

APPENDIX B TO REQUEST FOR PROPOSALS

THIRD-PARTY CONTRACTOR AGREEMENT BETWEEN NEBRASKA PUBLIC POWER DISTRICT AND CONTRACTOR

Background

Nebraska Public Power District (NPPD) is proposing to construct the R-Project, a new 225-mile-long 345 kV transmission line that will extend north from NPPD's Gerald Gentleman Station near Sutherland, Nebraska to NPPD's existing substation east of Thedford, Nebraska, which is being expanded, then proceeds east, and will connect to a new substation that is being built in Holt County, Nebraska. Because the R-Project will cross habitat of the threatened American burying beetle, NPPD sought an incidental take permit (ITP) under the Endangered Species Act (ESA) from the U.S. Fish and Wildlife Service (USFWS). On June 12, 2019, after a permitting process spanning more than six years, which included USFWS's preparation of a final environmental impact statement (FEIS), USFWS issued an ITP to NPPD for the R-Project.

In July 2019, a group of R-Project opponents filed a lawsuit challenging USFWS's decision under the ESA, the National Environmental Policy Act (NEPA), and the National Historic Preservation Act. On June 17, 2020, the U.S. District Court for the District of Colorado issued its decision. While the court found in favor of USFWS and NPPD on several counts, it identified certain discrete errors in USFWS's decision-making process. The court thus vacated and remanded the ITP to USFWS for further proceedings consistent with the court's order.

On remand, there is a need to prepare a supplemental environmental impact statement (SEIS) to address the issues identified by the court ruling and to address new information and changed circumstances, as relevant. Appendix A, attached hereto provides the scope of work for the NEPA third-party contractor (Contractor) for the remand process, including project management, analysis, and preparation of an SEIS. USFWS will issue a record of decision (ROD) based on a review of the SEIS, comments received, and the decision file.

USFWS has independently selected _____ ("Contractor") to assist USFWS as the NEPA third-party contractor for preparation of the SEIS. NPPD is responsible for contracting with Contractor to provide Services to USFWS in connection with the R-Project's SEIS.

NOW THEREFORE, NPPD and Contractor agree as follows:

1. SCOPE OF SERVICES: In accordance with this Agreement, Contractor will perform the scope of work described in the SEIS Scope of Work attached hereto as Appendix A and made a part of this Agreement, and the scope of work described in Contractor's Proposal (Proposal) attached hereto as Exhibit 1 and made a part of this Agreement. The scope of work described in Exhibit 1 and Appendix A is referred to herein as "Services" and/or "Work". These Services shall be performed on a "time and material" basis. The Services shall be performed by Contractor under the direction of USFWS. Contractor shall not perform work outside the scope of work described in Exhibit 1 and Appendix A, except upon issuance of a Change Order by NPPD that modifies the scope of work or requires the performance of additional or modified work.

2. TIME OF PERFORMANCE: Time is of the essence in the completion of Services under the Agreement. Contractor shall perform the Services in compliance with the R-Project Schedule set by USFWS.

3. PROJECT TEAM: Contractor Project Manager for the Services shall be [name]; the other Project Team members shall be as shown in Contractor's Proposal; Project Team members can be replaced only after notification to and approval by USFWS and NPPD.

4. COMPENSATION: The total estimated cost of the Work described herein is \$_____.

Charges for all professional, technical and administrative personnel directly charging time to the R-Project will be calculated and billed on the basis of the following staff category hourly "billing rates" (Billing Rates), which are in U.S. dollars, net of all applicable taxes, duties, fees and related charges, and include fringe benefits, burden, and fee.

Staff Category	Rate/Hour

All staff personnel have been classified in the above staff categories based on discipline skills, education, and experience level.

Travel and living expenses shall be billed at actual cost or per diem. Travel time is limited to eight (8) hours per day at straight time billing rates. Local travel time will not be reimbursed. Air transportation shall be coach or economy airfare and vehicle rentals shall be mid-size or equivalent rates only. Personal vehicle mileage shall be reimbursed at the IRS allowable mileage reimbursement rate at the time of service. Billing Rates are based on a forty-hour work week. Overtime hours for exempt employees (non-hourly) will be charged at the standard Billing Rates. Overtime hours of non-exempt (hourly-non-supervisory) employees are charged at an amount not to exceed 1.5 times the standard Billing Rates.

"Other Direct Costs" are all costs and expenses incurred by Contractor directly attributable to the performance of Services, except as otherwise provided herein. Other Direct Costs include subcontracts, materials, shipping charges, special fees, permits, special insurance and licenses, outside computer time, and miscellaneous costs. All other internal expenses (reproduction, telephone, facsimile, etc.) will be charged as a percentage of labor cost, or as quoted.

Fees and expenses incurred by Subcontractors in performing the Services will be reimbursed by NPPD to Contractor based on subcontractor's actual billings to Contractor.

5. LITIGATION SUPPORT: In the event that Contractor's employees are requested by NPPD or compelled by subpoena or otherwise by any party to give expert or witness testimony or otherwise participate in a judicial or administrative proceeding involving NPPD at any time, NPPD shall compensate Contractor at the Billing Rates shown above, including preparation time, and shall reimburse Contractor for all other direct costs as provided herein.

6. RETAINER: Contractor may require advance deposit of funds on specific projects based upon project cost estimates. In those instances, Contractor and NPPD will mutually provide terms for the deposit of advance payments and provisions for crediting such advances against invoices for Services completed.

7. INVOICING AND PAYMENT: Contractor shall invoice NPPD once each month for all sums due for the preceding month. Each invoice shall be supported by detailed summaries of labor charges and other direct costs (including, but not limited to, transportation, lodging, meals, subcontracts, materials, shipping charges, special fees, permits, special insurance and licenses, outside computer time, and miscellaneous costs), with all applicable multipliers clearly shown. No expenses involving alcohol will be reimbursed. Said labor charges, both regular time and overtime, shall be itemized by employee name, job classification, hourly rate, and number of hours worked. Each invoice shall clearly reference this Agreement number and the time period covered. Upon request, Contractor shall supply NPPD with complete documentation for all invoiced costs.

All invoices shall be sent to:
Nebraska Public Power District
Attention: Accounts Payable
P.O. Box 1740
Columbus, Nebraska 68602-1740
accountspayable@nppd.com

Monthly invoices received by NPPD shall be paid no later than thirty (30) calendar days after receipt. In the event NPPD takes exception to any invoiced item(s), NPPD may withhold payment of said item(s). In such a case, NPPD shall promptly notify Contractor explaining the item(s) questioned, the reason for the exception, and what information or documentation NPPD requires before payment will be made.

Each invoice shall also be accompanied by (1) a "Financial Status Report," comparing estimated labor costs and project costs against actual labor costs and project costs incurred as of the invoicing date; and (2) a "Progress Report," providing a narrative discussion of program status, including budgetary, scheduling and other issues relative to timely completion of Work pursuant to this Agreement.

8. ESTIMATES OF COSTS: Contractor's estimates of costs will be used by NPPD for budget and planning assistance. Cost estimates are based on Contractor's best judgment of the requirements known at the time of the Proposal, and can be influenced favorably or adversely by NPPD needs and other circumstances. Contractor will endeavor to perform the Services and accomplish the objectives within the estimated costs, but in no event shall Contractor's estimate be interpreted as a not-to-exceed or fixed price. Contractor shall give written notice to NPPD if

and when Contractor reasonably concludes that the estimated total costs of the Services will exceed the total estimated amount of this Agreement, and Contractor shall obtain written consent from NPPD prior to incurring fees or expenses in excess of this estimate.

9. ACCESS: To the extent possible, NPPD shall grant, or obtain for Contractor and its subcontractors, authority to enter the property upon which Contractor's Services are to be performed, at NPPD's expense.

10. STANDARD OF SERVICES AND WARRANTY: Contractor agrees to perform its Services in accordance with generally accepted engineering and construction standards, and scientific practices in effect and utilized by environmental firms in the United States at the time the Services are rendered. The Services may involve the use of tests, calculations, analysis and procedures that are in a state of change and refinement. Subject to **Section 13**, Contractor warrants that, if any of its completed Services fail to conform to the above standard as determined by USFWS, and provided Contractor is notified of such defective Services within one year of the completion of the Services, Contractor will, at its expense, either perform corrective Services of the type originally performed as may be required to correct such defective Services, or refund to NPPD the amount paid to Contractor for the defective Services. Except as provided in this Section, Contractor makes no other warranty, express or implied.

11. CONFIDENTIALITY: "Confidential Information" means all technical, economic, financial, pricing, marketing or other information that has not been published and/or is not otherwise available to members of the public and includes, without limitation, trade secrets, proprietary information, customer lists, scientific, technical and business studies, analyses, processes, methods, procedures, policies and information furnished hereunder and conspicuously marked as proprietary or confidential. In the event that either party discloses Confidential Information to the other party in connection with this Agreement (excluding Contractor's Work Product that is delivered to NPPD or others hereunder), the party receiving such Confidential Information agrees to hold as confidential and to not disclose to others the Confidential Information for a period of five (5) years from the date of disclosure. These restrictions shall not apply to information that (i) the parties had in their possession prior to disclosure; (ii) becomes public knowledge through no fault of the receiving party; (iii) the receiving party lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; (iv) is independently developed by the receiving party; or (v) is required to be disclosed by law or court order. NPPD agrees that Contractor may, however, use and publish NPPD's name and a general description of the Services provided to NPPD in describing Contractor's experience and qualifications to other clients and potential clients.

Contractor understands that NPPD is a public corporation and political subdivision of the State of Nebraska, and as such, is subject to certain open meeting and public record laws of the State of Nebraska. If a request under any such law is made by a third party for any Confidential Information furnished to either party under this Agreement, the receiving party will immediately notify the providing party of such request for Confidential information and of the receiving party's subsequent decision whether disclosure to the requesting third party will be made under the public records law, except that, for a period of four business days after receipt of such request, the receiving party shall not make the requested disclosure. It shall be the responsibility and obligation of the providing party to take any and all action necessary to protect the Confidential Information.

If the providing party has taken no action to protect the Confidential Information from being released by the end of four business days after receipt of the request, the receiving party may make such disclosure to the requesting third party without any liability to the providing party.

12. WORK PRODUCT: “Work Product” consists of all reports, notes, laboratory test data and other information prepared by Contractor for delivery to NPPD or USFWS.

13. INSURANCE: Contractor shall not begin Work under this Agreement until it has obtained all insurance coverages required under this Section and such insurance has been approved by NPPD.

The following insurance coverages shall be kept in force during the life of this Agreement and shall be primary with respect to any insurance or self-insurance programs covering NPPD, its directors, officers, agents, representatives and employees.

a. Workers' Compensation and Employers' Liability Insurance - Workers' Compensation Insurance with statutory limits as required by the State of Nebraska, and Employers Liability Insurance with a minimum acceptable limit of \$100,000 each accident.

b. Commercial General Liability Insurance - Commercial General Liability Insurance against claims for damages resulting from bodily injury, including death, personal injury, and property damage. The minimum acceptable limit of liability shall be \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, such limit shall not be less than \$2,000,000.

The insurance required herein shall not exclude the following forms of protection:

1. X.C.U.
2. Broad Form Property Damage
3. Contractual Liability
4. Protective Liability
5. Products/Completed Operations

c. Automobile Liability Insurance - Automobile Liability Insurance against claims for damages resulting from bodily injury, including death and property damage, which may arise from the operations of any owned, hired or non-owned automobiles. The minimum acceptable limits of liability shall be \$1,000,000 combined single limit for each accident.

d. Professional Liability Insurance – Professional Liability Insurance provided coverage for acts, errors, or omissions committed or alleged to have been committed by Contractor with a minimum acceptable limit of liability of \$1,000,000 each occurrence and in the aggregate.

e. Certificate of Insurance - Contractor shall furnish NPPD with a certificate of insurance evidencing coverage required in paragraphs a., b., c., and d. above. Such certificate(s) shall specifically state that the insurance company or companies issuing these insurance coverages shall give NPPD at least 30 days written notice in the event of cancellation of, or material change in, any of the coverages. If coverage on the certificate(s) is shown to expire prior to completion of all terms of this Agreement, Contractor shall furnish a certificate of insurance evidencing renewal of its coverage to NPPD. The certificate(s) of insurance shall clearly reference this Agreement number.

Contractor shall also require every subcontractor performing Work under this Agreement to maintain the same insurance coverages required in paragraphs a., b., c., and d. above.

14. INDEMNITY BY CONTRACTOR: Contractor shall indemnify and save NPPD, and its officers, directors, employees, agents, or representatives harmless from and against all claims, demands, suits, actions, payments, and judgments arising from personal injuries, death and damage to property, or other claims brought or recovered against NPPD, or for losses experienced by NPPD, its officers, directors, employees, agents, or representatives, as a result of any negligent act or omission of Contractor, its agents, servants, or employees, in the execution of the Work under this Agreement, including any and all expense, legal or otherwise, incurred by NPPD, or its officers, directors, employees, agents, or representatives in the defense of any claim or suit.

NPPD shall promptly notify Contractor in writing of any claim for which indemnification is sought. Contractor shall not indemnify NPPD for any loss, damage, expense or liability arising out of any negligent act of NPPD.

15. COMPLIANCE WITH LAW: Contractor and its subcontractors shall comply with all applicable federal, state and local laws, regulations and requirements in the performance of its Services. Contractor shall hold harmless and indemnify NPPD for any fines or penalties, except consequential damages, resulting from the violation of laws and ordinances of any kind by Contractor or its subcontractors.

16. VERIFICATION OF WORKER'S LAWFUL STATUS TO PERFORM WORK: Contractor shall use a federal immigration verification system to determine the work eligibility status of any newly hired permanent or temporary employees, physically performing services within the State of Nebraska, under this Agreement. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security, or other federal agency authorized to verify the work eligibility status of a newly hired employee.

This verification requirement also applies to any subcontractor hired by Contractor to assist in the performance of the Work under the terms and conditions of this Agreement. Contractor is responsible to ensure that each subcontractor complies fully with the requirements contained in this section.

17. CHANGES: It is recognized that USFWS may request changes in the Work to be performed hereunder or that changes may be necessary in order to meet the requirements of governmental authorities and codes. If a modification in compensation is required because of a change in the Work performed, such compensation shall be agreed upon in writing prior to the time the change is implemented. Notwithstanding any other provisions of the Agreement to the contrary, Contractor shall be entitled to additional compensation for Work or an adjustment in the schedule, in the event that Contractor experiences any increases in costs or delays in the schedule due to changes in Contractor's scope of Work from that included in Contractor's original Proposal, or for changes in the manner or method of performance of Work, or due to changes in schedule or circumstances not solely caused by Contractor.

18. CONSEQUENTIAL DAMAGES: Neither party, nor their parent, affiliated or subsidiary companies, nor the officers, directors, agents, employees or contractors of any of the foregoing, shall be liable to the other in any action or claim for incidental, indirect, special, collateral, consequential, exemplary or punitive damages arising out of or related to the Services, including without limitation, loss of profits, loss of opportunity, loss of production, or loss of use. Any protection or limitation against liability for any losses or damages afforded any individual or entity by these general conditions shall apply whether the action in which recovery of damages is sought is based upon contract, tort, (including, negligence, strict liability) or any other legal theory of law.

19. INDEPENDENT CONTRACTOR: Contractor's Services are performed as an independent contractor. Neither Contractor nor its employees or subcontractors are or shall be considered NPPD's employees or agents or have authority to bind NPPD in any way.

20. FORCE MAJEURE: Contractor shall not be liable for loss or damage to NPPD resulting from any delay or failure to perform any of its contractual obligations within the time specified as a result of a Force Majeure. Force Majeure shall include, by way of example and not as a limitation, those circumstances which are beyond the control of Contractor such as acts of God, the public enemy, the U.S. Government, or any department or agency thereof, any of the several states, other contractors of NPPD as well as fire, flood, epidemics, quarantines, riots, civil insurrections, and unusually severe weather. In the event of a Force Majeure, Contractor shall be excused from performance during the existence of the Force Majeure and shall have a reasonable extension of time after the termination of the Force Majeure to complete performance. When a Force Majeure occurs, Contractor shall immediately notify NPPD and USFWS of the existence of the Force Majeure and shall submit a revised performance schedule for NPPD approval as soon as practicable, but no later than ten (10) days following termination of the Force Majeure.

21. LIMITATIONS OF LIABILITY: Contractor's maximum liability arising out of or in any way related to this Agreement, the Services, or the Site, whether based on contract, tort, or any other legal theory, shall be limited to, and shall not exceed, the value of this Agreement.

The parties agree that in any dispute over the terms of this Agreement or any issue arising under this Agreement, they will make a good-faith effort to resolve the matter without litigation. Such efforts shall include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. The parties agree that before either party commences an action against the other party, they will consider the use of alternate forms of dispute resolution. Pending the outcome of such dispute resolution, both parties shall take immediate steps to mitigate any damages.

22. ENTIRE AGREEMENT: This Agreement constitutes the entire understanding between the parties. Any waiver, modification or amendment of this Agreement shall be effective only if in writing and signed by an authorized representative of both Parties. If any portion of this Agreement is held invalid or unenforceable, any remaining portion shall continue in full force and effect. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than NPPD or Contractor. There shall be no assignment of the rights or obligations contained in this Agreement by either Party and any such assignment shall be null and void.

23. TERMINATION: NPPD shall have the right to terminate, with or without cause, all or any portion of the Services performed by Contractor and to cancel this Agreement forthwith.

In the event of termination by NPPD without cause (for the convenience of NPPD), Contractor shall be compensated by NPPD, in accordance with the terms of this Agreement, for all Work completed prior to termination but for which compensation has not been made; all Work done in accordance with NPPD's termination instructions; and any reasonable costs and expenses directly and reasonably incurred by Contractor in terminating this Agreement (not to exceed the total estimated cost of this Agreement).

In the event of termination by NPPD, for cause, NPPD shall be liable to Contractor only for direct costs of the Work incurred through the date of termination. NPPD shall not be liable for any "close-down" costs or other like expenses nor shall NPPD be liable for any other costs or expenses incurred by Contractor in connection with termination of the Work.

In the event of termination, either with or without cause, NPPD shall have the right to use, without additional charge any and all Work Products which Contractor prepares in connection with the Work, and Contractor shall, upon NPPD's request, deliver same to NPPD. In addition, Contractor shall take all steps, including assignment of any contractual rights with third parties, relating to this Agreement, as may be required to fully vest such rights in NPPD.

If a modification in the compensation or performance schedule for the Work is required due to suspension, such modification shall be mutually agreed upon by NPPD and Contractor. Under no circumstances, however, shall Contractor be entitled to any additional compensation or extensions of schedule for those delays where suspension is caused by Contractor's failure to comply with the terms of this Agreement or applicable laws and regulations.

24. CONFLICT OF INTEREST DISCLOSURE STATEMENT: Contractor and the subcontractors which Contractor anticipates using to perform the Services have each executed an organizational conflict of interest representation statement, in the form required by USFWS. Any additional subcontractors used by Contractor to complete the Services shall likewise execute a conflict of interest representation statement prior to performing any Work on the SEIS.

25. NPPD'S RIGHT TO HIRE ADDITIONAL CONTRACTORS: Nothing in this Agreement shall be construed to restrict NPPD's right to enter into future agreements with other contractors (including but not limited to the subcontractors referenced in Paragraph 26) to perform Work on this R-Project or any other project.

26. SUBCONTRACTORS RETAINED BY CONTRACTOR: Contractor intends to retain other contractors as subcontractors to assist Contractor in completing the Services under this Agreement; and NPPD agrees to such retention provided (1) Contractor remains ultimately responsible for the completeness, quality and legal adequacy of the Services being provided under this Agreement; (2) Contractor, under USFWS's direction and supervision, shall independently evaluate and verify any Work performed by such subcontractors to ensure its validity and legal adequacy for use in the SEIS preparation process; (3) Contractor shall enter into the necessary contractual arrangements with such subcontractors and handle the billing and payment of subcontractors consistent with this Agreement; (4) Contractor shall require that each

subcontractor agrees to conduct its Work in compliance with Contractor's Proposal, and the terms of this Agreement (including but not limited to the Standard of Services, Confidentiality, Insurance, and Indemnity provisions of this Agreement). Contractor may retain additional subcontractors only upon NPPD's and USFWS's prior written approval.

27. COOPERATION IN DEFENSE OF LITIGATION BY THIRD PARTIES:

Contractor agrees to cooperate at NPPD's expense in the defense of any suit by third parties brought against USFWS or other state or federal agencies involving the legality or adequacy of their compliance with NEPA.

28. AUDIT: Since the Services performed under this Agreement are being performed on a time and material basis, Contractor shall keep accurate records and books of accounts showing all charges and expenses incurred in the performance of the Services. NPPD shall have the right upon reasonable notice to have NPPD's auditors verify at any time, up to two (2) years after satisfactory completion of the Services, all costs, expenses, and disbursements made or incurred by Contractor in connection with the Services to be performed, and may examine Contractor's books and records relating thereto; however verification of the charges hereunder shall be limited to the review of the following: (1) Work hour charges by individuals; (2) Individual expense accounts; (3) Purchase orders for materials, equipment, outside labor or services; (4) Transportation charges; (5) Equipment rental or use charges; and (6) computer and peripheral resource unit charges.

29. NOTICES: Contractor and NPPD shall each designate a representative authorized to act in its behalf and, when necessary, shall designate alternate or additional persons. Said representatives designated by each shall have full authority to direct all affairs with respect to the performance of Work hereunder.

All notices, correspondence, and reports provided for in this Agreement shall be in writing and shall only be effective when delivered to the parties at the following addresses unless changed by written notice:

CONTRACTOR

[address]

Attn: [name]

and

NEBRASKA PUBLIC POWER DISTRICT

1414 15th Street

Columbus, Nebraska 68601

Attn: Lynn Guillatt

Senior Procurement Specialist

Email: llguill@nppd.com

Phone: (402) 563-5350

All project-related notices and correspondence including, but not limited to, the terms and conditions herein, submitted to NPPD shall be addressed to the attention of Lynn Guillatt, Senior Procurement Specialist.

30. CONTROLLING LAW: This Agreement is deemed to have been effectively entered into in the State of Nebraska and it shall be interpreted and controlled by the laws of said state. The Parties agree that any action arising out of or related to this Agreement brought by Contractor in any Court against NPPD shall be brought only in the federal or state courts in and for the State of Nebraska.

IN WITNESS WHEREOF, the parties have duly executed this Agreement by and through their respective officers and/or directors authorized effective as of the date first mentioned above.

NEBRASKA PUBLIC POWER DISTRICT

By: _____

Title: Procurement Manager

Date: _____

CONTRACTOR

By: _____

Title: _____

Date: _____