the Omaha Metro Area (Sarpy and Douglas Counties) will require the work to be performed during "off peak hours", i.e. 8:00 P.M. to 5:00 A.M. CDT. For all other guardrail repairs that can be performed on the shoulder of the road, work may be provided during normal daylight working hours.</p> <p>Please include in your bid, an hourly crew rate for "off peak hours" on the revised cost proposal bid sheet.</p> <p><b>For Districts 1, 3, 5, 6 and 7</b>, guardrail repairs shall be provided during normal daylight working hours.</p>
2.	Is there a published wage decision to be used in the District #2 area, or do standard wages apply?	<p>NDOT does not intent to apply any other wage rate than minimum wage. Please also refer to the following sections of the RFP:</p> <ul style="list-style-type: none"> <li>• Section III Contractor Duties, subsection A. Independent Contractor/Obligations and</li> <li>• Subsection C. Compliance with Civil Rights Law and Equal Opportunity Employment/Nondiscrimination</li> </ul>

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.

**State of Nebraska Department of Transportation  
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

**RETURN TO:**

Name: Nebraska Department of  
Transportation, Operations Division  
Address: 5001 So. 14<sup>th</sup> Street  
City/State/Zip: Lincoln, NE 68512  
Phone: 402-479-4356

<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
RFP #R01-19	June 5, 2018
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
July 24, 2018 3:00 p.m. Central Time	Gloria Ryken

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska (State), Department of Transportation, is issuing this Request for Proposal (RFP) Number R01-19 for the purpose of selecting a qualified Bidder to provide Guardrail Repair and Replacement Services. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar services from other sources now or in the future.

The term of the contract will be two (2) years commencing upon execution of the contract by the Nebraska Department of Transportation and the Bidder (Parties)/notice to proceed. The Contract includes the option to renew for two (2) additional two (2) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT:  
<http://dot.nebraska.gov/business-center/business-opp/pre-maint/>.

In accordance with Nebraska State Statutes 39-1351 & 39-1352, and Title 409 of the Nebraska Rules and Regulations; any person desiring to submit to the department a bid for the performance of this contract shall apply to the Department for prequalification not later than 10 days before the bid opening date of the Request for Proposal.

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the RFP, and the successful bidder's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

In addition, and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all proposals or responses received regarding this RFP will be posted to the State Purchasing Bureau public website.

These postings will include the entire proposal or response. Bidders must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously in black ink with the words "PROPRIETARY INFORMATION". The bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the bidder will be informed. It will be the bidder's responsibility to defend the bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this RFP for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to this RFP, specifically waives any copyright or other protection the contract, proposal, or response to the RFP may have; and, acknowledges that they have the ability and authority to enter into



such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to this RFP, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the RFP being found non-responsive and rejected.

Any entity awarded a contract or submitting a proposal or response to the RFP agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the RFP, awards, and other documents.

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## GLOSSARY OF TERMS

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

**Addendum:** Something to be added or deleted to an existing document; a supplement.

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

**Agent/Representative:** A person authorized to act on behalf of another.

**Amend:** To alter or change by adding, subtracting, or substituting.

**Amendment:** A written correction or alteration to a document.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

**Award:** All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the RFP. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

**Best and Final Offer (BAFO):** In a competitive bid, the final offer submitted which contains the bidder's (vendor's) most favorable terms for price.

**Bid/Proposal:** The offer submitted by a vendor in a response to a written solicitation.

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

**Bidder:** A vendor who submits an offer bid in response to a written solicitation.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

**Business Day:** Any weekday, except State-recognized holidays.

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

**Cancellation:** To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

**Central Processing Unit (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

**Change Order:** Document that provides amendments to an executed purchase order or contract.

**Collusion:** An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

**Commodities:** Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

**Commodities Description:** Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

**Competition:** The effort or action of two or more commercial interests to obtain the same business from third parties.

**Confidential Information:** Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific

advantage the competitor(s) would receive.

**Contract:** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

**Contract Administration:** The management of the contract which includes and is not limited to; contract signing, contract amendments and any necessary legal actions.

**Contract Award:** Occurs upon execution of the State document titled "Service Contract Award" by the proper authority.

**Contract Management:** The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

**Contract Period:** The duration of the contract.

**Contractor:** Any individual or entity having a contract to furnish commodities or services.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

**Critical Program Error:** Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by the Contractor.

**Default:** The omission or failure to perform a contractual duty.

**Deviation:** Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

**Evaluation:** The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

**Evaluation Committee:** Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/proposals (offers made in response to written solicitations).

**Extension:** Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

**Free on Board (F.O.B.) Point of Origin:** The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

**Foreign Corporation:** A foreign corporation that was organized and chartered under the laws of another state, government, or country.

**Installation Date:** The date when the procedures described in "Installation by Contractor" and "Installation by State", as found in the RFP, or contract, are completed.

**Interested Party:** A person, acting in their personal capacity, or an entity entering into a contract or other agreement creating a legal interest therein.

**Late Bid/Proposal:** An offer received after the Opening Date and Time.

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

**Module (see System):** A collection of routines and data structures that perform a specific function of software.

**Must:** See Mandatory/ Must and Shall/Will/Must.

**National Institute for Governmental Purchasing (NIGP):** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services.

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

**Opening Date and Time:** Specified date and time for the public opening of received, labeled, and sealed formal proposals.

**Operating System:** The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

**Outsourcing:** The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

**Payroll & Financial Center (PFC):** Electronic procurement system of record.

**Performance/Contract Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

**Platform:** A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

**Point of Contact (POC):** The person designated to receive communications and to communicate.

**Pre-Bid/Pre-Proposal Conference:** A meeting scheduled for the purpose of clarifying a written solicitation and related expectations.

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

**Program Error:** Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

**Program Set:** The group of programs and products, including the Licensed Software specified in the RFP, plus any additional programs and products licensed by the State under the contract for use by the State.

**Project:** The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the contract.

**Proposal:** See Bid/Proposal.

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serves no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

**Protest/Grievance:** A complaint about a governmental action or decision related to a RFP or resultant contract, brought by a vendor who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

**Recommended Hardware Configuration:** The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

**Release Date:** The date of public release of the written solicitation to seek offers.

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

**Request for Information (RFI):** A general invitation to vendors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

**Request for Proposal (RFP):** A written solicitation utilized for obtaining competitive offers.

**Responsible Bidder:** A bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

**Responsive Bidder:** A bidder who has submitted a bid which conforms to all requirements of the solicitation document.

**Shall/Will/Must:** An order/command; mandatory.

**Should:** Expected; suggested, but not necessarily mandatory.

**Software License:** Legal instrument with or without printed material that governs the use or redistribution of licensed software.

**Sole Source – Commodity:** When an item is available from only one source due to the unique nature of the requirement, its supplier, or market conditions.

**Sole Source – Services:** A service of such a unique nature that the vendor selected is clearly and justifiably the only practical source to provide the service. Determination that the vendor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

**Statutory:** These clauses are controlled by state law and are not subject to negotiation.

**Subcontractor:** Individual or entity with whom the contractor enters a contract to perform a portion of the work awarded to the contractor.

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

**Termination:** Occurs when either Party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Third Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**Upgrade:** Any change that improves or alters the basic function of a product or service.

**Vendor:** An individual or entity lawfully conducting business in the State of Nebraska, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

**Vendor Performance Report:** A report issued to the Contractor by State Purchasing Bureau when products or services delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to State Purchasing Bureau by the agency. The State Purchasing Bureau shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

**Will:** See Shall/Will/Must.

**Work Day:** See Business Day.



**I. PROCUREMENT PROCEDURE**

**A. GENERAL INFORMATION**

The RFP is designed to solicit proposals from qualified Bidders who will be responsible for providing guardrail repair and replacement services at a competitive and reasonable cost.

Proposals shall conform to all instructions, conditions, and requirements included in the RFP. Prospective bidders are expected to carefully examine all documents, schedules, and requirements in this RFP, and respond to each requirement in the format prescribed. Proposals may be found non-responsive if they do not conform to the RFP.

**B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS**

Procurement responsibilities related to this RFP reside with the Nebraska Department of Transportation. The point of contact (POC) for the procurement is as follows:

Name: Gloria Ryken  
 Agency: Nebraska Department of Transportation (NDOT)  
 Address: 5001 So. 14<sup>th</sup> Street  
 Lincoln, NE 68512  
 Telephone: (402) 479-4356

E-Mail: [ndot.OperationsProcurement@nebraska.gov](mailto:ndot.OperationsProcurement@nebraska.gov)

From the date the RFP is issued until the Intent to Award is issued, communication from the Bidder is limited to the POC listed above. After the Intent to Award is issued, the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this RFP. The POC will issue any clarifications or opinions regarding this RFP in writing. Only the buyer can modify the RFP, answer questions, render opinions, and only the SPB or awarding agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this RFP.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events or an event scheduled later by the RFP POC; and
3. Contact required for negotiation and execution of the final contract.

*The State reserves the right to reject a bidder's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.*

**C. SCHEDULE OF EVENTS**

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

ACTIVITY	DATE/TIME
1. Release RFP	June 5, 2018
2. Last day to submit written questions	June 19, 2018
3. State responds to written questions through RFP "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://dot.nebraska.gov/business-center/business-opp/pre-maint/">http://dot.nebraska.gov/business-center/business-opp/pre-maint/</a> .	June 25, 2018
4. Proposal opening Location: Nebraska Department of Transportation, Operations Division 5001 So. 14 <sup>th</sup> Street Lincoln, NE 68512	July 24, 2018 3:00 PM Central Time
5. Review for conformance to RFP requirements	July 24, 2018
6. Evaluation period	July 24-27, 2018
7. Post "Intent to Award" to Internet at: <a href="http://dot.nebraska.gov/business-center/business-opp/pre-maint/">http://dot.nebraska.gov/business-center/business-opp/pre-maint/</a> .	July 30, 2018
8. Contract finalization period	July 30 – August 31, 2018
9. Contract award	TBD
10. Contractor start date	TBD

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any RFP provision must be submitted in writing to the Nebraska Department of Transportation and clearly marked "RFP Number R01-19; Guardrail Repair and Replacement Services Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the Bidder's proposal is or might be developed. Proposals will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a bidder.

It is preferred that questions be sent via e-mail to [ndot.OperationsProcurement@nebraska.gov](mailto:ndot.OperationsProcurement@nebraska.gov), but may be delivered by hand or by U.S. Mail. It is recommended that Bidders submit questions using the following format.

RFP Reference	Section	RFP Number	Page	Question

Written answers will be posted at <http://dot.nebraska.gov/business-center/business-opp/pre-maint/> per the Schedule of Events.

**E. PRICES**

Prices submitted on the cost proposal form shall remain fixed and valid commencing on the opening date of the proposal and for the first two (2) years of the contract period. Any request for a price increase subsequent to the first two (2) years of the contract period shall not exceed five percent (5%) of the previous contract period. Increases will be cumulative across the remaining periods of the contract. Any request for an increase must be submitted in writing to the Nebraska Department of Transportation a minimum of 30 days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation. Further documentation may be required by the State, to authenticate the increase. Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. The State will be given full proportionate benefit of any decrease for the term of the contract.

The State reserves the right to deny any requested price increase. No price increases are to be billed to the Nebraska Department of Transportation prior to written amendment of the contract by the parties.

**F. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)**

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Transportation website at <http://dot.nebraska.gov/media/2802/ndot289.pdf>. This must be accomplished prior to execution of the contract.

**G. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject bids, withdraw an intent to award or award, or terminate a contract if a bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a proposal on behalf of another Party or entity; and
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State.

The Bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the successful Bidder and their subcontractors.

**H. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**

The requirements contained in the RFP become a part of the terms and conditions of the contract resulting from this RFP. Any deviations from the RFP in Sections II through VI must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with

the basic nature of the RFP, requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

#### I. SUBMISSION OF PROPOSALS

Bidders should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The Bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Bidder Contact Sheet". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or bidder's bid response packet. If a recipient phone number is required for delivery purposes, (402) 479-4356 should be used. The RFP number should be included in all correspondence.

Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to requirements, completeness, and clarity of content. If the bidder's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the proposal as non-conforming.

By signing the "Request for Proposal for Contractual Services" form, the bidder guarantees compliance with the provisions stated in this RFP.

The State shall not incur any liability for any costs incurred by bidders in replying to this RFP, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this RFP.

The Cost Proposals Template should be presented in separate sections (loose-leaf binders are preferred) on standard 8 ½" x 11" paper, except that charts, diagrams and the like may be on fold-outs which, when folded, fit into the 8 ½" by 11" format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables should be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

#### J. PROPOSAL GUARANTEE BID BOND

Bidders shall submit a bid bond with their proposal. The bid bond must be in the amount of five percent (5%) of their total bid price. The bid bond shall be executed on the Department bid bond form by corporations authorized to contract as a surety in the State of Nebraska. An original watermarked Department bid bond form may be requested from the Department by contacting the Operations Division at (402) 479-4356 or by e-mail to [ndot.OperationsProcurement@nebraska.gov](mailto:ndot.OperationsProcurement@nebraska.gov). Any copies, alterations, conditions or limitations added to the Department's bid bond form will be unacceptable and cause the bid not to be read. The bid bond will be released upon execution of the awarded contract (See Exhibit A: Contractor Prequalification).

**Option 1: The completed bid bond and bid shall be placed in separate sealed envelopes, attached to each other and furnished by the Department.** Any copies, alterations, conditions, or limitations added to the Department's bid bond form will be unacceptable and cause the bid not to be read.

**Option 2: (Annual Bid Bond)** The Department at its discretion may allow a bidder to place an "Annual Bid Bond" on file with the Department. This bond would cover all projects on which the bidder bids on for a 12-month period shown in the bond. The bidder must indicate in the bid submittal to the Department that their "annual bid bond" applies to the submitted bid. If the "annual bid bond" is applicable the bidder shall indicate this in writing on the bid bond envelope. The envelope containing the bid shall be marked by the bidder to indicate its content. The annual bid bond shall be executed on the Department of Transportation' bid bond form, copies of which may be obtained from the Department.

In the event the low bidder fails to comply with any requirement regarding the execution of the contract, the Department shall immediately be entitled to recover the full amount of the bid bond as liquidated damages.

#### K. BID PREPARATION COSTS

The State shall not incur any liability for any costs incurred by Bidders in replying to this RFP, including any activity related to bidding on this RFP.

#### L. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

Violation of the terms and conditions contained in this RFP or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a bidder's proposal;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Termination of the resulting contract;

5. Legal action; and
6. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**M. BID CORRECTIONS**

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changes in a bid after opening are acceptable only if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**N. LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will be returned unopened, if requested by the bidder and at bidder's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

**O. PROPOSAL OPENING**

The opening of proposals will be public and the bidders will be announced. Proposals WILL NOT be available for viewing by those present at the proposal opening. Vendors may contact the State to schedule an appointment for viewing proposals after the Intent to Award has been posted to the website. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

**P. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS**

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

1. Original Request for Proposal for Contractual Services form signed using an indelible method;
2. Clarity and responsiveness of the proposal;
3. Completed State Cost Proposal Template; and
4. Bid Bond, executed on the Department of Transportation bid bond form.

**Q. EVALUATION OF PROPOSALS**

All proposals that are responsive to the RFP will be evaluated based on the following:

1. Cost Proposal

Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the RFP cover page under "Bidder must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the vendor within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service;
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

**R. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the bidder, they will be evaluated (using the stated BAFO criteria), scored, and ranked by the Evaluation Committee. The State reserves the right to conduct more than one Best and Final Offer. The award will then be granted to the highest scoring bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

**S. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to this RFP, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

**T. AWARD**

The State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the proposals, or at any point in the RFP process, the State of Nebraska may take one or more of the following actions:

1. Amend the RFP;
2. Extend the time of or establish a new proposal opening time;
3. Waive deviations or errors in the State's RFP process and in bidder proposals that are not material, do not compromise the RFP process or a bidder's proposal, and do not improve a bidder's competitive position;
4. Accept or reject a portion of or all of a proposal;
5. Accept or reject all proposals;
6. Withdraw the RFP;
7. Elect to rebid the RFP;
8. Award single lines or multiple lines to one or more bidders; or,
9. Award one or more all-inclusive contracts.

The RFP does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at: <http://dot.nebraska.gov/business-center/business-opp/pre-maint/>

Grievance and protest procedure is available on the Internet at: <http://dot.nebraska.gov/business-center/business-opp/pre-maint/>

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet.

## II. TERMS AND CONDITIONS

Bidder is expected to read the Terms and Conditions. By signing the RFP, bidder is agreeing to be legally bound by all the accepted terms and conditions. The State of Nebraska is soliciting proposals in response to this RFP. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this RFP.

The bidders should submit with their proposal any license, user agreement, service level agreement, or similar documents that the bidder wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the bidder's proposal as the document will not have been included in the evaluation process. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the Addendum to Contract Award have been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

1. If only one Party has a particular clause, then that clause shall control;
2. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

### A. GENERAL

The contract resulting from this RFP shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the RFP;
3. Questions and Answers;
4. Contractor's proposal (RFP and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to RFP and any Questions and Answers, 4) the original RFP document and any Addenda, and 5) the Contractor's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

### B. NOTIFICATION

Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

Vendor Contract Manager	Agency Contract Manager: District Operations and Maintenance Manager (DOMM)
Vendor	Agency: Nebraska Department of Transportation
Vendor Street Address	Agency Street Address: As listed under Section V.D. of this RFP
Vendor City, State, Zip	Agency City, State, Zip: As listed under Section V.D. of this RFP

### C. GOVERNING LAW (Statutory)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to

enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**D. BEGINNING OF WORK**

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**E. CHANGE ORDERS**

The Nebraska Department of Transportation and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the RFP. Changes may involve specifications, the quantity of work, or such other items as the Nebraska Department of Transportation may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The Nebraska Department of Transportation shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the Nebraska Department of Transportation, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

**F. NOTICE OF POTENTIAL CONTRACTOR BREACH**

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**G. BREACH**

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

**H. NON-WAIVER OF BREACH**

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**I. SEVERABILITY**

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

**J. INDEMNIFICATION**

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

## 2. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this RFP.

## 3. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

## 4. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

## 5. ALL REMEDIES AT LAW

Nothing in this agreement shall be construed as an indemnification by one Party of the other for liabilities of a Party or third parties for property loss or damage or death or personal injury arising out of and during the performance of this lease. Any liabilities or claims for property loss or damages or for death or personal injury by a Party or its agents, employees, contractors or assigns or by third persons shall be determined according to applicable law.

6. The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

## K. ATTORNEY'S FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if order by the court, including attorney's fees and costs, if the other Party prevails.

## L. CONTRACT BOND

The selected contractor shall be required to furnish within 30 days after the award, a contract bond in the sum equal to the full amount of the contract. **The contract bond must be executed on the form furnished by the Department. Contract bonds must be executed by a corporation authorized to contract surety in the State of Nebraska.** This requirement shall apply to any extensions and/or renewal periods (See Exhibit A: Contractor Prequalification).

## M. ASSIGNMENT, SALE, OR MERGER

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.



The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**N. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS**

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**O. FORCE MAJEURE**

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

**P. CONFIDENTIALITY**

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**Q. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Second or subsequent documented "vendor performance report" form deemed acceptable by the Agency;
  - i. Contractor has or announces it will discontinue support of the deliverable; and,
  - j. In the event funding is no longer available.

**R. CONTRACT CLOSEOUT**

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;

3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

### III. CONTRACTOR DUTIES

#### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law; and
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees.
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

#### B. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of 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 an employee.

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 Transportation website at <http://dot.nebraska.gov/media/2802/ndot289.pdf>

The completed United States Attestation Form should be submitted with the RFP response.

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.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for services to be covered by any contract resulting from this RFP.

**D. COOPERATION WITH OTHER CONTRACTORS**

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. PERMITS, REGULATIONS, LAWS**

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

**G. INSURANCE REQUIREMENTS**

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) year of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) year following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

**1. WORKERS' 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 the contactors' 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 Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor 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.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the Nebraska Department of Transportation as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	A policy that does not exclude and falls under the GL
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
Includes Non-Owned Disposal Sites	
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy, a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

### 3. EVIDENCE OF COVERAGE

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

**Nebraska Department of Transportation**  
**Operations Division**  
**5001 So. 14<sup>th</sup> St.**  
**Lincoln, NE 68512**  
**Email: [ndot.OperationsProcurement@nebraska.gov](mailto:ndot.OperationsProcurement@nebraska.gov)**

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

### 4. DEVIATIONS

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

**H. ANTITRUST**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**I. CONFLICT OF INTEREST**

By submitting a proposal, bidder certifies that there does not now exist a relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this RFP or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or an appearance of conflict of interest.

The bidder certifies that it will not knowingly employ any individual known by bidder to have a conflict of interest.

The Parties shall not knowingly, for a period of two years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

**J. STATE PROPERTY**

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**K. SITE RULES AND REGULATIONS**

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

**L. ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**M. DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under the specifications in the contract in the event of a disaster.

**N. DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

#### **IV. PAYMENT**

##### **A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

##### **B. TAXES (Statutory)**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

##### **C. INVOICES**

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Invoices submitted for payment shall include the contract number under which the work has been performed. The contractor's invoice shall be submitted to the District Operations Maintenance Manager for approval for the work that was provided in that District. NDOT contact information shall be provided upon the commencement of the contract.

All invoices must include an itemized list of materials, service hours, and mobilization charges for guardrail repair/replacement services. Invoices received that do not indicate a mobilization charge will be paid as invoiced. No future charges or corrections against that invoice or purchase order released will be allowed or paid due to failure of the Contractor to include mobilization charges. Invoices shall be accompanied by the District Guardrail Damage Report and Repair Request documenting the completed repair. NDOT will reimburse the Contractor for repair/replacement material/parts used in the repair and/or replacement of guardrail **at cost** with proof of purchase. A copy of all invoices for guardrail materials/parts must accompany the Contractor's invoice for reimbursement when submitted to NDOT for payment.

The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

##### **D. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

##### **E. PAYMENT**

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)) Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

##### **F. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

##### **G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

##### **H. RIGHT TO AUDIT (First Paragraph is Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other



records and information relevant to the contract (Information) to enable the State to audit the contract. The State may audit and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## V. PROJECT DESCRIPTION AND SCOPE OF WORK

The State of Nebraska, Department of Transportation (NDOT) is requesting proposals for the purpose of providing guardrail repair and replacement services on an "on-call" basis for NDOT Districts 1, 2, 3, 5, 6, and 7. The intent of the contract is for the service provider to repair guardrail throughout the districts as requested; however, the State reserves the right to repair guardrail on its own. Each District shall be bid individually and bidders may submit proposals with pricing for all the specified districts or for individual districts as desired.

### A. SCOPE OF WORK

Contractor(s) shall be responsible for providing all labor, tools, equipment, transportation; traffic control devices, fuel, insurance, and materials necessary for the removal and disposal, installation and repair/replacement of damaged, deficient guardrail within each NDOT District on an "on-call" basis (see Attachment A-District Maps). Installations/replacements and/or repairs of damaged, deficient guardrails will meet or exceed requirements in accordance to Sections 902.01-902.03, 903.01-903.03, and 1066-1067 of the Nebraska Standard Specifications for Highway Construction, 2017 edition at: <https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.aspx>, and as directed by the designated NDOT District personnel.

Additionally, the Contractor shall be responsible for ensuring compliance with any other related sections in the Nebraska Standard Specifications for Highway Construction, 2017 edition that are relevant to the requirements of this RFP.

The NDOT District designated personnel shall notify Contractor(s) of any guardrail replacement and repair services needed, and the designated work site(s). NDOT contact information shall be provided to the Contractor at the commencement of the contract. All state roadways located within each District are identified in Attachment A, District maps.

### B. GUARDRAIL REQUIREMENTS

All guardrail and associated materials furnished must meet or exceed requirements set forth in Sections 902.01-902.03, 903.01-903.03, 1066-1067 and any other related sections in the Nebraska Standard Specifications for Highway Construction, 2017 edition that are relevant to the requirements of this RFP. Parts and materials shall be of proven performance and must be new and of first quality and be of standard design. Materials and parts are to be free from defects or features affecting appearance, and serviceability.

Any and all damaged, deficient guardrail materials shall become the property of the Contractor and shall be removed from the work site and properly disposed of in accordance with all-applicable laws and regulations at the Contractor's expense. Contractor is to leave the work site(s) in a safe and orderly condition upon completion of work.

### C. GUARDRAIL MATERIALS/PARTS REIMBURSEMENT

NDOT shall reimburse the Contractor for materials/parts used in the repair and replacement of guardrails at cost with proof of purchase. A copy of all invoices for guardrail materials/parts being submitted for reimbursement must accompany the Contractor's invoice when submitted to NDOT for payment.

### D. MOBILIZATION

Mobilization costs shall be bid at a rate per mile and shall include fuel, the transportation of vehicles, equipment, tools, traffic control devices, materials, and personnel from the distance traveled from the District's bid point location to the work site location. The Contractor shall calculate the mobilization costs for any authorized requested NDOT project where mobilization is required by the distance traveled from the District's bid point location to the work site location. The Contractor shall verify the closest route from the District's bid point location to the work site location by utilizing "MapQuest" or a similar mapping system. The District's bid point locations are listed below:

District 1: 302 Superior St., Lincoln, NE

District 5: 140375 Rundell Rd., Gering, NE

District 2: 4425 S. 108<sup>th</sup> St., Omaha, NE

District 6: 1321 N. Jeffers St., North Platte, NE

District 3: 408 N. 13<sup>th</sup> St., Norfolk, NE

District 7: 619 Auditorium Dr., McCook, NE

### E. TEMPORARY TRAFFIC CONTROL

All cost for temporary traffic control, excluding the cost for flashing arrow panels and traffic control flagging shall be incidental to mobilization and shall be inclusive in the bid price for mobilization. Traffic control devices shall be provided by the Contractor including but is not limited to barrels, all necessary signs, cones and any other traffic control devices as needed at each work site.

All traffic control devices including flashing arrow panels and traffic control flagging shall be in compliance with the following:

- Federal Highway Administration Publication titled "Manual on Uniform Traffic Control Devices" (MUTCD) at: <http://mutcd.fhwa.dot.gov/> and
- The Nebraska Department of Transportation Standard Specifications for Highway Construction 2017 edition at: <https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.aspx>

**F. FLASHING ARROW PANELS AND TRAFFIC CONTROL FLAGGING**

In the event the work requires lane closures, it shall be at the District's discretion whether to utilize NDOT personnel and/or equipment for traffic control including flagmen and flashing arrow panels or require the Contractor to provide flagmen and/or flashing arrow panels. The Contractor will be notified by the designated NDOT District personnel if the Contractor is to provide flagmen and/or flashing arrow panels and NDOT will be responsible for the hourly cost of the flashing arrow panels and the hourly rate per flagmen for traffic control flagging. Bidders shall provide a bid price for the hourly cost for flashing arrow panels and a bid price for the hourly rate per flagmen for traffic control flagging on the cost proposal bid sheet.

**G. GUARDRAIL DAMAGE REPORT AND REPAIR REQUEST**

Requests for guardrail repairs/replacements will be initiated by the District Operations and Maintenance Manager (DOMM), Maintenance Superintendents or Maintenance Supervisors. **No repairs are to be made by the Contractor until notified by the District and authorized with the form titled "District (#) Guardrail Damage Report and Repair Request" (Attachment B).**

**H. RESPONSE TIME / PRIORITY AND WORK COMPLETION / PROGRESS UPDATES**

Notification for repairs and/or replacements will be requested by NDOT District designated personnel during normal work hours of 8:00 AM - 5:00 PM CDT; Monday through Friday, excluding weekends and holidays. Contractor must respond to service calls within seventy-two (72) hours of the service call and are expected to work with district personnel to schedule the inspection of the guardrail(s) and determine the required repairs to be completed. At the time of inspection, NDOT and Contractor will agree to a start date and completion date for the required repairs. In the event, the work is unable to be completed within the designated time frame, the Contractor shall immediately notify the designated NDOT District personnel and provide daily progress updates until the work is completed. If more than one location requires repair at the same time, NDOT will establish the order in which the repairs are to be made.

**I. DAMAGE TO HIGHWAY PROPERTY AND PRESERVATION OF TREES**

The Contractor shall carry out operations in such a manner so as to not damage existing ground areas, trees or shrubs outside the fixed obstacle clearance zone, signs, delineator posts, mail boxes and posts, or other roadside features. Trees outside the fixed obstacle clear zone are an asset to the roadside corridor and shall be protected from immediate and long term damage from vehicles, equipment or materials too close to the trees. Throughout the duration of the contract, no materials, vehicles or equipment shall be allowed to be stored or parked with 25 feet of existing trees 4" caliper or larger, whether standing alone or in groups. In the event damage should occur to any of the above-mentioned features, regardless if it is State or private property, the Contractor shall replace or repair the damaged areas or items at no cost to NDOT. In the event NDOT highway traffic control and/or warning signs are damaged beyond repair, the operator shall notify the area Maintenance Superintendent immediately so that replacement of the damaged sign(s) can be made. The cost of such repair and/or replacement of damaged State property shall be deducted from any payment due the Contractor. The cost of repair and/or replacement of damaged private property shall be the responsibility of the Contractor and the property owner, with no involvement of the Nebraska Department of Transportation.

**J. ADVERSE WEATHER CONDITIONS**

The Contractor will be expected to proceed with work in inclement weather conditions, as long as the weather does not pose a dangerous or hazardous situation to either the workers or the traveling public.

**K. CONTRACTOR LIABILITY**

The contractor shall assume full liability for hazards to traffic and the public that may be created by guardrail repair/replacement operations and save harmless the Nebraska Department of Transportation.

**L. ESTIMATED QUANTITIES**

It shall be clearly understood by all parties that the estimated quantities for guardrail repairs/replacements are an estimate given for the purpose of securing unit bid prices. The estimated annual quantities shown are not guaranteed and may be increased, decreased or eliminated depending on actual need. No bids will be considered that require the purchase of any definite quantities.

**M. PROPOSAL PRICING**

Proposal pricing shall consist of four components:

- 1) The hourly crew rate for providing on-call guardrail repair/replacement services. The hourly crew rate shall include but not be limited to removal, disposal, installation, labor, tools and equipment needed to perform and complete guardrail repair/replacement services as specified in this RFP;

- 2) mobilization rate per mile shall include fuel, the transportation of vehicles, equipment, tools, traffic control devices, materials, and personnel from the distance traveled from the District's bid point location to the work site location;
- 3) hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site and;
- 4) hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.

**N. DELIVERABLES**

The Contractor(s) shall provide guardrail repair/replacement services as specified in this RFP at an hourly crew rate to the Nebraska Department of Transportation including all labor, equipment, traffic control devices, fuel, insurance, and materials necessary for the removal and disposal, installation and repair/replacement of damaged deficient guardrail per listed NDOT District. NDOT will reimburse the Contractor for repair/replacement material/parts used in the repair and replacement of guardrails **at cost** with proof of purchase. Mobilization costs are at a rate per mile for the distance traveled from the District's bid point location to the work site location and the hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site, and the hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.

**O. PAYMENT SCHEDULE**

The payment schedule for the project is tied to specific dates and deliverables. Invoices may be submitted by the contractor on specific dates based on the completion, installation and acceptance of related deliverables at the designated locations. Each NDOT District utilizing this contract will be billed directly by the contractor and will be responsible for its own costs. District billing addresses are the same as listed under mobilization. No invoice will be approved unless the associated deliverables have been approved. A percentage of the total contract cost may then be invoiced based on the following schedule.

*The Contractor's invoice must be submitted to the specific District Operations Maintenance Manager within 30 days after completion of the guardrail repair/replacement services.*

## VI. PROPOSAL SUBMISSION

### A. REQUEST FOR BIDDING PROPOSAL FORMS

1. The RFP and cost proposal bid sheet posted on the NDOT website is for information only. Bidding Proposal forms including the State issued bid bond, bid envelope and bidding documents to be used for bidding purposes will be provided only to contractors who are currently prequalified to bid in accordance with the Nebraska Standard Specification for Highway Constructions. **“Request for Bidding Proposal Form” must be completed, signed and submitted with the Nebraska Department of Transportations before 5:00 PM CDT on the day preceding the bid opening.** The **“Request for Bidding Proposal Forms”** are available at: <http://dot.nebraska.gov/business-center/business-opp/pre-maint/>.
2. By signing the “RFP for Contractual Services” form, the bidder guarantees compliance with the provisions stated in this RFP, agrees to the Terms and Conditions stated in this RFP unless otherwise agreed to, and certifies bidder maintains a drug free work place environment.
3. The Request for Proposal for Contractual Services form must be signed using an indelible method (not electronically) and returned in the bid envelope provided by the Nebraska Department of Transportation and per the schedule of events in order to be considered for an award.
4. **Sealed proposals including the cost proposal bid sheet, signed Request for Proposal for Contractual Services form and the bid bond (see section I.J.) must be received in the bid envelope provided by the Nebraska Department of Transportation by the date and time of the proposal opening at the Nebraska Department of Transportation location per the Schedule of Events.** No late proposals will be accepted. No electronic, e-mail, fax, voice, or telephone proposals will be accepted.

**It is the responsibility of the bidder to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date and after the opening date for any other information/notifications such as bid tabulations, and intent to award notification. Website address is as follows:** <http://dot.nebraska.gov/business-center/business-opp/pre-maint/>.

## **VII. COST PROPOSAL REQUIREMENTS**

This section describes the requirements to be addressed by bidders in preparing the State's Cost Sheet. The bidder must use the State's Cost Sheet. The bidder should submit the State's Cost Sheet in accordance with Section I Submission of Proposal.

**THE STATE'S COST SHEET AND ANY OTHER COST DOCUMENT SUBMITTED WITH THE PROPOSAL SHALL NOT BE CONSIDERED CONFIDENTIAL OR PROPRIETARY AND IS CONSIDERED A PUBLIC RECORD IN THE STATE OF NEBRASKA AND WILL BE POSTED TO A PUBLIC WEBSITE.**

### **A. COST SHEET**

This summary shall present the total fixed price to perform all of the requirements of the RFP. The bidder must include details in the State's Cost Sheet supporting any and all costs.

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

### **B. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the bidder, F.O.B. destination named in the RFP. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

**Form A**  
**Bidder Contact Sheet**  
**Request for Proposal Number R01-19**

Form A should be completed and submitted with each response to this RFP. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

Preparation of Response Contact Information	
Bidder Name:	GARCIA-CHICOINE ENTERPRISES, INC.
Bidder Address:	P.O. Box 703 Milford, NE 68405
Contact Person & Title:	Tyler J. Chicoine, Vice President
E-mail Address:	tyler.chicoine@garciachicoineent.com
Telephone Number (Office):	402-761-4460
Telephone Number (Cellular):	402-432-9396
Fax Number:	402-761-4464

Each bidder should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	Garcia-Chicoine Enterprises, Inc
Bidder Address:	P.O. Box 703, Milford, NE 68405
Contact Person & Title:	Tyler J. Chicoine, Vice President
E-mail Address:	tyler.chicoine@garciachicoineent.com
Telephone Number (Office):	402-761-4460
Telephone Number (Cellular):	402-432-9396
Fax Number:	402-761-4464

# REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

## BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the procedures stated in this Request for Proposal, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder maintains a drug free work place.

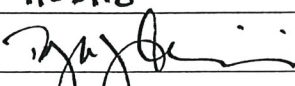
Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

X NEBRASKA CONTRACTOR AFFIDAVIT: 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.

\_\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

\_\_\_\_\_ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. §71-8611 and wish to have preference considered in the award of this contract.

### FORM MUST BE SIGNED USING AN INDELIBLE METHOD (NOT ELECTRONICALLY)

FIRM:	GARCIA-CHICOINE ENTERPRISES, INC.
COMPLETE ADDRESS:	P.O. Box 703 Milford, NE 68405
TELEPHONE NUMBER:	402.761.4460
FAX NUMBER:	402.761.4464
DATE:	7/23/18
SIGNATURE:	
PRINT NAME & TITLE OF SIGNER:	TYLER S. CHICOINE, Vice President



## EXHIBIT A

### CONTRACTOR PREQUALIFICATION

In accordance with Nebraska State Statutes 39-1351 & 39-1352, and Title 409 of the Nebraska Rules and Regulations; any person desiring to submit to the department a bid for the performance of this contract shall apply to the department for prequalification not later than 10 days before the letting of the contract.

As part of the prequalification process, each contractor will be required to submit a "Contractor's Statement of Experience, Equipment and Financial Condition" which can be found on the Department's website, and will be the basis for establishing a Maximum Qualification Rating. As a part of the Statement, the contractor will be required to furnish financial information regarding their assets and liabilities via either an 'Audited Financial Statement' or 'Letter of Credit for Prequalification' from their financial institution.

A contractor's bidding qualifications are determined by multiplying the appropriate dollar amount (derived from the submitted financial information) by the sum of a "base factor" and a "premium factor". The "base factor" is based upon the contractor's years of experience with our agency (minimum value of 3; maximum value of 5), while a "premium factor" is assigned based on the contractor's documented performance in the field (minimum value of 0; maximum value of 10).

For example, a brand new company with no experience with NDOT would begin with a base factor of 3, and a premium factor of 0 – bringing the total multiplier to 3. If the contractor submits a 'Letter of Credit for Prequalification' with a net line of credit amount of \$100,000, then the contractor's Maximum Qualification Amount would be \$300,000 (\$100,000 x 3).

For further information regarding contractor prequalification, contact the Contract Lettings Office at 402-479-4525 or visit the NDOT website at <http://dot.nebraska.gov/business-center/business-opp/pre-maint/>

### PROPOSAL GUARANTEE BID BOND

**Each bid shall be bonded with a bid bond made payable to the Department in an amount equal to at least five (5) percent of the amount bid.** The bid bond shall be executed on the Department bid bond form by corporations authorized to contract as a surety in the State of Nebraska. **An original watermarked Department bid bond form may be requested from the Department by contacting the Operations Division at (402) 479-4356 or by e-mail to [ndot.operationsprocurement@nebraska.gov](mailto:ndot.operationsprocurement@nebraska.gov).**

**Option 1: The completed bid bond and bid shall be placed in separate sealed envelopes, attached to each other and furnished by the Department.** Any copies, alterations, conditions, or limitations added to the Department's bid bond form will be unacceptable and cause the bid not to be read.

**Option 2: (Annual Bid Bond)** The Department at its discretion may allow a bidder to place an "Annual Bid Bond" on file with the Department. This bond would cover all projects on which the bidder bids on for a 12-month period shown in the bond. The bidder must indicate in the bid submittal to the Department that their "annual bid bond" applies to the submitted bid. If the "annual bid bond" is applicable the bidder shall indicate this in writing on the bid bond envelope. The envelope containing the bid shall be marked by the bidder to indicate its content. The annual bid bond shall be executed on the Department of Transportations' bid bond form, copies of which may be obtained from the Department.

In the event the low bidder fails to comply with any requirement regarding the execution of the contract, the Department shall immediately be entitled to recover the full amount of the bid bond as liquidated damages.

### PREQUALIFICATION CLASS OF WORK REQUIREMENT FOR THIS PROJECT

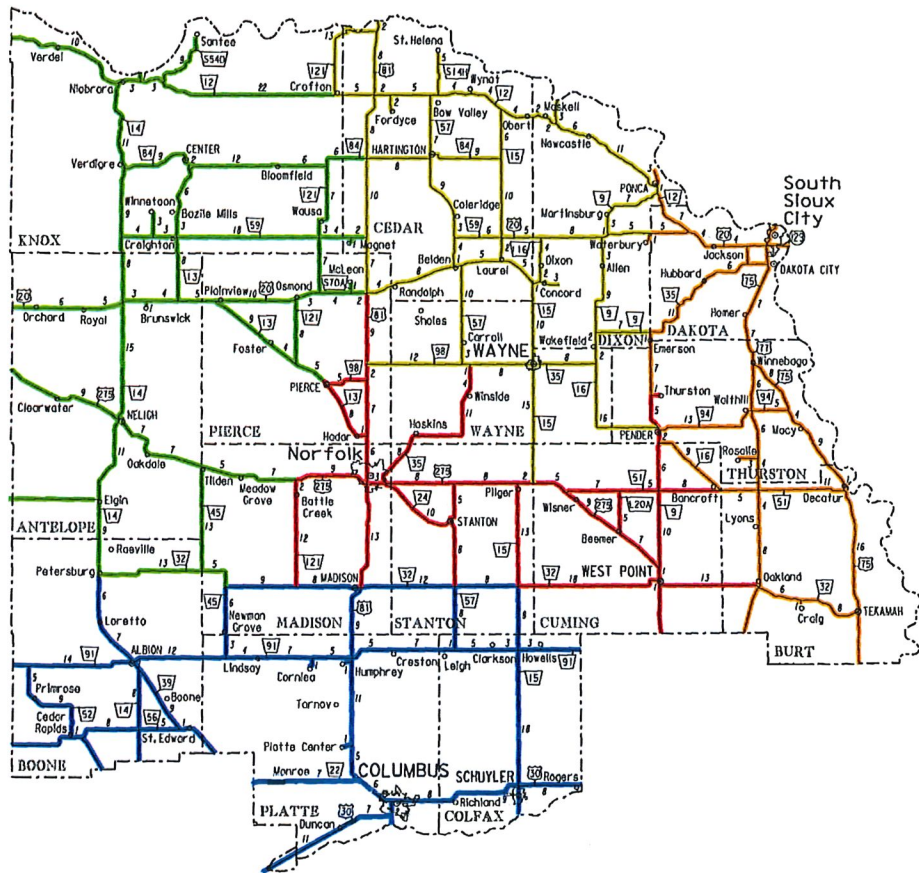
Only bids from contractors prequalified for **GUARDRAIL AND FENCES (Class 7)** will be opened and read.

#### **CONTRACT BOND**

The bidder to whom the Contract is awarded shall furnish within thirty days after the award a Contract bond in a sum equal to the full amount of the Contract. The Contract bond must be executed on the form furnished by the Department. Contract bonds must be executed by corporations authorized to contract as a surety in Nebraska. **This requirement shall apply to any extensions and /or renewal periods.**

#### **EXECUTION OF CONTRACT**

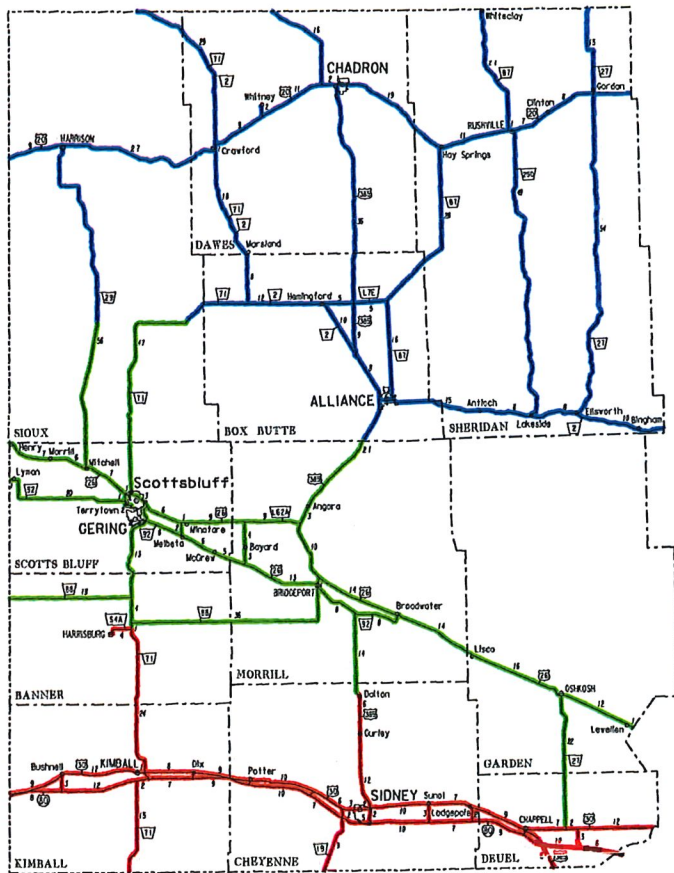
The Contract shall be signed by the successful bidder and returned, together with a satisfactory bond, within thirty days from the date of award. The Department will not execute a contract until satisfactory bonds, certificate of insurance, and other required documents have been received. No bid shall be considered binding upon the Department until the execution of the Contract.



NEBRASKA DEPARTMENT OF ROADS  
DISTRICT 3 MAINTENANCE AREA MAP  
August 19, 2013

303 - Ray Branstiter  
District Operations & Maintenance Manager  
370-3470

- = 310 - Warren Racely, Supt.  
564-4126
- = 320 - Tony Tschirren, Supt.  
887-5441
- = 330 - Tim Kaenig, Supt.  
370-3477
- = 340 - Dan Sayre, Supt.  
494-6826
- = 350 - Dick Soden, Supt.  
375-7070



NEBRASKA DEPARTMENT OF ROADS  
 DISTRICT 5 MAINTENANCE AREA MAP  
 August 19, 2013

503 - Chris Ford  
 District Operations & Maintenance Manager  
 308-436-6587

— = 510 - Paul Howard, Supt.  
 308-432-6141

— = 520 - John Lutz, Supt.  
 308-436-6587

— = 530 - Doug Slick, Supt.  
 308-254-6932

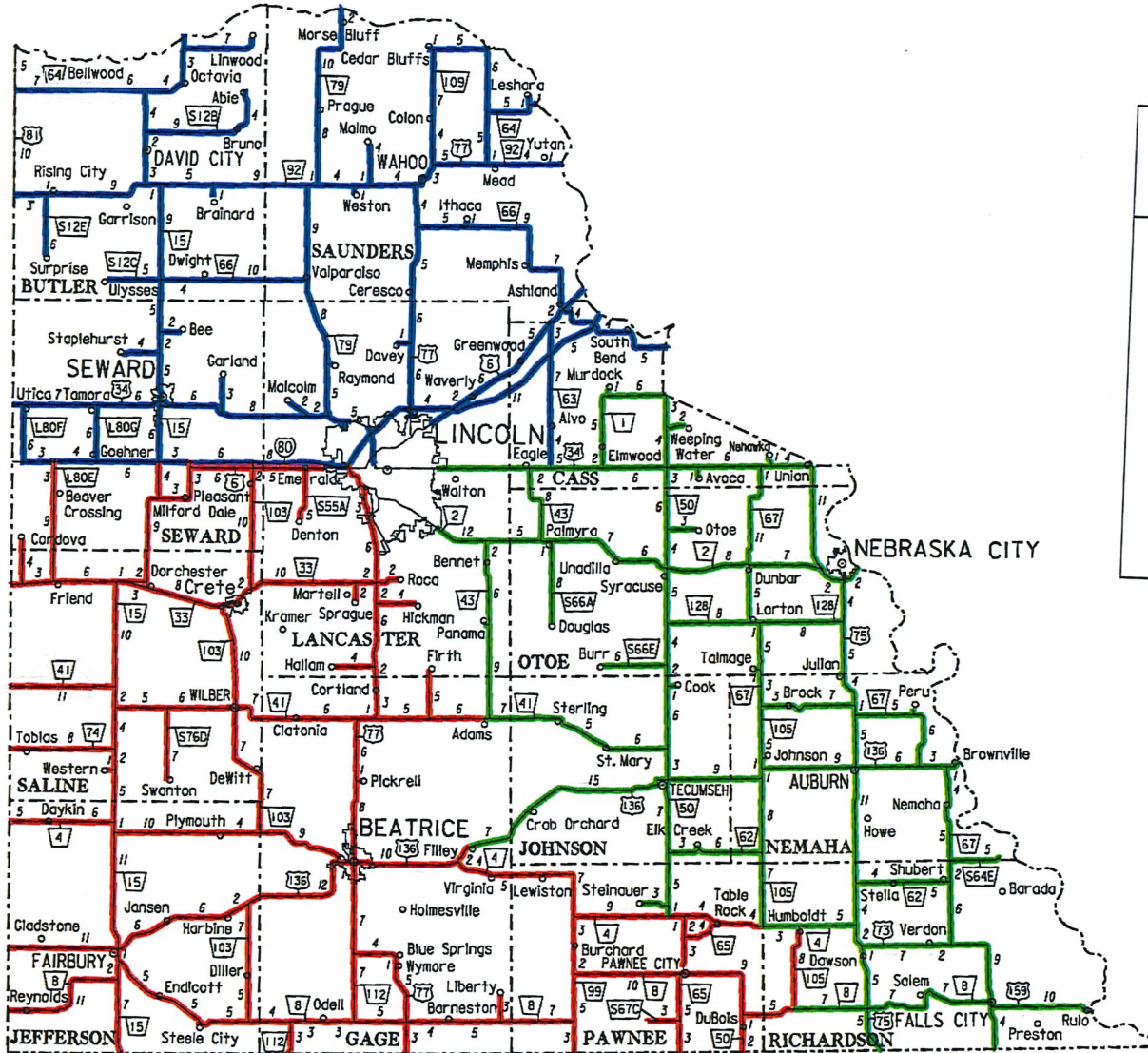
NEBRASKA DEPARTMENT OF ROADS  
DISTRICT I MAINTENANCE AREA MAP  
August 19, 2013

103 - Roger Kalkwarf  
District Operations & Maintenance Manager  
471-0850

— = 110 - Jeff Havlat, Supt.  
471-0850

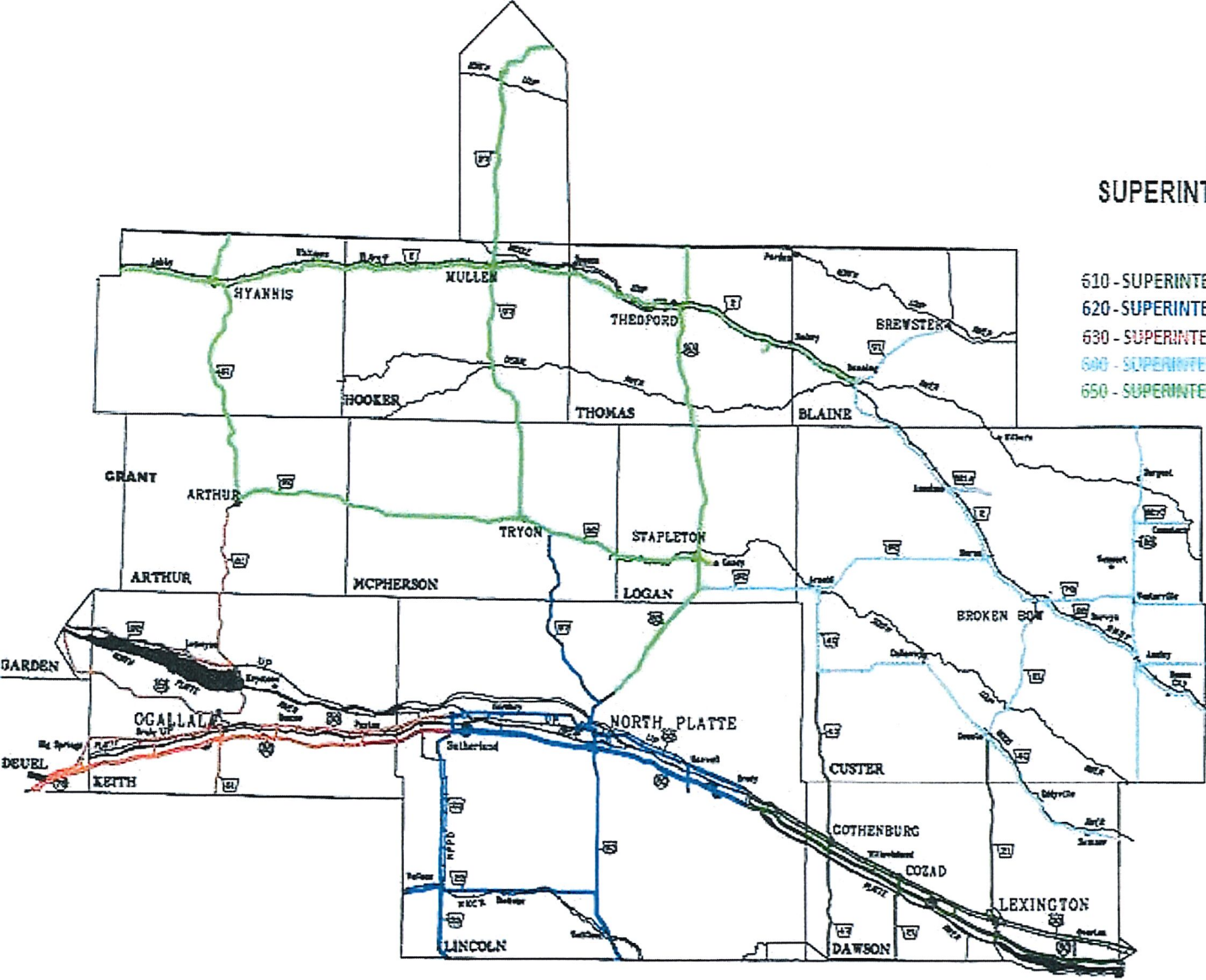
— = 120 - Todd Ceerle, Supt.  
471-0850

— = 130 - Janie Vrtiska, Supt.  
471-0850



**NDOT  
DISTRICT 6  
SUPERINTENDENT REGION MAP  
2018**

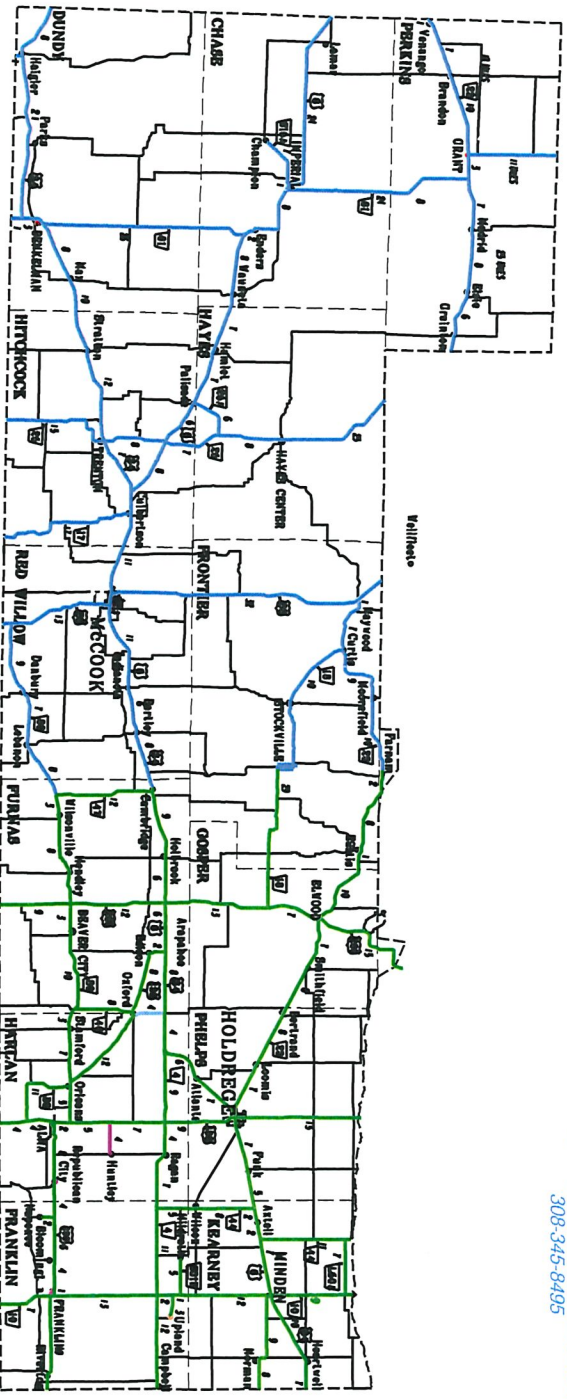
- 610 - SUPERINTENDENT CAMPA - 308-324-3885
- 620 - SUPERINTENDENT GARRETT 308-535-8010
- 630 - SUPERINTENDENT HILTON 308-284-8070
- 640 - SUPERINTENDENT FERGUSON 308-872-6733
- 650 - SUPERINTENDENT ZIMMERMAN 308-546-2241



# NEBRASKA DEPARTMENT OF TRANSPORTATION DISTRICT 7 MAINTENANCE AREA MAP MAY 16, 2018

— 710 - Clint Collicott, Superintendent  
308-995-4242

— 720 - Kerry Scott, Superintendent  
308-345-8495



### District 5 Guardrail Damage Report and Repair Request

<b>Date:</b>	<b>Supervisor:</b>	<b>Priority:</b> <input type="checkbox"/> High <input type="checkbox"/> Med. <input type="checkbox"/> Low			
<b>Purchase Order No.:</b>	<b>DIRK No.:</b>	<b>What damaged guardrail?</b>			
<b>Investigated By:</b>	<b>Case No.:</b> <i>(If known)</i>				
<b>Location</b> <i>(Miles and Direction to Nearest Town):</i>					
<b>Accident Damage:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown		<b>Driver(s):</b> <i>(If known)</i>			
<b>Hwy.:</b>	<b>Mile Post:</b>	<b>Guardrail Height</b> <i>(check one)</i> <input type="checkbox"/> 27 5/8" <input type="checkbox"/> 31" <b>Picture(s) Taken:</b> <input type="checkbox"/>			
<b>Direction:</b> <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W		<b>Driving Lane</b> <input checked="" type="checkbox"/> <b>Passing Lane</b> <input type="checkbox"/>			
<b>Amt.</b>	<b>Bridge Approach Section</b>	<b>Amt.</b>	<b>W-Beam</b>	<b>Amt.</b>	<b>Thrie Beam</b>
	12'-6" Nested Thrie		25'		25'
	6'-3" Transition		12'-6"		12'-6"
	6'-3"		6'-3"		6'-3"
<b>Amt.</b>	<b>Thrie Beam Bullnose</b>		<b>Amt.</b>	<b>Cable Guardrail</b>	
	12'-6" Standard			Steel Line Post	
	12'-6" slotted			Cable	
	12'-6" 34' radius slotted			Terminal Anchorage System	
	12'-6" 5' radius slotted bullnose			Stub Post at Anchor	
<b>Amt.</b>	<b>End Treatments</b>				
	SRT-350, 37'-6", 4' offset from straight, typical highway end treatment				
	MELT, 37'-6", 4' offset from straight, typical county road bridge end treatment				
	Breakaway Cable Terminal, (BCT), 37'-6", 4' offset from straight, typical county road bridge end treatment				
	ET-2000, 50' with extruder head, either straight or 2' offset, typical interstate end treatment				
	Texas Turndown, 50'				
	Cable Assembly, Anchor Box, Bearing Plate, Strut Assembly				
<b>Amt.</b>	<b>Misc. Hardware</b>				
	6' x 8" standard line post, 8" x 8", 10" x10" ← <b>Will replace with standard steel or equivalent</b>				
	4" x 6" steel standard line post				
	6" x 8" CRT, <i>(hole at ground)</i>				
	Standard centerhole block				
	Standard offset block				
	Thrie beam block				
	Stub Post in steel tube <i>(End Treatments, End Anchorage Assemblies, Bullnoses, etc.)</i>				
<b>Comments:</b>					



**REVISED 06/21/18**  
**COST PROPOSAL BID SHEET**  
**NEBRASKA DEPARTMENT OF TRANSPORTATION**  
**GUARDRAIL REPAIR AND REPLACEMENT SERVICES**  
**RFP #R01-19**

Please read the RFP carefully and be aware of the bonding and insurance requirements as specified in the RFP. All required insurance including commercial general liability, worker's compensation and employer's liability, commercial automobile liability, and umbrella/excess liability shall be maintained for the life of the contract.

COMPANY: GARCIA - Chicoine Enterprises, Inc.

**DISTRICT 1:**

*[Signature]* 7/18/18

Description	Estimated Annual Qty.	Unit of Measure	Bid Price Per Unit of Measure
1. Hourly crew rate for providing on-call guardrail repair/replacement services during normal daylight working hours and as specified in RFP #R01-19.	290	hours	\$ 400. <sup>00</sup>
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	2130	miles	\$ 25. <sup>00</sup>
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	61	hours	\$ 425. <sup>00</sup>
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	75	hours	\$ 45. <sup>00</sup>

**DISTRICT 2:**

Description	Estimated Annual Qty.	Unit of Measure	Bid Price Per Unit of Measure
1. Hourly crew rate for providing on-call guardrail repair/replacement services during normal daylight working hours and as specified in RFP #R01-19.	825	hours	\$ 450. <sup>00</sup>
2. Hourly crew rate for providing on-call guardrail repair/replacement services during "off peak hours", 8:00 P.M. to 5:00 A.M. CDT and as specified in RFP #R01-19.	275	hours	\$ 1350. <sup>00</sup>
3. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	720	miles	\$ 200. <sup>00</sup>
4. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	200	hours	\$ 1350. <sup>00</sup>
5. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	100	hours	\$ 45. <sup>00</sup>

**DISTRICT 3:**

<b>Description</b>	<b>Estimated Annual Qty.</b>	<b>Unit of Measure</b>	<b>Bid Price Per Unit of Measure</b>
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	200	hours	\$425. <sup>00</sup>
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	1000	miles	\$80. <sup>00</sup>
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	50	hours	\$675. <sup>00</sup>
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	50	hours	\$45. <sup>00</sup>

**DISTRICT 5:**

<b>Description</b>	<b>Estimated Annual Qty.</b>	<b>Unit of Measure</b>	<b>Bid Price Per Unit of Measure</b>
1. Hourly crew rate for providing on-call guardrail repair/replacement services <i>during normal daylight working hours</i> and as specified in RFP #R01-19.	200	hours	\$425. <sup>00</sup>
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	1000	miles	\$115. <sup>00</sup>
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	50	hours	\$600. <sup>00</sup>
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	50	hours	\$45. <sup>00</sup>

**DISTRICT 6:**

Description	Estimated Annual Qty.	Unit of Measure	Bid Price Per Unit of Measure
1. Hourly crew rate for providing on-call guardrail repair/replacement services during normal daylight working hours and as specified in RFP #R01-19.	180	hours	\$ 425. <sup>00</sup>
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	1875	miles	\$ 60. <sup>00</sup>
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	150	hours	\$ 600. <sup>00</sup>
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	66	hours	\$ 45. <sup>00</sup>

**DISTRICT 7:**

Description	Estimated Annual Qty.	Unit of Measure	Bid Price Per Unit of Measure
1. Hourly crew rate for providing on-call guardrail repair/replacement services during normal daylight working hours and as specified in RFP #R01-19.	25	hours	\$ 425. <sup>00</sup>
2. Mobilization rate per mile for the distance traveled from the District's bid point location to the site location and as specified in RFP #R01-19.	200	miles	\$ 80. <sup>00</sup>
3. Hourly rate for flashing arrow panels in the event, flashing arrow panels are utilized at the work site.	5	hours	\$ 600. <sup>00</sup>
4. Hourly rate per flagmen for traffic control flagging in the event of lane closures on 2-lane highways.	50	hours	\$ 45. <sup>00</sup>

## **INSURANCE CLAUSE FOR ALL CITY OF LINCOLN, LANCASTER COUNTY AND PUBLIC BUILDING COMMISSION CONTRACTS**

Insurance coverage on this Contract will be required for the entities selected below

City of Lincoln     Lancaster County     Public Building Commission

Vendors must provide coverage & documents related to the items with a check mark in Sections 1 – 1.9.

This includes proof of coverage and waivers as required below.

All Vendors must comply with Sections 2-8.

**THE REQUIREMENTS HEREIN APPLY TO CONTRACTS TO BE ISSUED BY THE CITY OF LINCOLN,  
LANCASTER COUNTY, AND THE LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION.  
FOR PURPOSES OF CERTIFICATES, ENDORSEMENTS AND OTHER PROOF REQUIRED HEREIN, ONLY  
INCLUDE THE ENTITY ISSUING THE CONTRACT.**

**FAILURE OF THE APPROPRIATE ENTITY (CITY, COUNTY, OR PUBLIC BUILDING COMMISSION) TO  
OBJECT TO THE FORM OF THE CERTIFICATE OR ENDORSEMENT OR TO DEMAND SUCH PROOF AS  
IS REQUIRED HEREIN SHALL NOT CONSTITUTE A WAIVER OF ANY OF THE INSURANCE  
REQUIREMENTS SET FORTH BELOW.**

### **Insurance; Coverage Information**

The Contractor shall, prior to beginning work, provide proof of insurance coverage in a form satisfactory to the City/County/PBC, which shall not withhold approval unreasonably. The coverages and minimum levels required by this Contract are set forth below and shall be in effect for all times that work is being done pursuant to this Contract. No work on the Project or pursuant to this Contract shall begin until all insurance obligations herein are met to the satisfaction of the City/County/PBC, which shall not unreasonably withhold approval. Self-insurance shall not be permitted unless consent is given by the City/County/PBC prior to execution of the Contract and may require submission of financial information for analysis. Deductible levels shall be provided in writing from the Contractor's insurer and will be no more than \$25,000 per occurrence or as may be approved by the City or County as appropriate. Said insurance shall be written on an **OCCURRENCE** basis, and shall be **PRIMARY, with any insurance coverage maintained by the City/County/PBC being secondary or excess.**

### **Certificates**

The Contractor shall provide certificates of insurance and such other proof, such as endorsements, as may be acceptable to the City or County (as appropriate) evidencing compliance with these requirements. The Contractor shall provide a Certificate of Insurance demonstrating the coverage required herein and the necessary endorsements or other proof and waivers described herein and below before being permitted to begin the work or project pursuant to this Contract.

1. **Commercial General Liability**

The Contractor shall provide proof of Commercial General Liability Insurance with a minimum limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/ Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury. Such coverage shall be endorsed for the general aggregate to be on a **PER PROJECT** basis, and the Contractor shall provide an additional insured endorsement acceptable to the City/County/PBC. The required insurance must include coverage for all projects and operations of Contractor or similar language that meets the approval of the City/County/PBC, which approval shall not be unreasonably withheld.

1.1 **Additional Insured (Requires an Endorsement Form)**

All Contractors shall provide an Additional Insured Endorsement form or other proof showing the City/County/PBC as additional insured for commercial general liability, auto liability and such other coverages as may be required by the City/County/PBC. The form or other proof shall be as is acceptable to the City/County Attorney.

1.2 **Automobile Liability**

The Contractor shall provide proof of Automobile Liability coverage, which shall include: Owned, Hired and Non-Owned. Bodily Injury and Property Damage Combined Single Limit shall be at least \$1,000,000 Per Accident.

1.3 **Garage Keepers / Garage Liability**

The Contractor shall provide garage insurance, if required. Coverage shall include Garage Liability and Garage Keepers on a Direct Primary Basis, including Auto Physical Damage, with limits of not less than \$1,000,000 each accident Bodily Injury and Property Damage combined liability and Actual Cash Value auto physical damage. Coverage symbol(s) 30 and 21 shall be provided, where applicable.

1.4 **Workers' Compensation; Employers' Liability**

The Contractor shall provide proof of workers' compensation insurance of not less than minimum statutory requirements under the laws of the State of Nebraska and any other applicable State. Employers' Liability coverage with limits of not less than \$500,000 each accident or injury shall be included. The Contractor shall provide the City/County/PBC with an endorsement for waiver of subrogation or other proof of such waiver as may be acceptable to the City or County. The Contractor shall also be responsible for ensuring that all subcontractors have workers' compensation insurance for their employees before and during the time any work is done pursuant to this Contract.

**1.5 Builder's Risk Insurance**

The Contractor shall purchase and maintain builder's risk property insurance for all sites upon which construction is occurring as provided by Contract and all storage sites where equipment, materials, and supplies of any kind purchased pursuant to the Contract are being held or stored unless the Contractor receives notice that the City/County/PBC has obtained a builder's risk policy for itself. Except to the extent recoverable by Contractor from another subcontractor, deductibles shall be the responsibility of the Contractor. This coverage is required whenever the work under contract involves construction or repair of a building structure or bridge.

**1.5.1 Waiver of Builder's Risk Insurance Carrier's Subrogation Rights**

The Contractor and its subcontractor(s) waive all rights of action and subrogation that the insurance company providing the builder's risk policy may have against each of them and/or the City/County/PBC, Architect, and the officers, agents and employees of any of them, for all claims, damages, injuries and losses, to the extent covered by such property insurance. Such waiver of subrogation shall be effective for such persons even though such persons would otherwise have a duty of indemnification or contribution, contractual or otherwise, and even though such persons did not pay the insurance premium directly or indirectly, and whether or not such persons had an insurable interest in any property damaged. The Contractor or subcontractor shall provide proof of such waiver.

**1.6 Pollution Liability**

Contractors shall provide proof of pollution liability insurance arising out of all operations of the Contractors and subcontractors, due to discharge, dispersal, release, or escape of contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water with bodily injury and property damage limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for:

- 1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- 2) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- 3) Defense including loss adjustment costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
- 4) Definition of pollution conditions shall include asbestos, lead, and mold so that these risks are covered if caused by Contractor/successful candidate's work or operations.
- 5) Coverage is required on an occurrence form.

**1.7 Errors and Omissions; Professional Liability**

Errors and Omissions or Professional Liability insurance, as may be required, covering damages arising out of negligent acts, errors, or omissions committed by Contractor in the performance of this Contract, with a liability limit of not less than \$1,000,000 each claim. Contractor shall maintain this policy for a minimum of two (2) years after completion of the work or shall arrange for a two year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of professional Services under this contract and caused by any error, omission, breach or negligent act, including infringement of intellectual property (except patent and trade secret) of the Contractor. This coverage is required whenever the Contractor or service provider is required to be certified, licensed or registered by a regulatory entity and/or where the provider's judgment in planning and design could result in economic loss to City/County/PBC.

**1.8 Railroad Contractual Liability Insurance**

If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or railroad crossing, the Contractor must provide proof acceptable to the City or County that any exception for such work in the Contractor's commercial general liability policy has been removed or deleted.

**1.8.1 Railroad Protective Liability**

If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City/County/PBC Purchasing Department prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

**1.9 Cyber Insurance**

The Contractor shall maintain network risk and cyber liability coverage (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in an amount of not less than \$1,000,000. Such insurance shall be maintained in force at all times during the term of the Contract and for a period of two years thereafter for services completed during the term of the Contract.

2. **Cancellation Notice**

All Contractors shall include an endorsement to provide for at least thirty (30) days' firm written notice in the event of cancellation during the term of the Contract and during the period of any required continuing coverages. The Contractor shall provide, prior to expiration of the policies, certificates and endorsement forms evidencing renewal insurance coverages. The parties agree that the failure of City/County/PBC to object to the form of a certificate and/or additional insured endorsement or endorsement forms provided shall not constitute a waiver of this requirement.

3. **Risk of Loss**

Except to the extent covered by the builder's risk insurance, the Contractor shall have the sole responsibility for the proper storage and protection of, and assumes all risk of loss of, any subcontractor's Work and tools, materials, equipment, supplies, facilities, offices and other property at or off the Project site. The Contractor shall be solely responsible for ensuring each subcontractor shall take every reasonable precaution in the protection of all structures, streets, sidewalks, materials and work of other subcontractors. Contractor shall protect its Work from damage by the elements or by other trades working in the area.

4. **Umbrella or Excess Liability**

The Contractor may use an Umbrella, Excess Liability, or similar coverage to supplement the primary insurance stated above in order to meet or exceed the minimum coverage levels required by this Contract.

5. **Minimum Scope of Insurance**

All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted otherwise.

6. **Indemnification**

To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, its elected officials, officers, employees, agents, consultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible or intangible property, including the Work itself, but only to the extent caused by the negligent, wrongful, or intentional acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or



expense is caused in part by the negligence of a party indemnified hereunder. In the event the claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder, the indemnification by the Contractor shall be prorated based on the extent of the liability of the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce obligations of indemnity which would otherwise exist as to a party or person described in this Section. Nothing herein shall be construed to be a waiver of sovereign immunity by the Owner.

**7. Reservation of Rights**

The City/County/PBC reserves the right to require a higher limit of insurance or additional coverages when the City/County/PBC determines that a higher limit or additional coverage is required to protect the City/County/PBC or the interests of the public. Such changes in limits or coverages shall be eligible for a change order or amendment to the Contract.

**8. Sovereign Immunity**

Nothing contained in this clause or other clauses of this Contract shall be construed to waive the Sovereign Immunity of the City/County/PBC.

**9. Further Contact**

For further information or questions concerning coverage or acceptable forms, Contractors may contact the Purchasing Division or the department that issued the bid or the request for proposal.

For general questions regarding Insurance Requirements, please contact Risk Management for the City or County.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/7/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> UNICO Group, Inc. 1128 Lincoln Mall Suite 200 Lincoln NE 68508		<b>CONTACT NAME:</b> Dan Virgillito <b>PHONE (A/C No. Ext):</b> (402) 434-7200 <b>E-MAIL ADDRESS:</b> dvirgillito@unicogroup.com <b>FAX (A/C No.):</b> (402) 434-7272															
<b>INSURED</b> Garcia Chicoine Enterprises Inc. Midwest Machine & Supply Co. PO Box 703 Milford NE 68405-0703		<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Cincinnati Insurance Co.</td> <td>10677</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Cincinnati Insurance Co.	10677	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER D:																	
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INSURER F:																	

**COVERAGES**

CERTIFICATE NUMBER: 17/18 GL, AU, WC, UMB

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			EPP0352675	10/1/2017	10/1/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			EPP0352675	10/1/2017	10/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EPP0352675	10/1/2017	10/1/2018	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	EWC0405048	10/1/2017	10/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: On-Call Guardrail Repair and Replacement Services, Nebraska Department of Transportation, Contract #QH1804. The General Liability and Business Auto policies includes a blanket automatic additional insured endorsement that provides additional insured status only when there is a written contract between the named insured and the certificate holder/entity(ies) that requires such status prior to a loss. The Workers Compensation policy includes a blanket automatic waiver of subrogation endorsement that provides a waiver in favor of the certificate holder/entity(ies) when required by written contract with the named insured prior to a loss.

**CERTIFICATE HOLDER****CANCELLATION**

llirons@lincoln.ne.gov  City of Lincoln, Lancaster County 555 So. 10th Street Lincoln, NE 68508	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Ric Stoakes/HR 
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# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: EPP 035 26 75

Named Insured is the same as it appears in the Common Policy Declarations

### LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	\$ 1,000,000	
GENERAL AGGREGATE LIMIT	\$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 2,000,000	
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	ANY ONE PERSON OR ORGANIZATION
DAMAGE TO PREMISES RENTED TO YOU LIMIT		ANY ONE
\$100,000 limit unless otherwise indicated herein:	\$ SEE GA233	PREMISES
MEDICAL EXPENSE LIMIT		
\$5,000 limit unless otherwise indicated herein:	\$ SEE GA233	ANY ONE PERSON

CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
			Products / Completed Operations	All Other	Products / Completed Operations	All Other
FENCE DEALERS (NE)	12651 C	3,459,748	1.103	.615	3,816	2,128
CONCRETE CONSTRUCTION (KS)	91560 B	IF ANY	7.657	5.821	STA	STA
CONTRACTORS - SUBCONTRACTED WORK (NE)	91589 E	862,427 TOTAL COST	.935	3.193	806	2,754
CONTRACTORS PERMANENT YARDS (NE) INCL PROD AND/OR COMP OP	91590 B	IF ANY		5.796		STA
FENCE ERECTION CONTRACTORS (NE)	94276 B	IF ANY	7.507	6.860	STA	STA
MACHINERY OR EQUIPMENT INSTALLATION OR REPAIR (NE)	97222 B	IF ANY	5.308	2.743	STA	STA
STREET OR ROAD CONSTRUCTION (KS)	99315 B	IF ANY	3.439	13.224	STA	STA
STREET OR ROAD CONSTRUCTION (NE)	99315 B	853,836	2.653	18.155	2,265	15,501
LOC. 2 - NE REAL ESTATE DEVELOPMENT PROPERTY	47051 E	2 EACH		35.738		71

CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
			Products / Completed Operations	All Other	Products / Completed Operations	All Other
INCL PROD AND/OR COMP OP						
REAL ESTATE DEVELOPMENT PROPERTY INCL PROD AND/OR COMP OP	47051 E8	EACH	17.869			143
REAL ESTATE DEVELOPMENT PROPERTY INCL PROD AND/OR COMP OP	47051 E10	EACH	9.527			95
INJURY OR DAMAGE TO OR RESULTING FROM YOUR WORK AND INJURY OR DAMAGE RESULTING FROM YOUR PRODUCT	21589					50
AUTOMATIC ADD. INSURED - CONTRACTORS OPERATIONS	29923		3.5%			965
CONTRACTORS BROADENED COVERAGE	29975		3.5%			965
ADDITIONAL INSUREDS - OWNER, LESSEE, CONTRACTOR	29940					100

The General Liability Coverage Part is subject to an annual minimum premium.

TOTAL ANNUAL PREMIUM \$ 29,659

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

GA101	12/04	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
GA4497	09/17	NOTICE TO POLICYHOLDERS COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENTS EDITION 09 17
GA4499	09/17	NOTICE TO POLICYHOLDERS COMMERCIAL GENERAL LIABILITY COVERAGE PROFESSIONAL LIABILITY EXCLUSIONS EDITION 09 17
CG0300	01/96	DEDUCTIBLE LIABILITY INSURANCE
CG2279	04/13	EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY
GA233	09/17	CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT
GA3024	05/14	EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY - WITH LIMITED BODILY INJURY EXCEPTION
GA353	10/01	CONTRACTUAL LIABILITY LIMITATION
GA369	09/17	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM WITH SPECIFIED EXCEPTIONS
GA382	03/02	FUNGI OR BACTERIA EXCLUSION
GA4113	11/99	ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION - YOUR WORK
GA4315	03/12	INJURY OR DAMAGE TO OR RESULTING FROM YOUR WORK AND INJURY OR DAMAGE RESULTING FROM YOUR PRODUCT
GA4339KS	07/10	KANSAS CHANGES - TRANSFER OF RIGHTS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
1. Employee Benefit Liability Coverage .....	2
2. Unintentional Failure to Disclose Hazards .....	7
3. Damage to Premises Rented to You.....	8
4. Supplementary Payments .....	9
5. Medical Payments.....	9
6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.).....	9
7. 180 Day Coverage for Newly Formed or Acquired Organizations .....	10
8. Waiver of Subrogation .....	10
9. Automatic Additional Insured - Specified Relationships: .....	10
• Managers or Lessors of Premises;	
• Lessor of Leased Equipment;	
• Vendors;	
• State or Political Subdivisions - Permits Relating to Premises;	
• State or Political Subdivisions - Permits; and	
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10. Broadened Contractual Liability - Work Within 50' of Railroad Property .....	14
11. Property Damage to Borrowed Equipment.....	14
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• Emergency Medical Technicians; and	
• Paramedics	
13. Broadened Notice of Occurrence.....	14

#### B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000  
Aggregate Limit: \$ 3,000,000  
Deductible: \$ 1,000

##### 3. Damage to Premises Rented to You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

a. Bail bonds: \$ 1,000  
b. Loss of earnings: \$ 350

##### 5. Medical Payments

Medical Expense Limit: \$ 10,000

**6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.)**

Limits of Insurance (Each Occurrence)

Coverage a. \$1,000

Coverage b. \$5,000 unless otherwise stated \$ \_\_\_\_\_

Deductibles (Each Occurrence)

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE (For Limits in Excess of \$5,000)	ADVANCE PREMIUM (For Limits in Excess of \$5,000)
b. Care, Custody or Control			\$
<b>TOTAL ANNUAL PREMIUM</b>			<b>\$</b>

**11. Property Damage to Borrowed Equipment**

Each Occurrence Limit: \$ 10,000

Deductible: \$ 250

**C. Coverages:**

**1. Employee Benefit Liability Coverage**

a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

**(1) Insuring Agreement**

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- 2) Our right and duty to defend ends when we

have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

- 1) Occurs during the policy period; or
- 2) Occurred prior to the effective date of this endorsement provided:

a) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
  - ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and
- b) There is no other applicable insurance.

**(2) Exclusions**

This insurance does not apply to:

**(a) Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

**(b) Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

**(c) Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past per-

formance of investment vehicles; or

- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employ-

ment-related practices, acts or omissions; or

- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

### (3) Supplementary Payments

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** also apply to this Coverage.

#### b. Who is an Insured

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- (1) If you are designated in the Declarations as:
- (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
  - (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

- (2) Each of the following is also an insured:

- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
- (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
- (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:

- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

#### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section B. **Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
- (a) Insureds;



- (b) Claims made or "suits" brought;
- (c) Persons or organizations making claims or bringing "suits";
- (d) Acts, errors or omissions; or
- (e) Benefits included in your "employee benefit program".

(2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

- (a) An act, error or omission; or
- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

**(4) Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

(d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

(1) Item 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

**2. Duties in the Event of an Act, Error or Omission, or Claim or Suit**

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

- (2) Item 5. **Other Insurance** is deleted in its entirety and replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, SECTION V - DEFINITIONS** is amended as follows:

- (1) The following definitions are added:

**1. "Administration" means:**

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation

in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - c. Unemployment insurance, social security

benefits, workers' compensation and disability benefits; and

- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
- c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

## 2. Unintentional Failure to Disclose Hazards

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

**3. Damage to Premises Rented to You**

a. The last Subparagraph of Paragraph 2. **SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE, 2. LIABILITY Exclusions** is hereby deleted and replaced by the following:

Exclusions c. through q. do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

b. The insurance provided under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

(1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, other than i. War and the Nuclear Energy Liability Exclusion**, are deleted and the following are added:

This insurance does not apply to:

(a) "Property damage":

- 1) Assumed in any contract; or
- 2) Loss caused by or resulting from any of the following:

- a) Wear and tear;
- b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

c) Smog;

d) Mechanical breakdown including rupture or bursting caused by centrifugal force;

e) Settling, cracking, shrinking or expansion; or

f) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(b) Loss caused directly or indirectly by any of the following:

1) Earthquake, volcanic eruption, landslide or any other earth movement;

2) Water that backs up or overflows from a sewer, drain or sump;

3) Water under the ground surface pressing on, or flowing or seeping through:

a) Foundations, walls, floors or paved surfaces;

b) Basements, whether paved or not; or

c) Doors, windows or other openings.

(c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:

1) You did your best to maintain heat in the building or structure; or

2) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) Loss to or damage to:

1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or

2) The interior of any building or structure, or to personal property in the building or structure

caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit of Insurance**

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph 6. of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

(3) The amount we will pay is limited as described in Section B, **Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

**4. Supplementary Payments**

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section B, **Limits of Insurance, 4.a. Bail Bonds** of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section B, **Limits of Insurance, 4.b. Loss of Earnings** of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section B, **Limits of Insurance, 5. Medical Payments** of this endorsement.

**6. Voluntary Property Damage and Care, Custody or Control Liability Coverage**

**a. Voluntary Property Damage Coverage**

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

- (1) Damage is caused by the insured; or
- (2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

**b. Care, Custody or Control Liability Coverage**

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property**, Subparagraphs (3), (4) and (5) do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B, **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B, **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

**b. Deductible Clause**

- (1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section B, Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (2) Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit, applies to each claim or "suit" irrespective of the amount.
- (3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**7. 180 Day Coverage for Newly Formed or Acquired Organizations**

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

**8. Waiver of Subrogation.**

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

**9. Automatic Additional Insured - Specified Relationships**

a. The following is hereby added to **SECTION II - WHO IS AN INSURED:**

- (1) Any person or organization described in Paragraph 9.a.(2) below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- (a) A written contract or agreement; or
- (b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:

- 1) Currently in effect or becomes effective during the policy period; and
- 2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

- (2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

- (a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- 1) Any "occurrence" which takes place after

you cease to be a tenant in that premises.

- 2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 9.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organizations(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- (c) Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
- 1) The insurance afforded the vendor does not apply to:
    - a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
    - b) Any express warranty unauthorized by you;

- c) Any physical or chemical change in the product made intentionally by the vendor;
  - d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
  - f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
  - g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- 2) This insurance does not apply to any insured person or organization:
- a) From whom you have acquired such products, or any ingredient, part or container, entering into, ac-

companying or containing such products; or

- b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

- (d) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- 2) The construction, erection, or removal of elevators; or
- 3) The ownership, maintenance, or use of any elevators covered by this insurance.

- (e) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following provisions:

- 1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- 2) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or political subdivision.

- (f) Any person or organization with which you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

- (3) Any insurance provided to an additional insured designated under Paragraph 9.a.(2):

- (a) Subparagraphs (e) and (f) does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard";

- (b) Subparagraphs (a), (b), (d), (e) and (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured; or

- (c) Subparagraph (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- 1) Defects in design furnished by or on behalf



of the additional insured; or

- 2) The rendering of, or failure to render, any professional architectural, engineering or surveying services, including:

- a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- b) Supervisory, inspection, architectural or engineering activities.

- 3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the primecontractor-project manager or owner of the construction project in which you are involved.

- b. Only with regard to insurance provided to an additional insured designated under Paragraph 9.a.(2) Subparagraph (f) above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- c. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

- (1) Condition 5. **Other Insurance** is amended to include:

- (a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as re-

spects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

- (b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

- 1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or

- 2) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

- (2) Condition 11. **Conformance to Specific Written Contract or Agreement** is hereby added:

#### 11. **Conformance to Specific Written Contract or Agreement**

With respect to additional insureds described in Paragraph 9.a.(2)(f) above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

- a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or
- b. Include coverage for completed operations; or
- c. Include coverage for "your work";

and where the limits or coverage provided to the addi-

Additional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs 9.a.(3)(a), 9.a.(3)(b) or 9.b. above, or any combination thereof, shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form number CG 20 10 but does not specify which edition, or specifies an edition that does not exist, Paragraphs 9.a.(3)(a) and 9.a.(3)(b) of this endorsement shall not apply and Paragraph 9.b. of this endorsement shall apply.

**10. Broadened Contractual Liability - Work Within 50' of Railroad Property**

It is hereby agreed that Paragraph f.(1) of Definition 12. "Insured contract" (SECTION V - DEFINITIONS) is deleted.

**11. Property Damage to Borrowed Equipment**

- a. The following is hereby added to Exclusion j, **Damage to Property** of Paragraph 2., **Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of insurance shown in the Declarations are replaced by the limits designated in Section B. **Limits of Insurance, 11.** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. **Limits of Insurance,**

11. of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bring "suits".

**(2) Deductible Clause**

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible amount stated in Section B. **Limits of Insurance, 11.** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.
- (b) Condition 2. **Duties in the Event of Occurrence, Offense, Claim or Suit,** applies to each claim or "suit" irrespective of the amount.
- (c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**12. Employees as Insureds - Specified Health Care Services**

It is hereby agreed that Paragraph 2.a.(1)(d) of SECTION II - WHO IS AN INSURED, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses;
- b. Emergency Medical Technicians; or
- c. Paramedics;

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

**13. Broadened Notice of Occurrence**

Paragraph a. of Condition 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** (SECTION IV - COMMERCIAL GENERAL LIABILITY CONDI-

TIONS) is hereby deleted and replaced by the following:

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED BY CONTRACT

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: <b>10-01-2016</b>	Policy Number: <b>EBA 035 26 75</b>
Named Insured: <b>GARCIA-CHICOINE ENTERPRISES INC</b>	
Countersigned by:	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**SECTION II - LIABILITY COVERAGE, A. Coverage, I. Who is an Insured** is amended to include as an Insured any person or organization with which you have agreed in a valid written contract to provide insurance as is afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been executed prior to the "bodily injury" or "property damage".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BLANKET WAIVER OF SUBROGATION - AUTO

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: <b>10-01-2016</b>	Policy Number: <b>EBA 035 26 75</b>
Named Insured: <b>GARCIA-CHICOINE ENTERPRISES INC</b>	
Countersigned by:	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### 1. Blanket Waiver of Subrogation

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because

of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract".

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

(This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

### Schedule

#### Blanket Waiver of Subrogation

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery.

This waiver of rights applies to any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver, but shall not be construed to be a waiver with respect to any other operations in which the Insured has no contractual interest.

THIS ENDORSEMENT ONLY APPLIES TO POLICIES IN KANSAS WHEN ALLOWED BY LAW (KSA 16-1801 THRU 16-1807)

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 10-01-2016 Policy No. EWC 040 50 48-00 Endorsement No.

Insured GARCIA CHICOINE ENTERPRISES INC

Insurance Company THE CINCINNATI INSURANCE COMPANY Premium \$INCL

Countersigned by \_\_\_\_\_

WC 00 03 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CANCELLATION OR NONRENEWAL BY US NOTIFICATION TO A DESIGNATED ENTITY

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS PACKAGE POLICY  
CLAIMS-MADE EXCESS LIABILITY COVERAGE PART  
COMMERCIAL AUTO COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
DENTIST'S PACKAGE POLICY  
ELECTRONIC DATA LIABILITY COVERAGE PART  
EXCESS LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

### SCHEDULE

Name and mailing address of person(s) or organization(s):

CITY OF LINCOLN, LANCASTER COUNTY  
555 S 10TH ST  
LINCOLN NE 68508

Number of days notice (other than nonpayment of premium): 30

- A. If we cancel or nonrenew this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice to the person or organization shown in the Schedule. We will mail such notice at least the number of days shown in the Schedule before the effective date of cancellation or nonrenewal.
- B. If we cancel this policy for nonpayment of premium, we will mail notice to the person or organization shown in the Schedule. We will mail such notice at least 10 days before the effective date of cancellation.
- C. If notice is mailed, proof of mailing to the mailing address shown in the Schedule will be sufficient proof of notice.
- D. In no event will coverage extend beyond the actual expiration, termination or cancellation of the policy.