

# LINCOLN ELECTRIC SYSTEM STANDARD SERVICE/CONSULTING CONTRACT

This contract is made and entered into on this            day of            20            by and between the City of Lincoln, Nebraska d/b/a Lincoln Electric System (hereinafter referred to as "LES") and (hereinafter referred to as "Contractor"). For the purposes of this contract, wherever the word "Contractor" is used it shall mean the party to the contract other than LES.

NOW, THEREFORE, based upon the mutual covenants contained herein, LES and Contractor agree as follows:

## ARTICLE I SCOPE OF WORK

1.1 The Scope of Work (SOW) is defined as the detailed explanation of the services to be provided, work to be performed, and deliverables to be delivered to LES pursuant to the terms of this Contract, together with a chronological division of services to be provided and work to be performed, time limits for completion, and costs and expenses to be paid by LES to Contractor as full compensation for the services, work, and deliverables.

The Scope of Work shall be as agreed to between LES and Contractor in a separate attachment to this Contract to be incorporated herein and made a part hereof, which, together with any subsequent Written Amendments/Change Orders, shall comprise the Contract Documents. To the extent that any term or provision included within the SOW conflicts with or adds to the terms of this Contract, the terms of the SOW shall prevail.

1.2 Contractor shall perform such duties, services and tasks, and provide such deliverables as described in the attached SOW (hereinafter "Work").

1.3 For purposes of this Contract, the Contract Owner for LES shall be            and the Manager, Procurement & Stores, shall be            , or such other person or persons as LES may designate in writing delivered to Contractor as hereinafter provided.

## ARTICLE II CONTRACT PRICE

2.1 Contract Price. LES hereby agrees to pay to the Contractor the sum as defined in the applicable Scope of Work for all Work to be performed under this Contract by Contractor as follows:

2.2 Payments. The SOW shall include a schedule, agreed to between LES and Contractor, setting forth the date or dates upon which the Work, or phases thereof, shall be commenced and completed and a date or dates upon which deliverables shall be delivered to LES. Such schedule will serve as the basis for payments. The Contractor shall submit to LES Accounts Payable an itemized invoice, including any applicable sales taxes for payment with a copy to the Contract Owner, together with appropriate documentation evidencing that the applicable deliverables have been met within 6 months of the applicable deliverables being completed. Upon approval of the invoice, LES shall make payments of the approved amount of the invoice within 30 days after receipt of the invoice.

### **ARTICLE III ROYALTIES AND PATENTS**

The consideration paid to Contractor hereunder includes, without exception, all royalties and costs arising from patents, trademarks, and copyrights in any way related to the Work. The Contractor shall indemnify and hold harmless LES from any and all claims for infringement by the use of any such patented design, device, material, process, trademark or copyright, in connection with the Work. The Contractor shall indemnify LES for any costs, expenses, and damages that LES may be obligated to pay, for any such claims. The indemnification provided herein shall apply at any time during the Work and shall continue after the completion of the Work indefinitely.

### **ARTICLE IV SUBCONTRACTORS**

Contractor shall be responsible to LES for all acts and omissions of subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in this Contract or any SOW shall create for the benefit of any such subcontractor, supplier, or other individual or entity any contractual relationship between LES and any such contractor, supplier, or other individual or entity, nor shall it create any obligation on the part of LES to pay or see to the payment of any monies due to any such subcontractor, supplier, or other individual or entity except as may otherwise be required by law.

Contractor shall be solely responsible for scheduling and coordinating the work of subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all subcontractors, suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with the Contract Owner through Contractor.

### **ARTICLE V TIME; CHANGES OF CONTRACT TIMES**

5.1 Time for Starting and Completion; Time of the Essence. The Contractor shall commence performance in accordance with the schedule included in the SOW and complete the Work within all applicable time limits. Time is of the essence of this contract.

5.2 Extension of Time Limits; Force Majeure.

- (a) Change Orders/Written Amendment. Time limits within this Contract and each SOW may only be changed by a Change Order or a Written Amendment. The Contractor, in undertaking to complete the Work, shall take into consideration and make allowances for all the ordinary delays and hindrances incident to such Work.
- (b) Force Majeure. Adjustments to any time limit in this Contract and each SOW will be made for delays in completion of the Work from causes beyond Contractor's control, limited to the following:
  - (1) Acts of God.
  - (2) Federal embargoes, priority orders, or other restrictions imposed by the United States Government.
  - (3) Strikes and other labor disputes.
  - (4) Delays caused by court proceedings.
  - (5) Neglect, delay or default of any other contractor employed by Owner.

- (6) Conflicts, errors or discrepancies in the Contract or SOW reported to the Contract Owner as provided in this Contract.

No extension of a time limit will be granted for delays involving only portions of the Work, or which do not directly affect the time required for completion of the entire Work.

Any claim for an extension of a time limit shall be delivered in writing to LES within ten (10) days of the occurrence of the event giving rise to the claim. All claims for extension of a time limit will be determined by the Manager, Procurement & Stores, if the Contract Owner and Contractor cannot otherwise agree. Any change to a time limit resulting from any such claim will be incorporated in a Change Order or a Written Amendment.

The provisions of this Section shall not exclude recovery for damages (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) for delay by either party.

## **ARTICLE VI REQUIREMENTS CHANGES; PRICE CHANGE**

Any change in the work requirements, contract time or contract price shall only be effective upon the execution by both parties of a Change Order or Written Amendment. No Change Order or Written Amendment shall be authorized by LES unless accompanied by a Purchase Order executed by the Manager, Procurement & Stores, or the Manager, Procurement & Store's, designee.

## **ARTICLE VII INDEMNIFICATION; INSURANCE; RISK OF LOSS**

7.1 Indemnification. Contractor agrees to indemnify, defend, and hold LES and its officers, and employees harmless from and against any and all claims, demands, causes of action, damages, losses, and expenses (including reasonable attorneys' fees and costs) of whatsoever nature, character, or description, which have or may be asserted against LES by any person or entity and to the extent that they arise out of or result from the negligent or willful acts or omissions of the Contractor in the provision of services under this Contract. LES shall give Contractor reasonable notice of, and an opportunity to defend against, any such claims or actions. Notwithstanding the above indemnification, Contractor shall give LES reasonable notice of any matter covered herein and shall forward to LES a copy of every demand, notice, summons or other process received in any claim or legal proceeding covered hereby.

7.2 Insurance.

7.2.1 To protect LES, its officers, directors and employees against liability or loss expense of whatever kind arising in any way out of, in connection with, or resulting from performance of this Contract by Contractor, Contractor shall procure and maintain, at its sole expense and until acceptance of the work by LES, insurance as hereinafter enumerated.

7.2.2 Contractor shall submit to LES at the time Contractor executes this Contract, a Certificate of Insurance, in form satisfactory to LES, evidencing that satisfactory coverage of the type and limits set forth herein are in effect. Contractor shall promptly give written notice to LES of any cancellation or material changes in the policies. Irrespective of the requirements as to insurance to be carried as provided for herein, the

insolvency, bankruptcy or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, or the inadequacy of the limits of the insurance, shall not affect, negate or waive any of the provisions of this Contract, including, without exception, the indemnity obligations of the Contractor.

- 7.2.3 Contractor agrees to require any policies of insurance, except Workers' Compensation coverage and Professional Liability coverage, which are in any way related to the work and that are secured and maintained by Contractor or its subcontractor, to include LES, its officers, directors, employees as Additional Insureds. Furthermore, Contractor shall waive all rights of recovery against LES, its officers, directors and employees which Contractor may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance maintained by Contractor.
- 7.2.4 Contractor agrees to require all such policies of insurance which are in any way related to the work and that are secured and maintained by Contractor or its subcontractor, to include clauses providing that each underwriter shall waive its rights to recovery, under subrogation or otherwise, against LES, its officers, directors and employees.
- 7.2.5 Contractor shall at a minimum maintain the following insurance during the term of the contract.

- (a) **WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE** Contractor agrees to comply with workers' compensation laws of the state where any portion of the work is performed and maintain a workers' compensation and employer's liability policy. This policy shall be endorsed to provide: all state coverage, voluntary compensation coverage, and occupational disease.

Workers Compensation	Statutory
Employers Liability	\$500,000 Each Accident
	\$500,000 Disease – Each Person

- (b) **COMMERCIAL GENERAL LIABILITY INSURANCE** Commercial General Liability insurance, endorsed to provide coverage for: Explosion, Collapse and Underground Damage to property of others; Contractual Liability; Contractor's Protective Liability (if subcontracting is authorized) and Products and Completed Operations (for a minimum of two (2) years after completion of the work).

General Aggregate (Other than Products/Completed Operations)	\$500,000
Products/Completed Operations Aggregate	\$500,000
Personal and Advertising Injury	\$500,000
Each Occurrence	\$300,000
Fire Damage	\$50,000
Medical Expenses (Any One Person)	\$5,000

- (c) **PROFESSIONAL LIABILITY INSURANCE (Errors and Omissions)** Professional liability insurance to cover negligent performance of the Work \$500,000
- (d) **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE** Comprehensive Automobile Liability insurance which shall include coverage for all owned, non-owned and hired vehicles.

Automobile Liability

\$100,000/300,000/100,000

- 7.3 Title Transfer and Risk of Loss. Title to any equipment provided hereunder shall pass to LES when received at the LES designated point of delivery, and Contractor shall bear all risk of loss until delivery.

## **ARTICLE VIII DISPUTES**

In the event of any dispute, claim, question or disagreement arising from or relating to this Contract or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to litigation (unless necessary to avoid the expiration of any applicable statute of limitations) or the exercise by LES or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such dispute, claim, question or disagreement.

## **ARTICLE IX TERMINATION**

- 9.1 Termination for Default. LES may terminate this Contract upon the occurrence of any one or more of the following events:
- (a) If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency.
  - (b) If a petition is filed against Contractor under any chapter of the bankruptcy code as now or hereafter in effect at the time of filing, or if any creditor is granted relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
  - (c) If Contractor makes a general assignment for the benefit of creditors.
  - (d) If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractors' creditors.
  - (e) If Contractor admits in writing an inability to pay its debts generally as they become due.
  - (f) If Contractor fails to perform in accordance with the Contract and any SOW after being given the opportunity to cure any deficient performance.
  - (g) If Contractor refuses to comply with Laws or Regulations of any public body having jurisdiction.
  - (h) If Contractor refuses to comply with the authority of Contract Owner, or the Manager, Procurement & Stores.
  - (i) If Contractor otherwise violates any provision of the Contract or any SOW after being given an opportunity to cure the violation.

If one or more of the events identified above occur, LES may, after giving Contractor thirty (30) days written notice, terminate the services of Contractor, exclude Contractor from the site, and take possession of the Work. In such case, Contractor shall not be entitled to receive any further

payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, attorneys, and other professionals, and all court or arbitration or other dispute resolution caused) sustained by LES arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to LES.

- 9.2 Termination for Convenience. Upon thirty (30) days written notice to Contractor, LES may, without cause and without prejudice to any other right or remedy of LES, elect to terminate the Contract. In such case, Contractor shall be paid:
- (a) For completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit for such work;
  - (b) For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses;
  - (c) For all claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and other; and
  - (d) For reasonable expenses directly attributable to termination.

Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

- 9.3 Suspension of Work. At any time and without cause, LES may suspend the Work for a period of not more than ninety (90) consecutive days by notice in writing to Contractor which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any such suspension if Contractor makes a claim therefore in writing. All claims for an adjustment in the Contract Price or an extension of the Contract Time, or both will be determined by the Manager, Procurement & Stores, if the Contract Owner and Contractor cannot otherwise agree. Any resulting change in the Contract Time or Contract Price will be incorporated in a Change Order or Written Amendment.

## **ARTICLE X FAIR EMPLOYMENT; LAWS**

- 10.1 Fair Employment Practices. Neither Contractor nor any of its subcontractors shall discriminate against any employee or applicant for employment to be employed in the performance of this contract with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, national origin, ancestry, age or marital status.
- 10.2 E-Verify Provision. The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United State Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

- 10.3 Governing Law. The Contract and all documents incorporated therein shall be construed pursuant to the law of the State of Nebraska.
- 10.4 Applicable Laws and Regulations. For work done in Nebraska in the performance of the Contract, the Contractor shall maintain fair labor standards and comply with all laws and regulations enacted and promulgated by the United States, the state of Nebraska, or any political subdivision thereof which govern the conduct of the Contractor during the performance of its obligations under this Contract, and they shall be deemed to be included in this Contract as though written out in full in this Contract. Specifically included in the laws to which Contractor shall comply, are: (1) Nebraska Workers' Compensation Act, §§ 48-101 to 48-1,110, R.R.S. 1943; (2) Employment Regulations, Chapter 48, Article 2, R.R.S. 1943; (3) Child Labor, Chapter 48, Article 3, R.R.S. 1943; (4) Health and Safety Regulations, Chapter 48, Article 4, R.R.S. 1943; (5) Employment Security Law, §§ 48-601 to 48-671 R.R.S. 1943; (6) Act Prohibiting Unjust Discrimination in Employment Because of Age, §§ 48-1001 to 48-1009, R.R.S. 1943; (7) Wage and Hour Act, §§ 48-1201 to 48-1209, R.R.S. 1943; (8) Nebraska Wage Payment and Collection Act **(9) 41 C.F.R. § 60-1.4(a); 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a) (This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-1.4(a); 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractor take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.)**

## ARTICLE XI CONFIDENTIAL INFORMATION; OWNERSHIP OF DOCUMENTS

- 11.1 Confidentiality. Neither Contractor, nor any of its employees, shall disclose Confidential Information (as hereinafter defined), nor use Confidential Information in any way, directly or indirectly, except as required in the performance of this Contract. Contractor shall not divulge Confidential Information obtained pursuant to this Contract to anyone not in its employment except with the express written consent of LES. "Confidential Information" means any material, data or information in whatever form or media of LES which LES desires to protect against disclosure or competitive use, regardless of the form in which maintained and shall include all information relating to the business of LES, whether disclosed orally or whether it is marked as confidential or not, including, but not limited to information concerning customers, personnel, infrastructures, security procedures, facilities/building construction, blueprints and/or specifications, technical, business and financial strategies and planning, pricing information and any information relating to the operational structure of LES, hardware and/or software, equipment, deliverables or services rendered under this Contract and all information and materials relating to third-party vendors, systems integrators or consultants of LES that have provided, are providing or that may provide in the future any services to LES. Contractor agrees to hold in confidence at all times, during the term of this Contract and after its completion, all Confidential Information and materials. Unless Contractor has received written authorization from LES to the contrary, upon expiration, termination or completion of Contractor's services or upon the request of LES, Contractor shall either:
- (a) Return Confidential Information to LES and provide LES written clarification that all such Confidential Information has been returned; or

- (b) Destroy Confidential Information and provide LES with a notarized certification, signed by an authorized representative of Contractor, stating that Confidential Information has been destroyed.

Contractor shall have no obligation with respect to Confidential Information which is in the public domain, that was previously known by the Contractor, that is independently developed by Contractor, or which is received by Contractor from a third party who is not bound by a confidentiality agreement with respect to such information, or that is required to be released pursuant to Nebraska statute or an order from a court of competent jurisdiction requiring disclosure. Contractor shall be responsible for ensuring that any of its Subcontractors abide by the terms and conditions of this confidentiality provision or LES Form 790, if applicable.

- 11.2 All documents of any kind or any nature, and in any form, whether hard copy or electronic, including, but not limited to: marketing plans; drawings; studies; websites; and any other documents, drawings, surveys, maps, booklets, pamphlets, or other materials developed, prepared, created or otherwise obtained by Contractor in the course of performing services under this Contract shall be and at all times remain the property of LES. Contractor shall have no right to copyright, trademark, patent or otherwise claim any ownership rights in or to such materials.

## **ARTICLE XII MISCELLANEOUS**

- 12.1 Contractor Relationship. The parties hereby agree that this Contract shall not be construed as forming a partnership or joint venture between the parties to this Contract. The parties further agree that Contractor and its employees, agents and subcontractors are performing services under this Contract as independent contractors and not as employees or agents of LES.
- 12.2 Successors and Assigns. All rights and obligations under this Contract shall inure to the benefit of and shall be binding upon the parties and their successors and assigns. Neither party shall assign this Contract, or delegate any of the responsibilities hereunder to a third party, without the prior written assent of the other party (which assent shall not be unreasonably withheld). In the case of Contractor, the surety shall also assent, and the assignment or delegation assented to shall substitute assignee for Contractor and shall constitute assignee joint principal co-obligor with the Contractor on all bonds and insurance required hereunder.
- 12.3 Records Retention; Audit. Contractor shall establish and maintain a reasonable accounting system that enables LES to readily audit this Contract and any SOW. LES and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and Subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by LES,



whether during or after completion of this contract and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by LES. Such records shall be made available to LES during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for LES. Contractor shall ensure LES has these rights with Contractor's assigns, successors, and Subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those Subcontracts or agreements relate to fulfillment of the Contractor's obligations to LES.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by LES unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to LES in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse LES for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse LES for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of LES's findings to Contractor.

12.4 Provisions of Contract as Controlling. In case of an actual or alleged disagreement or discrepancy between any of the Contract Documents, the Contract Documents shall be given precedence and considered controlling in descending order as follows:

- (a) Written amendment/Change Order
- (b) Scope of Work (SOW)
- (c) Contract

12.5 Notice. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, (d) by electronic notification (e-mail), or (e) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to LES:

P.O. Box 80869  
Lincoln, NE 68501  
Attention:

If by facsimile:

(402) 476-7601

If by e-mail:

procurementdept@les.com

or to such other address, facsimile number, or e-mail address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip, and which for any electronic notification shall mean upon transmittal by internet.

12.6 Entire Agreement. The Contract Documents form the entire agreement between LES and Contractor and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.6 Authority to Sign Contract. The person signing this Contract on behalf of Contractor represents and warrants that said person has the legal authority to bind and obligate Contractor to the terms and conditions of this Contract. Proof of such authority shall be attached to this Contract unless:

- (a) Contractor is a corporation and the person signing is the president; or
- (b) Contractor is a general partnership and the person signing is a partner; or
- (c) Contractor is a limited partnership and the person signing is the general partner; or
- (d) Contractor is a limited liability company and the person signing is the managing partner.

**SIGNATURES**

In witness whereof, the parties have executed this contract as of the day and year first written above.

CITY OF LINCOLN, NEBRASKA d/b/a  
LINCOLN ELECTRIC SYSTEM

By: \_\_\_\_\_  
Todd Dlouhy, Manager  
Procurement & Stores

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