# Sample Construction Contract Provisions

All contracts require certain language to be included; however, construction contracts require additional provisions to be included in the respective contracts between Subrecipients and Successful Applicants and their contractors and vendors. These contract provisions should be used in construction contracts between Subrecipients or Successful Applicants (noted here as the Contracting Entity – “CE” or “Owner”) and construction contractors. This language is only a suggestion – other wording can be used if the meaning is substantively the same.

These procedures will be administered under the supervision of the State of Nebraska’s Department of Economic Development (DED). They are intended to support program implementation funded by the United States (US) Department of Housing and Urban Development’s (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) awarded in response to Winter Storm Ulmer (DR-4420).

# Contract Language

THIS AGREEMENT is made and entered into this \_\_\_\_ day of\_\_\_\_\_\_\_\_, 20XX, by and between the [CONTRACTING ENTITY] (hereinafter called "CE"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter named "Contractor"), for the Construction Project known as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Owner's Representative (OR) is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Owner and Contractor agree as follows:

**ARTICLE 1 – THE WORK**:

The Contractor shall complete all the work on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as specified in the Scope of Work included and also contained in the Request for Proposal (RFP) attached hereto and incorporated herein. The Work is generally described as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**ARTICLE 2 – TIME OF COMMENCEMENT AND COMPLETION:**

1. The Work to be performed under this Contract shall be commenced upon receipt of a Notice to Proceed and completed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Start date is anticipated to be on or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Except as otherwise required for the safety or protection of persons or the Work or property at the Work Site or adjacent thereto, all Work at the Site shall be performed between the hours of X:00 A.M. and X:00 P.M., Monday through Friday except posted holidays, unless otherwise provided in writing by Owner or CE, such consent not to be unreasonably withheld.

**ARTICLE 3 – CONTRACT AMOUNT AND BASIS:**

CE shall pay the Contractor the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in the General Conditions, the following:

**ARTICLE 4 – PROGRESS PAYMENTS**

*Note that the method and system of payment is up to the Contracting Entity. DED will only reimburse the Subrecipient or Successful Applicant for completed and documented work. The following is just one option available.*

Based upon Applications for Payment submitted to the CE by the Contractor and Certificates for Payment issued by CE, the Contractor shall be issued progress payments to the Contractor as follows:

* X progress payment requests shall be remitted within X days of issuance of Certificates for Payment by the DED and Subrecipients or non-profit Successful Applicants.

X percent (X%) of each amount certified for payment shall be retained by CE and Subrecipients or non-profit Successful Applicants until final payment.

**ARTICLE 5 – FINAL PAYMENT:**

After completion of the Work, provided the Contract be then fully performed, the Owner shall publish a Notice of Final Settlement twice at least X days prior to the date of Final Settlement. The Owner shall withhold from final payments any amounts as required pursuant to X.

**ARTICLE 6 – CONTRACT DOCUMENTS:**

The Contract may consist of some or all of the following documents:

1. Request for Proposal;
2. Contractor’s Proposal but only to the extent it does not conflict with CE’s documents;
3. Contract;
4. Plans;
5. Drawings;
6. Specifications;
7. Amendments;
8. Addenda;
9. Change Orders;
10. Bid, Payment and Performance Bonds; and,
11. Certificate of Insurance.

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. In the event of conflicts, the documents shall control in the following order of precedence:

1. Contract with latest, Addenda, Amendments, or Change Orders;
2. Request for Proposal with latest Amendments;
3. Plans, Drawings, and Specifications; and
4. Contractor’s Proposal.

The aforementioned documents form the Contract and what is required shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.

X (X) completed copies of the Contract Documents shall be signed by the Owner and the Contractor. If either CONTRACTING ENTITY or the Contractor do not sign the Drawings, Specifications, or any of the other Contract Documents, the CONTRACTING ENTITY shall identify them. By executing the Contract, the Contractor represents that they have visited the site and familiarized themself with the local conditions under which the Work is to be performed.

The term Work as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

If any of the covenants or provisions of this Contract shall conflict with any of the provisions of the Request for Proposals or the Contractor’s proposal, then this Contract shall control and shall be the governing document. If the Request for Proposals conflicts with the Contractor’s proposal then the Request for Proposals shall control, it being the intent that the work under the project is defined in this Contract and the Request for Proposals.

**ARTICLE 9 – CONTRACTOR RESPONSIBILITIES:**

The Contractor shall perform the work as an Independent Contractor pursuant to this Agreement.

The Contractor shall supervise and direct the Work, using Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, expertise, materials, freight/delivery equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to them.

The Contractor shall comply with all OSHA and all applicable trade-related rules and regulations.

The Contractor warrants to the CONTRACTING ENTITY that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective.

The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, and licenses necessary for the execution of the Work at the Contractor's expense.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the CONTRACTING ENTITY if the Drawings, Specifications and Provisions are at variance therewith.

The Contractor shall be responsible for the acts and omissions of all Contractor's employees and all Sub-Contractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.

The Contractor shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the Owner for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.

The Contractor shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the CONTRACTING ENTITY for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.

**ARTICLE 10 – SUBCONTRACTS:**

A Subcontractor is a person who has a contract with the Contractor to perform any of the Work at the site.

Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner in writing a list of the names of Subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any Subcontractor to whom the Owner may have a reasonable objection. The Contractor shall not be required to employ any Subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the Subcontractor shall be in accordance with the terms of this Agreement and shall include the General Conditions of this Agreement insofar as applicable.

**ARTICLE 11 – DECISIONS ON DISPUTES:**

The provisions of this Article shall govern the procedures to be followed in the event of a dispute.

Representative shall be the initial interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and changes in the Work and Contract Times will be referred initially to the Owner in writing with a request for a decision. Written notice of each such claim, dispute or other matter will be delivered by the Contractor to the Owner promptly after the occurrence or event giving rise thereto. The Owner will render a decision in writing promptly after receipt of the submittal, allowing sufficient time for review of the matter. The Owner's decision on such claim, dispute or other matter will be final and binding upon the Contractor.

When functioning under these provisions, the Owner will remain impartial to both the Contractor and the State and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

**ARTICLE 12 – ROYALTIES AND PATENTS:**

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

**ARTICLE 13 – PERFORMANCE AND PAYMENT BONDS:**

A Performance Bond, Payment Bond, and Materials Bond shall be submitted by the Contractor for all as indicated by State of Nebraska Requirements. The bond shall refer to this Contract and may be drawn against in an appropriate amount as determined by the Owner in its sole discretion when any damages to the Owner result from the Contractor’s services pursuant to this Contract, or Contractor’s malfeasance, misfeasance, or a breach in the performance hereof. The purpose of the bond is to secure the performance of and the compliance with this Contract by and between the Contractor and Owner; the bond shall not be transferable. Each bond shall comply with the requirements of the State.

**ARTICLE 14 – DELAY:**

All of the Work will be completed and ready for final payment by the date specified in this Agreement.

If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the Owner may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**ARTICLE 15 – PAYMENTS:**

Payments shall be made as provided as described in the in the ***Progress Payment*** section of this Contract.

Payments may be withheld on account of one (1) of the following reasons:

1. Defective Work not remedied.
2. Claims asserted or evidence that indicates probable assertion of claims.
3. Failure of the Contractor to make payments properly to Sub-Contractors or for labor, materials, or equipment.
4. Damage to another Contractor or Owner.
5. Unsatisfactory prosecution of the Work by the Contractor.

Final payment shall not be due until all of the following occur:

1. Contractor has delivered to the Owner a bond, a clean irrevocable letter of credit, cash, or other security satisfactory to the Owner indemnifying the Owner against any claim which has been asserted by anyone for labor, materials, equipment, or otherwise arising out of the contract or on account of any claim which either the Owner or Contractor believes may be asserted.
2. Owner has inspected and approved the Work as complying with the contract,
3. Written consent of surety if any is given.
4. Any manufacturers or suppliers’ warranties and equipment literature and any as built plans required are delivered to the Owner.
5. Owner and Contractor have complied with all requirements for Final Settlement imposed by applicable law.

**ARTICLE 16 – PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS:**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to the following:

1. All employees on the Work and other persons who may be affected thereby.
2. All the Work and all materials and equipment to be incorporated therein.
3. Other property at the site or elsewhere. Contractor shall bear all risk of loss to the work, or materials or equipment for the work due to fire, theft, vandalism, or other casualty or cause, until the work is fully completed and accepted by the Owner. He shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any Sub-Contractor, any Sub-Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

**ARTICLE 17 – INDEMNIFICATION AND INSURANCE:**

**Indemnification:**

The Contractor shall indemnify and hold harmless the Owner and their respective officers, agents and employees, insurers, and self-insurance pool, from and against all liability, claims and demands, on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any way connected with this Contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor or any Subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or any Subcontractor of the Contractor, or which arise out of any worker's compensation claim of any employee of the Contractor or any Subcontractor of the Contractor.

The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor, or at the option of the Owner, agrees to pay the Owner or reimburse the Owner for defense costs incurred by the Owner in connection with, any such liability, claims or demands. In carrying out any of the provisions of this Contract or in exercising any power or authority thereby, there shall be no personal liability of the Owner or the Owner's Representative, or officials, attorneys, employees and agents thereof.

The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether any such liability, claims or demands alleged are groundless, false or fraudulent. The obligation of these provisions shall not extend to any injury, loss or damage which is caused by the act, omission or other fault of the Owner.

**Insurance:**

The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the requirements of the State of Nebraska. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by Federal law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to State requirements by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain, and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Owner. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to State requirements. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.
2. Commercial General Liability insurance with minimum combined single limits of $2,000,000 each occurrence and $2,000,000 general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
3. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than $1,000,000 combined single limit with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract.
4. Professional/Contractor Liability insurance with minimum limits of $2,000,000 each occurrence and $2,000,000 aggregate.

The policy required by paragraphs (2) and (3) above shall be endorsed to include the Owner and officers and employees thereof, as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the Owner, its officers, or its employees, or carried by or provided through any insurance pool of the Owner, shall be excess and not contributory insurance to that provided by the Contractor. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

The certificate of insurance provided by the Owner shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Owner prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated, or materially changed until at least 30 days prior written notice has been given to the Owner. Any statement of the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken and initialed by the insurance agent completing the certificates. The completed certificate of insurance shall be sent to the Owner.

Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this contract, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to Contractor from the Owner.

The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

The parties hereto understand and agree that the Owner is relying on and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by Nebraska State Regulations.

The Agreement shall not be executed, and no notice or authorization to proceed shall be given to the Contractor until the Certificates required above, are submitted and approved by the Owner.

**ARTICLE 18 – PROPERTY INSURANCE:**

Unless otherwise provided, the Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interest of the Owner, the Contractor, Subcontractors, and Sub-Subcontractors in the Work and shall insure against the perils of Fire, Theft, Extended Coverage, Vandalism, and Malicious Mischief.

Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any mortgagee clause.

The Contractor shall file a copy of all such policies with the Owner prior to the commencement of the Work.

The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph. The Contractor shall require similar waivers by Subcontractors and Sub-Subcontractors.

**ARTICLE 19 – ACCEPTANCE OF THE WORK:**

The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment, or workmanship which appear within a period of one (1) year from the Date of Final Settlement of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor and are in addition to any other remedies or warranties provided by law.

No act of the Owner, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of the Owner. Before any final certificate shall issue, The Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Work done and materials furnished under this Contract, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this Contract by the Owner or anyone acting on the Owner's behalf shall be held as a waiver of any other subsequent breach thereof.

The Contractor agrees to guarantee all work under this Contract for a period of one (1) year from the date of Final Settlement by the Owner. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, as reasonably determined by the Owner, then the Contractor shall, when notified by the Owner, immediately place such guaranteed Work in a condition satisfactory to the Owner.

**ARTICLE 20 – CHANGES IN THE WORK:**

The Owner without invalidating the Contract may order Changes in the Work consisting of additions, deletions, or modifications with the Contract Sum and the Contract Time being adjusted accordingly.

All such changes in the Work shall be authorized by written Change Order signed by the Owner.

The Contract Sum and the Contract Time may be changed only by Change Order.

The cost or credit to the Owner, if any, from a Change in the Work shall be determined by unit prices if specified in the contract documents, or by mutual agreement.

**ARTICLE 21 – TERMINATION BY THE CONTRACTOR:**

If the Owner fails to issue a payment for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of 30 days from the issuance of payment, the Contractor may, upon 14 days written notice to the Owner, terminate the Contract, provided, however, that the Owner shall first have an opportunity to remit such payment within the 14 day period following written notice.

**ARTICLE 22 – TERMINATION BY THE OWNER:**

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after 14 days' written notice to the Contractor and without prejudice to any other remedy Owner may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at Owner's option, may terminate Contractor's work under the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method Owner may deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

**ARTICLE 23 – PERMITS:**

Contractor shall obtain and pay for all necessary permits and licenses relative to the Project.

**ARTICLE 24 – CONDITIONS OF THE WORK SITE:**

The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based upon information and data furnished to the State by the owners of such underground facilities. The State shall not be responsible for the accuracy or completeness of any such information or data, to the extent that it does not concern State or County-owned facilities.

Contractor shall be responsible for reviewing and checking all such information and data, locating all underground facilities as shown or indicated in the Contract Documents, coordination of the Work with the owners of such facilities, and the safety and protection of all such underground facilities, and repairing any damage thereto resulting from the Work.

**ARTICLE 25 – SAFETY:**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connections with the Work. The Contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to all employees and Subcontractors at the work site and all other persons affected by the Work, all materials and equipment in the care and custody of the Contractor or Subcontractor, all Work, and all property at the work site.

**ARTICLE 26 – SPECIAL/MISCELLANEOUS PROVISIONS:**

Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Contract, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent Addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers one (1) of the following:

1. A clerical error.
2. A misinterpretation of the law.
3. An error as to form; when such error(s) obviate or hinder the consideration, performance, or enforcement of this Agreement.

This contract is governed by the laws of the State of Nebraska and any action to enforce any of the provisions, obligations or covenants of this contract shall be commenced only in a court of proper jurisdiction in the designated County in Nebraska.

The Contractor shall not assign this contract. The provisions of the contract are binding on the heirs, successors or assignees of the parties.

The rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.

No failure to enforce any provision of the contract on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions of this contract concerning any subsequent or continuing breach.

If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions never had been inserted in this Agreement.

The terms of this agreement shall remain in full force and effect following final payment.

Contractor shall comply with the requirements of the State of Nebraska.

# Contract Performance

## Work of this Contract

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

## Location

The Work shall be undertaken at: (Legal description, Address, or other necessary detail to identify the location).

## Project Manager

DED shall assign a Project Manager to manage this project who shall have the authority to represent DED and the State of Nebraska. The Project Manager will be the primary point of contact for the Consultant, Contractor, or Superintendent.

## Contruction Schedule

The Contractor shall submit a detailed complete construction project schedule to the Consultant for review and approval within two (2) weeks of receipt of the signed Contract. The schedule shall include proposed construction start and completion dates, as well as all major construction project milestones. Schedule shall include all project work including Subcontractor work.

## Preconstruction Conference

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

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

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

## Prosecution of the Work and Completion Date

The work to be performed by the Contractor under this Agreement shall officially commence with the date of this Agreement evidenced in the “Affidavit and Execution of Contract” section of this contract. The Contract Time shall be measured from this date of commencement, and the work shall be carried on regularly and uninterruptedly thereafter, with such personnel and by such means as will ensure final completion of the entire Contract on or before the completion date set in the documents. The time of beginning, rate of progress, and time of completion are essential conditions of the Contract.

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

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

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

1. Additional work resulting from modification of the plan for the project,
2. Delays caused by the Owner, or
3. Other reasons beyond the control of the Contractor which in the Owners' judgement would justify such extension.

If adverse weather conditions or other natural phenomenon are the basis for a Claim for additional time, such Claim shall be documented by the Contractor using data substantiating that weather conditions were abnormal for the period of time, based upon National Weather Service records, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

No extension of the Contract period will be allowed for variation between contract quantities and actual quantities which cannot be predetermined, and which amount to less than 25% of the contract quantities.

## Waiver of 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 30-calendar day cure period (or longer at the non-breaching Party’s discretion considering the gravity and nature of the default). 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, DED may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

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

## Progress Meetings

After start of on-site construction work, progress meetings shall be scheduled at dates and times agreeable to the Contractor, Consultants, and representatives of the facility. Meetings may be held for purposes of discussion of issues including but not limited to construction progress, resolving construction problems, schedule, security, and changes.

# Materials

## Materials – Tests and Standards

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

## Substitute Material Specifications

If the Contractor desires to substitute any material for that specified in these project documents, the Contractor shall submit specifications for such substitute material to consultant for approval before bid opening. Such submittals shall be made in time to be received by consultant a minimum of seven working days before the bids due date to allow for examination and notification of action to prospective bidders.

## Obolete Equiptment

It is important that the Project Manager be protected as much as possible against the discontinuance of the model of equipment to be purchased, and that repair parts, and services of expert factory representatives, be made available if desired. Contractor shall not utilize equipment, materials, or systems that are not currently in production, for which parts cannot be obtained, or that are no longer supported by the manufacturer.

# Contractor’s Obligations

## Permits, Inspections, and Fees

The Subrecipient or Successful Applicant must establish a contract file and monitor the contract to assure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

* Description of method used to select consultants and related documentation;
* Qualification statements, RFP, and proposal(s) received;
* Any documentation used to evaluate respondents, if applicable;
* SAM verification (no active exclusions/debarment);
* Negotiation methods;
* Cost and pricing data;
* Contract for services;
* Records of partial payments and supporting documentation (in financial management files); and
* Contract amendments, if any, and rationale for amendment.

These procedures will be administered under the supervision of the State of Nebraska’s Department of Economic Development (DED). They are intended to support program implementation funded by the United Sates (US) Department of Housing and Urban Development’s (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) awarded in response to Winter Storm Ulmer (DR-4420).

## DAVIS-BACON AND RELATED ACTS

The contractor agrees to comply with all provisions of the Davis-Bacon Act as amended (40 U.S.C. 3141-3148). Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The [CONTRACTING ENTITY] will place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation document. The decision to award a contract shall be conditioned upon the acceptance of the wage determination.

## SECTION 3 REQUIREMENTS

1. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. §1701u) (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons including persons who are recipients of HUD assistance for housing, with preference for both targeted workers living in the service area or neighborhood of the Development and Youthbuild participants, as defined at 24 CFR Part 75 (“Section 3 Regulations”).
2. The Parties agree to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Parties certify that they are under no contractual or other impediment that would prevent them from complying with the Section 3 Regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor’s commitments under this section of the Contract, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.
4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in Section 3 Regulations. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.
5. The [CONTRACTING ENTITY] will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the [CONTRACTING ENTITY]’s obligations under Section 3 Regulations.
6. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.