

RESOLUTION **Agenda Item #** 22a
Date 4/8/20
SIGNING OF ENVIRONMENTAL SERVICES AGREEMENT - BK1957

COPY 

Dodge County

Resolution No. _____

Whereas: Dodge County is developing a transportation project for which it intends to obtain Federal funds;

Whereas: Dodge County as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project;

Whereas: Dodge County and Felsburg, Holt, & Ullevig, Inc., wish to enter into a Professional Services Agreement to provide environmental services for the Federal-aid project.

Be It Resolved: by the Board of Supervisors of the Dodge County that:

Bob Missel, Chair of the Dodge County Board of Supervisors, is hereby authorized to sign the attached environmental services agreement between Dodge County, Nebraska and Felsburg, Holt, & Ullevig, Inc.

NDOT Project Number: ER-3490(13)

NDOT Control Number: 22792

NDOT Project Description: Hooper North, Logan Creek

Adopted this _____ day of _____, 2020 at _____ Nebraska.
(Month)

The Board of Supervisors of Dodge County, Nebraska

Board/Council Member _____

Moved the adoption of said resolution

Member _____ Seconded the Motion

Roll Call: _____ Yes _____ No _____ Abstained _____ Absent

Resolution adopted, signed and billed as adopted

Attest:

Signature County Clerk

Task Order Agreement No.	BK1957
Master Agreement No.	VK1601
Effective (NTP) Date	01-23-2020
Task Order Amount	SRC \$46,830.75

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT LPA PROJECTS

DODGE COUNTY, NEBRASKA
FELSBURG, HOLT, AND ULLEVIG, INC.
PROJECT NO. ER-3490(13)
CONTROL NO. 22792
Hooper North, Logan Creek
Environmental Services



THIS AGREEMENT, is between the DODGE COUNTY, NEBRASKA ("LPA") and FELSBURG, HOLT, AND ULLEVIG, INC. ("Consultant"), and collectively referred to as the "Parties".

WHEREAS, Consultant entered into an On-Call Professional Services Master Agreement, No. VK1601 ("Master Agreement"), with the Nebraska Department of Transportation ("State") wherein Consultant agreed to provide Environmental Services ("Services") for future Federal-aid transportation projects, when selected by LPA or State, and

WHEREAS, LPA desires that this project be developed and constructed under the designation of Project No. ER-3490(13) and formally authorizes the signing of this Agreement, as evidenced by the Resolution of LPA dated _____ day of _____, 2020, attached as Exhibit "C" and incorporated herein by this reference, and

WHEREAS, LPA, or State on LPA's behalf, selected Consultant to provide professional services for the subject project, and

WHEREAS, the Parties wish to enter into a task order agreement ("Task Order"), to provide for the completion of the Services for the project for which Consultant has been selected, and to specify the duties and obligations for the Parties for the Services described herein, and

WHEREAS, solely for convenience, consistency and in an attempt to obtain federal funding for Consultant services, the Parties intend that this task order agreement ("Task Order") include some of the provisions of the Master Agreement between Consultant and State, and

WHEREAS, Consultant and LPA intend that the Services provided by Consultant comply with all applicable federal-aid transportation project related program requirements so that Consultant's costs under this Task Order will be eligible for federal reimbursement, and

WHEREAS, the LPA and Consultant intend that this Task Order be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual (See definition in Section 1), and

WHEREAS, Consultants primary contact for LPA's project is LPA's Responsible Charge when LPA is managing the project, and

WHEREAS, Consultant's primary contact for LPA's project is State's Project Coordinator when State is managing the project on behalf of LPA, and

WHEREAS, Consultant's primary contact for State's project is State's Project Coordinator.

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

WHEREAS, the Parties understand that State is involved in this federal-aid project on behalf of the FHWA only for issues related to the eligibility of the project for reimbursement of project costs with federal-aid funds.

NOW THEREFORE, in consideration of these facts, Consultant and LPA agree as follows:

SECTION 1. CONTACT INFORMATION

Contact information, for the convenience of the Parties, is as follows:

1.1 Consultant Project Manager

Firm Name	Felsburg, Holt, & Ullevig
Address	315 S. 9 th St., Lincoln, NE 68508
Project Manager's Name	Carin Richardson
Project Manager's Phone	402-858-3286

1.2 State Project Coordinator

Name	Richard Houck
Phone Number	402-479-3600

1.3 LPA RC

Name	Scott Huppert
Phone Number	402-727-2722

1.4 State Agreements Specialist

Name	Dawn Knott
Phone Number	402-479-4414

SECTION 2. NOTICE TO PROCEED AND COMPLETION SCHEDULE OF THE SERVICES

- 2.1 LPA, or State on LPA's behalf, issued Consultant a written Notice-to-Proceed on January 27, 2020. Invoiced charges for services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be paid by State on LPA's behalf.
- 2.2 In the event that prior to the Effective Date of this Task Order, LPA, State on LPA's behalf, issues Consultant a Notice-to-Proceed and Consultant began work, State, on LPA's behalf, will pay for such work in accordance with this Task Order and the Parties are bound by this Task Order as if the work had been completed after the Effective Date of this Task Order.
- 2.3 Consultant shall complete all the Services according to the schedule in attached Exhibit "A" and shall complete all Services required under this Task Order in a satisfactory manner by August 1, 2021. Costs incurred by Consultant after the completion date are not eligible for reimbursement unless LPA, or State on LPA's behalf, has provided a written extension of time. Extensions of the time to complete the services must not be construed as an extension to the duration of this Task Order.
- 2.4 The completion date will not be extended because of any avoidable delay attributed to Consultant, but delays not attributable to Consultant, such as delays attributed to LPA or State, may, upon request, constitute a basis for an extension of time.

SECTION 3. DURATION OF THIS TASK ORDER (Matches Construction Project Lifespan)

- 3.1 Effective Date -- This Task Order is effective when executed by the Parties.
- 3.2 Expiration Date -- This Task Order expires when State has (a) completed the project final audit and cost settlement or (b) waived the requirement of a financial audit.
- 3.3 Duration of this Task Order -- This Task Order duration is from the Effective Date to the Expiration Date. This Task Order duration is "specified" under Neb. Rev. Stat. § 73-506 to the period of time necessary for a Consultant to complete the applicable phase or phases of the development of this particular federal, state or locally funded construction project, including when applicable, the time during construction of the project.
- 3.4 Identifying Date -- This Task Order may be identified by the date LPA signed this Task Order.
- 3.5 Termination or Suspension -- LPA, or State on LPA's behalf, reserves the right to terminate or suspend this Task Order at any time for any of the reasons provided herein.

SECTION 4. TASK ORDER SCOPE OF SERVICES

- 4.1 Consultant agrees that the entire Scope of Services for this Task Order includes SECTION 5. SCOPE OF SERVICES of the Master Agreement, and the Scope of Services as set out in Exhibit "A", attached and incorporated herein by this reference. This Task Order Scope of Services will govern over any contrary language in the Scope of Services of the Master Agreement.
- 4.2 Upon receiving a written notice to proceed from LPA, or State on LPA's behalf, Consultant shall complete the Services required under this Task Order and in accordance with the terms of the Master Agreement.

SECTION 5. STAFFING PLAN (For PE Services, TO)

- 5.1 Consultant has provided LPA and State with a Staffing Plan, described in Exhibit "A", attached and incorporated herein by this reference. The Staffing Plan identifies the employees of Consultant who are anticipated to provide services under this Task Order. Consultant understands that LPA and State are relying on key personnel from Consultant's Staffing Plan to be primarily responsible for completing the Services under this Task Order. LPA and State consider the Principals, Senior level staff, Project Managers, Team Leaders or other similar classifications, to be the key personnel for the services provided. Consultant may make occasional temporary changes to the key personnel. However, any permanent change to key personnel will require prior written approval from LPA and State.
- 5.2 Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended services. Failure on the part of Consultant to provide acceptable replacement personnel or qualified new personnel to keep the services on schedule will be cause for termination of this Task Order, with settlement to be made as provided in Exhibit "B", attached and incorporated herein by this reference.

SECTION 6. NEW EMPLOYEE WORK ELIGIBILITY STATUS (Task Order)

- 6.1 Consultant 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. Consultant agrees to contractually require any subconsultants to use a federal

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

6.2 The undersigned duly authorized representative of Consultant, by signing this Task Order, hereby attests to the truth of the following certifications, and agrees as follows:

Neb. Rev. Stat. § 4-114. I certify compliance with the provisions of Section 4-114 and, hereby certify that this Consultant shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all Subconsultants, by contractual agreement, to require the same registration and verification process.

6.3 If Consultant is an individual or sole proprietorship, the following applies:

- a. Consultant must complete the United States Citizenship Attestation form and attach it to this Task Order. This form is available on the Department of Transportation's website at <http://dot.nebraska.gov/media/2802/dr289.pdf>.
- b. If Consultant indicates on such Attestation form that he or she is a qualified alien, Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- c. Consultant understands and agrees that lawful presence in the United States is required and Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

SECTION 7. FEES AND PAYMENTS

7.1 Consultant's fee proposal is attached as Exhibit "A", and incorporated herein by this reference.

7.2 The maximum payment amounts and general provisions concerning payment under this Task Order are set out on Exhibit "B".

SECTION 8. SUSPENSION OR TERMINATION (Unique)

8.1 Suspension or Termination

LPA, or State on LPA's behalf, has the absolute and exclusive right to suspend the work, or terminate this Task Order at any time and for any reason and such action on its part will in no event be deemed a breach of this Task Order by LPA, or State on LPA's behalf. Without limiting the rights set out in this section, the following is a non-exclusive list of the examples of the circumstances under which this Task Order may be suspended or terminated:

- a. A loss, elimination, decrease, or re-allocation of funds that, in the sole discretion of LPA, or State on LPA's behalf, make it difficult, unlikely or impossible to have sufficient funding for the Services or the project;
- b. LPA, or State on LPA's behalf, abandons the Services or the project for any reason;

- c. Funding priorities of LPA, or State on LPA's behalf, have changed;
- d. LPA, or State on LPA's behalf, determines, in its sole discretion, that the interests of LPA, or State on LPA's behalf, are best protected by suspension or termination of this Task Order;
- e. Consultant fails to meet the schedule, milestones, or deadlines established in this Task Order or agreed to in writing by the Parties;
- f. Consultant fails to provide acceptable replacement personnel or qualified new personnel as determined by LPA, or State on LPA's behalf;
- g. Consultant has not made sufficient progress to assure that the Services are completed in accordance with the schedule in attached Exhibit "A", or in a timely manner;
- h. Consultant fails to meet the standard of care applicable to the Services;
- i. Consultant fails to meet the performance requirements of this Task Order;
- j. Consultant's breach of a provision of this Task Order or failure to meet a condition of this Task Order;
- k. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity;
- l. Consultant fails to complete the project design in a form that is ready for letting a contract for construction according to the approved contract documents, including, but not limited to, project plans and specifications;

8.2 Suspension

- a. Suspension for Convenience. LPA, or State on LPA's behalf, may suspend for convenience by giving Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide LPA, or State on LPA's behalf, a detailed summary of the current status of the Services completed and an invoice of all costs incurred up to and including the date of suspension.
- b. Suspension for Cause. If LPA, or State on LPA's behalf, suspends Consultant's work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, LPA, or State on LPA's behalf, will give Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. LPA's notice of suspension, or State's notice of suspension on LPA's behalf, will provide Consultant with the reason(s) for the suspension, a timeframe for Consultant to correct the deficiencies, and when applicable, and a description of the actions that must be taken for LPA, or State on LPA's behalf, to rescind the suspension. Consultant's right to incur any additional costs will be suspended at the end of the day of suspension and will continue until all remedial action is completed to the satisfaction of LPA, or State on LPA's behalf. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Task Order.

8.3 Termination

If LPA, or State on LPA's behalf, terminates this Task Order, LPA, or State on LPA's behalf, shall give Consultant notice of the date of termination, which shall be no fewer

than three (3) business days after notice is given. Notice of termination from LPA, or State on LPA's behalf, shall provide Consultant with a description of the reason(s) for the termination. Notice from LPA, or State on LPA's behalf, must specify when this Task Order will be terminated along with the requirements for completion of the work under this Task Order. Consultant's right to incur any additional costs shall cease at the end of the day of termination or as otherwise provided by LPA, or State on LPA's behalf.

8.4 Compensation upon suspension or termination

If LPA, or State on LPA's behalf, suspends the work or terminates this Task Order, Consultant must be compensated in accordance with the provisions set out in Exhibit "A", provided however, that in the case of suspension or termination for cause or for Consultant's breach of this Task Order, LPA, or State on LPA's behalf, will have the power to suspend payments, pending Consultant's compliance with the provisions of this Task Order. In the event of termination of this Task Order for cause, LPA, or State on LPA's behalf, may make the compensation adjustments set out in Exhibit "B".

SECTION 9. SECTIONS INCORPORATED BY REFERENCE

For the convenience of the parties, for consistency for funding review, and in an effort to reduce the length of this Task Order, the LPA and Consultant agree to be bound by and hereby incorporate by this reference as if fully set forth herein, Sections 11 through 13, and 15 through 28 of the Master Agreement for Environmental Services for LPA projects VK1601 between State and Consultant, dated June 14, 2018, with one recurring change:

The LPA and Consultant agree to meet the requirements of all incorporated provisions and represent that by signing this Task Order, they expressly certify to any required certifications contained in those provisions. Although some of the provisions of the Master Agreement are incorporated herein by reference, it is understood that the State is not a party to this Task Order and shall have no obligations or duties under this Task Order.

SECTION 10. CONSULTANT CERTIFICATIONS

10.1 The undersigned duly authorized representative of Consultant, by signing this Task Order, hereby reaffirms, under penalty of law, to the best of my knowledge and belief, the truth of the certifications set out in SECTION 29. CONSULTANT CERTIFICATIONS of the Master Agreement, with one change:

"LPA, or State on LPA's behalf" should be substituted in for any reference in that section of the Master Agreement to "State" unless the context would otherwise require.

10.2 Neb. Rev. Stat. § 81-1715(1). I certify compliance with the provisions of Section 81-1715 and, to the extent that this Task Order is a lump sum, specific rates of compensation, or actual cost-plus-a-fixed fee professional service agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in this Task Order are accurate, complete, and current as of the date of this Task Order. I agree that this Task Order price and any additions thereto shall be adjusted to exclude any significant sums by which the LPA determines the agreement price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

SECTION 11. LPA CERTIFICATION

11.1 By signing this Task Order, I do hereby certify that, to the best of my knowledge, Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Task Order to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

11.2 I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this Task Order involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

SECTION 12. ENTIRE AGREEMENT

The Master Agreement, all supplements thereto, and this Task Order constitute the entire agreement ("The Task Order ") between the Parties. The Task Order supersedes previous communications, representations, or other understandings, either oral or written; and all terms and conditions of the Master Agreement and supplements thereto remain in full force and effect, and are incorporated herein.

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

IN WITNESS WHEREOF, the Parties hereby execute this Task Order pursuant to lawful authority as of the date signed by each party. Further, the Parties, by signing this Task Order Agreement, attest and affirm the truth of each and every certification and representation set out herein.

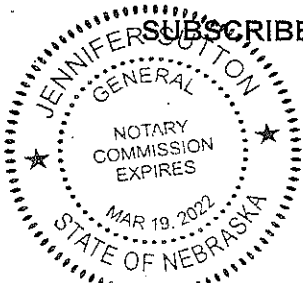
EXECUTED by Consultant this 6th day of February 2020.

FELSBURG, HOLT & ULLEVIG
Amy Zlotzky

Amy Zlotzky
Principal

STATE OF NEBRASKA)
)ss.
LANCASTER COUNTY)

SUBSCRIBED AND SWORN to before me this 6 day of Feb, 2020.



Jennifer Sutton
Notary Public

EXECUTED by DODGE COUNTY this _____ day of _____, 2020.

DODGE COUNTY
Bob Missel

Chair, Board of Supervisors

Subscribed and sworn to before me this _____ day of _____, 2020.

Clerk

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION
Form of Agreement Approved for
Federal Funding Eligibility:

Date

Consultant Work Order (Local Projects)

Project No.: ER-3490(18)		Control No.: 22792
Consultant (Name and Representative): FHU, Amy Ziotsky	Agreement No.: BK1957	Work Order No.: 0
LPA (Name and Representative): Dodge County, Scott Huppert		Const. Change Order No.: (If applicable)
<p>All parties agree the following described work needs to be performed by the consultant as part of the referenced project. All parties concur and hereby give notice to proceed based on the following: justification to modify contract, scope of services, deliverables, schedule, and estimated total fee. All other terms of existing agreements between the parties are still in effect, it is understood by all parties that the work described herein will become part of a future supplement to the agreement indicated above.</p> <p>Justification to modify agreement: (Include scope of services, deliverables, and schedule) contract documents have been reviewed and approved, funds have been obligated. Using DR250 as NTP while agreements route for signatures.</p>		
Work Title	Summary of Fee	
	A: Total Direct Labor Cost	=
	B: Overhead (Factor * x A)	=
	C: A + B	=
	D: Profit/Fee (Factor ** x C)	=
*Overhead Factor: %	E: FCCM (Factor *** x A)	=
**Profit/Fee Factor: %	F: Direct Non-Labor Cost	=
***Facility Capital Cost of Money (FCCM): %	G: Subconsultant Services	=
Total Fee Notes:	TOTAL FEE: C + D + E + F + G	=
	<input type="checkbox"/> ESTIMATED TOTAL FEE:	
	<input type="checkbox"/> FINAL TOTAL FEE:	\$46,830.75

Work Order Authorization – May be granted by email and attached to this document.

Consultant:
Amy Ziotsky Amy Ziotsky 1/24/2020
Name Signature Date

LPA: Scott Huppert Scott Huppert 1/24/2020
Name Signature Date

LPS PC (for Preliminary Engineering) and State Rep. (for Construction Engineering):
Richard A. Houch Richard A. Houch 1/28/2020
Name Signature Date

LPS Unit Head Review (for PE Phase):
NICOLE TAYLOR Nicole Taylor 01/27/20
Name Signature Date

LPS Manager or Construction Engineer (Construction Phase):

Name Signature Date

FHWA: (FHWA Approval on Full Oversight Projects Only):

Name Signature Date

Notice to Proceed will be granted by email by:
LPS PC for Preliminary Engineering & CD PC for Construction Engineering.

FMIS Approval Date:
12/5/19

Notice to Proceed Date:
01/27/20

Distribution: Consultant, LPA-RC, State Rep., FHWA, LPS PC, NDOT Agreements Engineer, Highway Funds Manager, CD PC

NDOT Form 250, November 18

SCOPE OF SERVICES

**Logan Creek Stream Stabilization
Dodge County**

**Project Number: ER-3490(13)
Control Number: 22792**

ENVIRONMENTAL SERVICES

A. PROJECT DESCRIPTION

This scope provides for environmental services related to compliance with the National Environmental Policy Act (NEPA) for the Logan Creek Stream Stabilization (Project). The Project is located adjacent on County Road F at the Logan Creek Dredge crossing, approximately 2 miles west of US-77. The Project involves stream bank stabilization and culvert repairs and/or replacements along Logan Creek Dredge.

The Project is a Federal-Aid project. Based on the initial project review, it has been determined that a **Level 2 Categorical Exclusion** may be required.

Scope Items Pertaining the Project (checked boxes indicate applicable sections of this scope):

SOS Section	Scope Items	Tasks
1	Categorical Exclusion (CE)	<input checked="" type="checkbox"/>
2	Airport Coordination	<input checked="" type="checkbox"/>
3	Farmland	<input checked="" type="checkbox"/>
4	Section 106 Coordination Request	<input checked="" type="checkbox"/>
5	Section 4(f)	<input checked="" type="checkbox"/>
6	Section 6(f)	<input type="checkbox"/>
7	Floodplain Review	<input checked="" type="checkbox"/>
8	Water Quality Review	<input checked="" type="checkbox"/>
9	Threatened & Endangered Species Review	<input checked="" type="checkbox"/>
10	Hazardous Materials Review (HMR)	<input checked="" type="checkbox"/>
11	Noise Analysis and Report	<input type="checkbox"/>
12	Wetland & Stream Delineation	<input checked="" type="checkbox"/>
	Delineation Project Size	<input checked="" type="checkbox"/> Small <input type="checkbox"/> Med <input type="checkbox"/> Large
13	404 Nationwide Permit Application	<input checked="" type="checkbox"/>
14	404 Individual Permit Application	<input type="checkbox"/>
15	Mitigation Plan	<input type="checkbox"/>
16	Public Involvement Materials	<input checked="" type="checkbox"/>
17	Green Sheet	<input checked="" type="checkbox"/>
18	Project Management	<input checked="" type="checkbox"/>
19	Project Meetings	<input checked="" type="checkbox"/>
20	Travel Time	<input checked="" type="checkbox"/>

B. LPA OR NDOT, ON LPA'S BEHALF, TO PROVIDE (to the extent that the items listed are available or needed for the scope checklist above):

1. Project description, location information, program documents (DR-73, DR-53), Threatened and Endangered species (T&E) Activity Checklist (from design consultant), Professionally Qualified Staff (PQS) Memos. When appropriate, detour route information will be provided (including a list of property owners along the project and detour route).
2. If available, electronic files of current aerial photographs with Project alignment and preliminary design, existing and new rights-of-way (ROW) and easements, topographic survey, utilities data, and Limits of Construction (LOC).
3. Roadway Feature File, Alignment File, Feature Codes and SMD (Simple Method Description) File (downloadable from NDOT's website).
4. County-wide plat (ownership) or TAM (occupancy) maps for Consultant's use if landowner notification is needed. A notification letter, on LPA's letterhead for the consultant's use in landowner contact and site access will also be provided.
5. Environmental Justice/Limited English Proficiency Memo (provided by NDOT if available).

6. Cultural Resources Investigations. NDOT will complete cultural resources investigations (archeological/architectural/structural) and associated documentation. NDOT will be responsible for defining the area of potential effects (APE), determining level of effort, National Register of Historic Places (NRHP) eligibility recommendations, all consultation required under Section 106 and the project effects determination under Section 106. Depending upon historic properties identified, consultation under Section 106 may be combined in the Public Involvement Plan (PIP).
7. Section 106 documentation and PQS Memo (provided by NDOT).
8. HMR PQS Memo (provided by NDOT).
9. Threatened and Endangered Species PQS Memo (provided by NDOT).
10. Wetlands PQS Memo (provided by NDOT).
11. Green Sheet, NDOT will provide the approved Green Sheet for the Project for distribution, detailing all applicable environmental project commitments and conditions.
12. The NDOT Roadside Stabilization Unit will submit the Notice of Intent, NPDES permit and the SWPPP to NDEQ.

C. **APPLICABLE PUBLICATIONS:** Work shall be done in accordance with the most current version of the following materials:

1. Nebraska Categorical Exclusion Guidance, October 2018.
2. NDOT National Historic Preservation Act Section 106 Guidelines, 2015.
3. Nebraska Biological Evaluation Process, Prepared in Support of the Programmatic Agreement that was developed between FHWA, NDOT, USFWS and NGPC, September 11, 2018.
4. Certified NEPA consulting firms and requirements. NDOT, July 2015.
5. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1. Environmental Laboratory, Department of the Army Waterways Experiment Station, US Army Corps of Engineers, Vicksburg, Mississippi, 1987.
6. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region, ERDC/EL TR-08-27. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
7. Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification. US Army Corps of Engineers, 2005.
8. Cowardin et al. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31. Biological Services Program, Fish and Wildlife Service, US Department of the Interior, 1979.
9. Nebraska Wetland Subclasses (Attachment K, Wetland Mitigation Banking, Standard Operating Procedures in Nebraska).
10. Nebraska Department of Transportation Hazardous Materials Review Guidance Manual (September 2018).
11. Nebraska Department of Transportation. Wetland and Water Resource Procedure Document (May 2018).
12. Nebraska Department of Roads. Nebraska Public Involvement Procedure (September 2015).
13. Guidance for Completing the Section 4(f) Review Process in Nebraska for Federal-Aid Projects (September 2018).

D. **CONSULTANT SHALL PROVIDE to Ipa or NDOT, on Ipa's behalf:** The Project is a Federal-Aid project. Based on the initial project review, it has been determined that a Level 2 Categorical Exclusion MAY be applicable.

1. **CE DOCUMENT AND RESOURCE REVIEWS**

- a. **Project Description and Purpose & Need.** Consultant will prepare a Project Description according to NDOT guidance for project descriptions. Following NDOT review and revision, the project description will be used in the CE document, consultation letters, and public involvement materials. Consultant will prepare a Purpose & Need statement according to NDOT guidance requirements. Following NDOT review and revision, the Purpose & Need statement be used in the CE document.

- b. CE Determination Form for Federal-Aid Projects (NDOT Smart Form). Consultant will complete the NDOT Smart Form. Figures, resource maps and supplemental information required for NEPA review will be obtained or produced and attached to the Smart Form or placed into the Project file as back-up reference material. Consultant will participate in up to three telephone progress meetings with the LPA and/or NDOT, as needed.

If an on-site meeting or meeting at NDOT is needed, it would be considered an out-of-scope item and would be negotiated as a Supplement to this Agreement.

- c. Project Maps. Consultant will prepare a Project Vicinity map on a 7.5 Minute Quadrangle Topographic Map base (1:24,000 scale), showing the Project location with insert showing the counties and position in Nebraska. The Project Location map shall be shown on an aerial photograph as the base, with the overall Environmental Study Area (ESA) mapped (minimum ¼ mile from centerline, right and left), Project beginning and end points plotted, and pertinent constraints such as LOCs depicted, if known.
- d. Documentation Reviews and Revisions. Consultant will submit the completed NEPA Form (including attachments) to the LPA and NDOT for review and approval (assumes 2 rounds of comments from NDOT NEPA Specialist or NDOT EPM and 1 round of comments from the NDOT EDU Manager for Level 3).
- e. CE Quality Control (QC). The Consultant will submit evidence to LPA and NDOT that a QC review of the CE document was conducted by an Environmental Professional other than the document author; this person shall be a Consultant Project Manager or Principal NEPA Author (as identified in the current approved NEPA Certification submittal - Category 101A). The submittal shall accompany both draft and final NEPA documents and may be in the form of a transmittal letter with the name, date and signature of the QC reviewer; an internal review process form developed by the Consultant; NDOT QC review form; or when the electronic CE Form allows, an electronic signature of QC review in the appropriate position on the CE form.
- f. CE Comment Tracking Table. Consultant shall maintain a summary table of all review comments and resolution of comments made by LPA and NDOT during document review and revisions. Comments shall be organized by the CE Form subject title and question number. The comment tracking table shall be submitted to LPA and NDOT, as appropriate, along with the revised draft and final documents.

2. AIRPORT COORDINATION

- a. Review Request to NDOT Division of Aeronautics. If there is a publicly owned or operated airport location within 10 miles of the Project Environmental Study Area, Consultant will prepare an email request for the NDOT Division of Aeronautics to review the Project for potential impacts to aviation. The Project appears to be within ten miles of the Scribner Airport.

3. FARMLAND

- a. Farmland Conversion Form. If there is farmland located in the Project ESA and its use may be converted to other purposes as part of the Project, Consultant will prepare a Natural Resource Conservation Service (NRCS) Farmland Conversion Form CP-106 and perform coordination with NRCS, if necessary.

4. SECTION 106 STATE HISTORIC PRESERVATION OFFICE/TRIBAL HISTORIC PRESERVATION OFFICE (SHPO/THPO)

- a. Coordination with NDOT. Consultant will complete the Section 106 Review Request Letter and submit it as a PDF to the NDOT Section 106 Professionally Qualified Staff (PQS), and copy the LPA Project Coordinator and NEPA Specialist. The Section 106 Review Request Letter shall include a Vicinity Map and a Location Figure, showing the project beginning and end points.

5. SECTION 4(F) EXCEPTION OR DE MINIMIS DETERMINATION

- a. Section 4(f) Initial Assessment Form. Consultant will determine if adjacent Section 4(f) properties such as public parks, recreation areas, and wildlife/waterfowl refuges, or historic sites of local, state or national significance are present. Consultant will prepare the Section 4(f) Initial Assessment Form and submit to NDOT NEPA Specialist for review and approval. The approved Section 4(f) Initial Assessment Form will be sent to the Consultant for inclusion in the CE appendices.
- b. Section 4(f) Documentation. If a Section 4(f) property is identified within the project area, it must be determined if the Project or undertaking will require a 'use' of the land from that property within the meaning of Section 4(f). If it is determined that there is a 'use' of the land, then coordination with NDOT must occur and one or more of the following documents will be prepared by the Consultant:

- i. Section 4(f) Exceptions Form
- ii. Section 4(f) *De Minimis* Form
- iii. A letter request to the Official With Jurisdiction for the Section 4(f) resource to obtain concurrence that the impact will/will not adversely affect the resource.

If more than one Section 4(f) properties requires 'use' of land, then analysis and documentation for the additional properties would be considered out of scope and the additional effort would be negotiated as a Supplement to this Agreement.

- c. Individual Section 4(f) Evaluation. ***If needed, an Individual Section 4(f) Evaluation and documentation would be considered out-of-scope and the additional effort would be negotiated as a Supplement to this Agreement.***

6. SECTION 6(f) ANALYSIS DOCUMENTATION (ASSUMED NOT REQUIRED)

- a. Determine if Section 6(f) Resources are Present. If Section 4(f) resources are identified in the project area (see Section D.5. above), then the Consultant will contact the Nebraska Game and Parks Commission to determine if Section 6(f) resources are present. If Section 6(f) resources are present, the Consultant will determine if a conversion will occur.

If replacement land is needed for a conversion, coordination with the jurisdictional agencies would be required, as well as additional Section 6(f) documentation. This additional Section 6(f) coordination and documentation as a result of a conversion would be considered out-of-scope and additional hours will be negotiated as a Supplement to this Agreement.

7. FLOODPLAIN REVIEW

- a. Floodplain Determination. The Design Engineer will research and document whether the Project is located within a Zone A floodplain, whether the Project will have construction occurring in a floodplain, and whether it will cross or parallel the floodplain. With parallel floodplains, highway embankment work that will encroach into the mapped floodplain will be quantified. This information will be included in the NEPA documentation.
- b. Floodplain Permit. If a Floodplain Permit is required, the Design Engineer will prepare the Floodplain Certification Package and provide a copy for attachment to the CE Smart Form. The package will include a memo describing the Project and floodplain impact; location map showing the boundary of the project; FIRMettes maps with floodplains and structures identified; and a certification form signed, sealed and dated by a professional engineer certifying compliance with floodplain and floodway regulations. A FIRMette is a legal to scale copy of a portion of a Flood Insurance Rate Map (FIRM). FIRMettes can be printed in either letter legal or leger size paper and found at the following website, <http://msc.fema.gov>. The LPA, with assistance from the Design Engineer, is to apply for the permit.

8. WATER QUALITY REVIEW

- a. Impaired Water Determination. Consultant will research and document whether impaired waters (303d list) are located within the ESA.
- b. NDEQ Coordination. If project impacts will affect impaired water resources, then the Consultant will coordinate with NDEQ.

9. THREATENED AND ENDANGERED SPECIES (T&E) REVIEW

- a. Biological Evaluation (BE) Review Request Letter. Consultant will complete the BE Review Request Letter and submit it as a PDF to the NDOT T&E PQS and NEPA Environmental PM. Consultant will revise it in response to NDOT comments as needed. This letter will include the wetland delineation as an attachment. The NDOT T&E PQS Memo will be cited and summarized in the CE document and included in the CE appendices.
- b. Field Review. If needed, a field review will be conducted by Consultant Qualified Biologist in conjunction with the wetland delineation site visit. If a wetland delineation is not required for the project and a site visit for T&E Species is needed, a qualified biologist will perform a site visit and conduct the field review.

10. **HAZARDOUS MATERIALS REVIEW (HMR)**. Consultant will complete a HMR within the HMR Study Area (which encompasses the ESA and is defined in the 2018 HMR Guidance manual) for conditions that are known to be, or may potentially be, contaminated with hazardous materials. Conditions that indicate an existing release, a past release, or a

material threat of a release, of any hazardous substances or petroleum products into structures, on the property or into the soils, groundwater, or surface water should be evaluated and assessed for potential impacts on the Project and discussed in the HMR technical report. The Consultant shall:

- a. Database Review. Consultant will conduct a review of local, state and federal environmental database records to identify regulated sites within the HMR Study Area.
- b. Site Visit. Consultant will conduct an on-site visual site reconnaissance survey (after coordination with the NDOT Hazardous Materials PQS).
- c. HMR Visual Reconnaissance Form. Consultant will complete the HMR Visual Reconnaissance Form and photo log.
- d. Additional Analysis. *If warranted and in consultation with the NDOT Hazardous Materials PQS, the scope of the HMR may include conducting additional analysis per the HMR guidance. Additional analysis may include (1) conducting a regulatory file review (NDEQ, SFM, etc.), (2) reviewing readily available historical record sources (aerial photographs, topographic maps, Sanborn Fire Insurance maps, etc.); and/or (3) conducting interviews with local agencies and regulators.*
- e. Subsurface Investigation. *If a subsurface investigation is determined to be necessary, a Supplement to this Agreement would be required.*
- f. HMR Report. The Consultant shall prepare a written HMR Report. The Report will be submitted to NDOT for inclusion in the Project file. NDOT Hazardous Materials PQS will summarize the results of the Report into a PQS Memo which will be sent to the Consultant for inclusion in the CE appendices. Findings and mitigation measures stated in the PQS Memo shall be summarized in the CE document.
- g. Quality Control. The Consultant shall perform thorough QC by a NDOT-defined Environmental Professional prior to any official HMR submittal to NDOT.

11. NOISE STUDY AND REPORT (ASSUMED NOT REQUIRED)

12. WETLAND AND STREAM DELINEATION SERVICES

- a. Site Visit. The Consultant shall visit the Project site to determine if waters of the United States (WOUS), including wetlands, are present within the Project Delineation Limits as described below. The site visit will be conducted by Qualified Wetland Scientists during the recognized growing season unless otherwise approved by the NDOT Wetlands Project Manager. Delineation methods shall be in accordance with the 1987 US Army Corps of Engineers (USACE) Wetland Delineation Manual; appropriate USACE Regional Supplement (Midwest or Great Plains); and the "NDOT Wetland and Water Resource Procedure Document" May 2018).
- b. Site visit hours are based on a Small Delineation size (See table at beginning of Environmental Section of this Scope), which is estimated to be accomplished with 1 day or less of field activities.
- c. Existing Resources/Databases Review. Consultant will review existing resources prior to field delineation. For projects requiring new Right-of-Way (ROW) beyond existing, into agricultural land, the NDOT shall be contacted for direction.
- d. Farmed Wetland Review. In some cases, a review of historic aerial photography along with precipitation records may be considered appropriate for delineating agricultural wetlands using procedures developed by the Natural Resources Conservation Service (NRCS). ***This review is assumed needed for the Project.***
- e. Delineation Limits For the purpose of scope and fee development, the Consultant shall assume a Full Delineation shall be provided for the area 100 feet beyond the project LOCs or the project ROW, whichever is farthest from the centerline.

At bridge-sized culverts and bridges along the project alignment, a Full Delineation (including delineation of the Ordinary High Water Mark (OHWM) if present, and adjacent wetlands) shall be provided for the area 150 feet outside of the LOCs or ROW, whichever is farthest from the centerline.
- f. Plot Boundaries. Consultant shall plot the data on aerial photographs. Data will include project ESA boundaries (i.e., project delineation limits), roadway alignment, and stationing, when available. Data will also include wetland boundaries, wetland types, OHWM and location of data collection points, photographs, and wetland acres. Map scale must be drawn to a scale of 1 inch = 200 feet.
- g. Wetland and Stream Delineation Report. Consultant shall prepare the Wetland and Stream Delineation Report document according to NDOT procedures (May 2018).
- h. Quality Control. The Consultant shall perform thorough QC checks prior to any official submittal to the LPA and NDOT. Reports and associated data sheets shall be scrutinized for accuracy and completeness. The Consultant shall submit to NDOT evidence that a QC review of the wetland document was conducted by a Qualified Wetland Scientist or Project Manager other than the document author (as identified in the approved NEPA Certification for the firm - Category 101A). The submittal shall accompany both draft and final documents and may be in the form of a transmittal letter with the name, date and signature of the QC reviewer. Inadequate delineation reports and/or geospatial data will be returned to the Consultant for correction.
- i. Waterway Permit Data Sheet Form. The 2W Plan Sheet will be completed by the Design Consultant for use in completing the Section 404 permit application.
- j. Electronic Files and Transmittal Letter or Email. Consultant shall submit the delineation materials to NDOT in electronic format as described in Section F. All geospatial data shall be post-processed to correct GPS data inaccuracies, compiled into NDOT geodatabase attribute tables, and checked for completeness, accuracy, and conformance to NDOT data standards (see Section F). Geospatial data shall provide an accurate representation of field observations. Files shall be accompanied by a transmittal letter or email.

13. SECTION 404 NATIONWIDE PERMITTING SERVICES – ASSUMED REQUIRED

- a. Pre-Application Meeting. Consultant shall discuss with NDOT the necessity of a pre-application meeting. If required, the Consultant shall arrange for, attend and conduct a pre-application meeting with USACE, NDOT, LPA, Design Engineer, and other interested resource agencies to discuss the wetland delineation and other issues relating to fill and disturbance impacts. Consultant shall prepare meeting agenda and send out one week prior to meeting. Consultant shall prepare and distribute minutes. This activity is considered in-scope; however, Consultant must obtain written approval from the LPA or NDOT when acting on behalf of the LPA to attend and conduct the meeting. **With LPA or NDOT approval, Consultant will be able to use the estimated hours for the meeting attendance and documentation.**
- b. 404 Nationwide Permit Application Package. Consultant shall prepare a first draft of the 404 Permit Application Package consisting of the 404 Permit Application, Wetland

Delineation Report, and Waterway Permit Data Sheet from the Design Engineer. It is assumed that a Pre-Construction Notification (PCN) will be required due to the complications from flooding. It is assumed that the project will fall under one of the following Nationwide or Regional permits:

- i. RGP 11-02 – Repairs after Flooding
- ii. NWP 3 – Maintenance
- iii. NWP 14 – Transportation
- iv. NWP 45 – Repair of Uplands

The PCN will include a project description, documentation of impacts to all wetlands and WOUS, and wetland and stream channel mitigation, if required. Electronic files of the documents will be submitted to NDOT for review and approval. The Consultant shall revise materials per NDOT comments and resubmit a subsequent draft to NDOT for review and approval.

- c. Jurisdictional Determination (JD) from USACE. In some cases, NDOT may direct the Consultant to request USACE to make a Preliminary and/or Final JD decision. The JD request will consist of the Consultant's submittal of either a preliminary wetland determination or a final delineation, along with a cover letter requesting the JD.

If the JD request requires additional supporting documentation beyond that specified above, additional scope would be defined and a supplement to this Agreement would be negotiated.

- d. Agency Coordination. Consultant shall correspond with USACE, in writing or personal contact documented in a telephone memo or meeting notes. Consultant will be available to provide additional information, answer questions, respond to public comments, and attend and conduct a meeting with USACE, if necessary. ***This activity is considered in-scope, however Consultant must obtain written approval from the LPA, or NDOT on LPA's behalf, to attend and conduct the meeting. With written approval from LPA, or NDOT on LPA's behalf, Consultant will be able to use the hours for the meeting attendance and documentation.*** Any correspondence with the USACE, if necessary, shall be submitted to the NDOT in draft form for approval from LPA, or NDOT on LPA's behalf, at least 10 days before final submittal.

If needed, the Consultant shall coordinate with NDEQ and obtain a letter of 401 Water Quality Certification. If wetlands are non-jurisdictional, Consultant shall obtain a Letter of Opinion from NDEQ, stating compliance with the non-degradation clause of Title 117 Nebraska Surface Water Quality Standards.

- e. Final Deliverables. Consultant shall prepare and submit to LPA, or NDOT on LPA's behalf, the electronic files and hard copies of all materials. For the final package, the Consultant will submit one bound copy to LPA and electronic files to NDOT on the NDOT ftp site. The Consultant shall submit a hard copy of the 404 permit application package to USACE and NDEQ (when required) unless otherwise directed by LPA, or NDOT on LPA's behalf.

14. SECTION 404 INDIVIDUAL PERMIT APPLICATION (ASSUMED NOT REQUIRED)

- a. Alternatives Analysis and Sequencing Demonstration. If required, all tasks specified above for Nationwide Permits, also apply to Individual Permits with the following additional tasks: Consultant shall prepare an Alternatives Analysis and Sequencing Demonstration for inclusion with the Individual Permit Application. Consultant will also handle coordination activities with the USACE and other regulatory and resource agencies, as needed.

15. MITIGATION PLAN (SUPPLEMENT NEEDED, IF MITIGATION PLAN IS REQUIRED)

- a. Mitigation Documentation. If required, the Consultant shall prepare materials for submittal of a conceptual mitigation plan and the associated 12 Components of Mitigation documentation for submittal to the USACE. This will identify mitigation locations, types of wetlands and/or channel mitigation to potentially develop, and buffer areas associated with the mitigation areas. If a Mitigation Plan is needed, additional scope and fee shall be negotiated as a supplement to this Agreement.
- b. Channel Mitigation. Should the project require channel mitigation, a stream assessment may be required using the USACE Nebraska Stream Condition Assessment Procedures (NeSCAP). ***If Channel Mitigation is needed, additional scope and fee shall be negotiated as a supplement to this Agreement.***

16. PUBLIC INVOLVEMENT MATERIALS

- a. Public Involvement Plan (PIP). The Consultant will work with the Design Consultant and LPA to develop a Public Involvement Plan in accordance with the NDOT "Nebraska Public Involvement Procedure" to address public notifications, plan for

Public Information Meeting, and coordinate meetings with key stakeholders, if necessary. A Public Involvement Plan will be submitted to the NDOT Public Involvement Coordinator and LPA for review and approval prior to further development of outreach materials. (Outreach materials will be created with assistance from the LPA and NDOT). Approved agency and LPA logos must be included on all project materials provided to the public. Any documents showing potential design plans must be stamped "Preliminary Plans". Consultant shall verify newspaper distribution schedule and critical dates and submittal information related to press releases and legal advertisements.

- b. Mailing Distribution List. Consultant will work with LPA to compile names and mailing addresses for local officials, city, county, and state agencies, district representatives, community organizations (schools, hospitals, libraries, railroads, and other interested groups [e.g. chamber of commerce, neighborhood associations]). The list will also include residents and businesses located directly adjacent to the project location. Consultant shall coordinate with the County Assessor, online GIS map servers, or LPA to obtain this information.
- c. Official Legal Notice. For the targeted outreach mailing, Consultant shall draft the legal notice that will be published in the legal section of a Nebraska Press Association (NPA) recognized newspaper having general circulation within proximity to the project area. The legal notice will include a project description, purpose and need, brief summary of project scope of work, acquisition of property rights, whether or not wetland impacts are anticipated, estimated construction schedule, instructions for obtaining additional information, project point of contact information, accommodation of information and/or materials for protected populations, date of the Public Information Meeting, and specified comment period. If applicable, notices will include detour information, potential Section 4(f) impacts, or no adverse / adverse effect to Section 106 resources. The legal notice must be published twice; once 30 days prior to anticipated comment period deadline (the legal notice will start the comment period) and again 15 days prior to end of comment period deadline.
- d. Project Information Packet Materials. Consultant will prepare the project information packet which includes a cover letter, fact sheet, map(s), and blank public comment sheet. The fact sheet should include project location, purpose and need, scope of work, traffic volumes, construction schedule, accommodation of traffic (detour if needed), right-of-way or easements needed, potential impacts, estimated cost, as well as any other applicable information. Consultant shall physically print and mail the project information packets using the distribution list developed in Task C.16.b, only after approval by the NDOT Public Involvement Office. Materials will be sent to LPA and State for review/comment. Consultant will physically print and mail the cover letter, fact sheet, map(s), and blank public comment sheet only after approval by the NDOT Public Involvement Office.
- e. Comment Responses. Draft responses to comments received from the public during the specified public involvement comment period (30 calendar days) will be directed to the Consultant who shall draft responses for LPA and NDOT review and approval. All comments received during the advertised comment period, along with a response to comments, will be compiled for inclusion in the Public Involvement Report and Summary Memo. If more than one comment is received on the same issue, then a similar response can be utilized for each comment.

Response to comment letters will be generated and mailed to each commenter after review and approval from the NDOT Public Involvement Specialist.

- f. Public Involvement Summary Report. A Public Involvement Summary Report will be compiled and will include the public involvement method and tools chosen based on the scope and civil rights analysis, type of public notification involved, Nebraska Press Association (NPA) publication locations and dates of the public/legal notice, and additional tools utilized. The memo will also include comment period dates and a matrix of summarized comments and responses. Attachments to the Summary Report will include the following sections, as outlined in the NDOT PI Reports table:
 - i. Sample Cover Letter
 - ii. Project Information Sheet
 - iii. Public Comments/Responses
- g. Public Involvement Report. A Public Involvement Report will be compiled following current NDOT Public Involvement procedures and standards and submitted to NDOT for Review. The Public Involvement Report includes the following (at a minimum):
 - i. Environmental Justice (EJ) and Limited English Proficiency (LEP) Analysis
 - ii. Public Involvement Plan
 - iii. Notification and advertising
 - Legal notice

- Request for publication
 - Legal Notice Affidavit (proof of publication)
 - Notification materials (e.g., cover letter and information sheet)
 - Distribution lists
 - News release(s) and any other forms of outreach (websites, signage, social media, etc.), if any.
- iv. Public comments
- Sample comment sheet
 - Comment matrix / response table
 - Written comments received
 - Final signed written response to comments

17. GREEN SHEET

- a. Green Sheet Coordination. The Consultant, on behalf of the LPA, will submit the Green Sheet to the NDOT NEPA Specialist and NDOT Local Projects for review. The Green Sheet must be submitted as a Word document with the attachments in a PDF format. The Green Sheet must be developed following Chapter 12 of the NDOT LPA Green Sheet Guidance (<http://dot.nebraska.gov/media/7789/lpa-greensheet-guidelines.pdf>). Review comments received from NDOT will be addressed with the revised Green Sheet documentation resubmitted to NDOT. This task assumes one round of document review and revision.

18. PROJECT MANAGEMENT

- a. Project Management. This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices, prepare project correspondence with the LPA or NDOT on behalf of the LPA; and maintain project records. Monthly Progress Reports shall be prepared and submitted according to the schedule provided by LPA, which may or may not coincide with Consultant invoicing schedule.
- b. Project Schedule. This task includes reviewing and providing input to the project schedule to document project milestones and critical paths.
- c. Quality Control/Quality Assurance. This task includes internal review by the Consultant of any deliverables submitted to the LPA and NDOT.

19. PROJECT MEETINGS

- a. Progress Meetings. Consultant will attend status update meetings (in-person or conference calls, as needed). This task includes activities to prepare for, facilitate, and document project progress meetings.
- b. Plan-in-Hand Meeting. Consultant will attend the on-site Plan-in-Hand meeting.

20. TRAVEL TIME

- a. Site Visit. Consultant will conduct up to two site visits for the wetland delineation and technical reviews, as needed.
- b. Plan-in-Hand Meeting. The Consultant will attend the Plan-in-Hand meeting scheduled and facilitated by the Design Consultant. (on-site meeting)

E. **FINAL DELIVERABLES:** (Identified in "Scope Items Table" and "Consultant Shall Provide (Section C)" above. When acting on behalf of LPA, Consultant will prepare final deliverables and submit electronic files and hard copies of all materials to LPA and NDOT for review prior to submittal to FHWA. These will include:

1. Monthly Invoices with Progress Reports per LPA's scheduled delivery dates
2. Meeting Minutes, if meetings are held
3. CE Determination Form for Federal-Aid Projects, and supporting attachments and file data
4. NRCS Form CPA-106 for Corridor Type Projects, if needed
5. Section 106 Review Request Letter, and supporting project location maps
6. Section 4(f) Initial Assessment Form and exception/*de minimis* documentation, if needed
7. Section 6(f) Documentation, if needed
8. Threatened and Endangered Species BE Review Request Letter
9. Hazardous Materials Review (HMR) Report
10. Wetland and Stream Delineation Report - For Full Delineation, USACE Wetland Determination Data Sheets (Midwest or Great Plains Regional Supplements) and Wetland Delineation Report including Plot(s) showing Wetland Boundaries, Wetland Types, OHWM, Waters of US and Location of Data Collection Points and Photos, and associated geospatial data (See Section F data transfer below)
11. 404 Permit Application (Nationwide or Individual) - 404 Permit Application Package consisting of 404 Permit Application, Water Way Permit Data Sheet, and Wetland Delineation Report. For Individual Permits, includes Alternatives Analysis and Sequencing Demonstration (Hard Copy and Electronic Files)
- ~~12. Mitigation Plan, if needed~~
13. Section 404 Authorization Letter and NDEQ 401 Water Quality Certification or Letter of Opinion regarding compliance with Title 117
- ~~14. A current Jurisdictional Determination from the USACE, if needed~~
15. Public Involvement Plan
16. Official Legal Notice
17. Public Involvement Summary Report
18. Public Involvement Report
19. Comment Response Letters addressed to the public commenter.
20. Quality Control Documentation
21. PDF copies of all materials and final electronic files (e.g., geodatabases for wetland delineations) as stated above. All supporting information shall be submitted to the NDOT for their Project File.

F. DATA TRANSFER

1. It shall be the Consultant's responsibility to obtain the necessary software to translate to and from the specified format for all electronic files supplied by the LPA or NDOT and for all electronic files prepared by the Consultant and supplied to the LPA or NDOT.
2. For wetland delineations - plot(s) showing wetland boundaries, ESA boundaries, wetland types, acres, waters of US and location of data collection points and photo points, will be submitted in GIS Geodatabase (.mdb or .gdb). Coordinate system projections for all submittals shall be: NAD 1983 State Plane Nebraska FIPS 2600 (feet). The submittal will include a completed attribute table with relevant information, such as wetland name and type, for each feature, as described in NDOT's (2018) procedure.
3. Electronic files should be submitted with each submittal.

G. SCHEDULE. The Consultant shall provide a schedule of activities and deliverables upon award:

1. Notice to Proceed: 1 September 2019
2. Contract End Date: 1 August 2021

SHPO Review and BE Request Letter Due Date Goal	HMR Report Submittal Due Date Goal	Wetland Delineation Report Due Date Goal	NEPA Draft Document & 404 Permit Application Due Date Goal to NDOT
1 November 2019	15 October 2019	15 October 2019	1 June 2020

ited above.

Staffing Plan (SRC)

Environmental

Project Name: Logan Creek Stream Stabilization
 Consultant: Felsburg Holt & Ullevig (FHU)
 Consultant PM: Allison Sambol, 402-445-4405, allison.sambol@fhueng.com
 LPA RC: Scott Huppert, 402-727-2722, dodgcoroads@hotmail.com
 NDOT PC: Rick Houck, 402-479-3600, richard.houck@nebraska.gov
 Date: February 25, 2020

Project Number: ER-3490(13)
 Control Number: 22792



Billing Rates Entered Directly or Calculated, based on:
 Overhead: 172.76%
 Profit Rate: 13.10%
 FCCM (if applicable): _____
 *Salary Escalation Factor: 3.0%
 *Escalation Period: 2 yrs
 *(default is 3% and 1 yr period)

#	Code	Classification	#	Code	Classification
1	PM	Project Manager			
2	SENV	Sr. Environmental Scientist			
3	ENV	Environmental Scientist			
4	ENG	Engineer			
5	DES	Designer/Technician			
6	ADM	Administrative			

Effective Multiplier For New Staff = 3.19

SRC BILLING RATE TABLE per employee

Template: T-WB-B1 Construction (rev 6-05-2017) SRC

Employee Name	Job Title & Certifications	Current Actual Hourly Rate	Lump Sum Billing Rate	% Assigned
Project Manager				
Allison Sambol	Senior Env. Sci	\$53.61	\$168.00	100%
		Weighted Average Rate: \$168.00		
Sr. Environmental Scientist				
Amy Zlotsky	Principal	\$80.29	\$252.00	15%
Carin Richardson	Env Sci / Planner V	\$52.88	\$166.00	85%
		Weighted Average Rate: \$178.90		
Environmental Scientist				
Adam Behmer	Env. Sci. / Planner IV	\$38.54	\$121.00	30%
Kody Unstad	Env. Sci. / Planner IV	\$39.90	\$125.00	30%
Jessica Jurzenski	Env. Sci. / Planner IV	\$42.58	\$134.00	30%
Blake Walter	Env. Sci. / Planner II	\$30.29	\$128.00	10%
		Weighted Average Rate: \$126.80		
Engineer				
Jodi Kocher	ENG 5	\$51.92	\$163.00	100%
		Weighted Average Rate: \$163.00		
Administrative				
Liz James	Administrative	\$20.00	\$63.00	50%
Jennie Sutton	Administrative/Accounting	\$27.75	\$87.00	50%
		Weighted Average Rate: \$75.00		

Consultant's Estimate of Hours

Environmental

Project Name: Logan Creek Stream Stabilization Project Number: ER-3490(13)
 Consultant: Felsburg Holt & Ullevig (FHU) Control Number: 22792
 Consultant PM: Allison Sambol, 402-445-4405, allison.sambol@fhueng.com
 NDOT PC: Rick Houck, 402-479-3600, richard.houck@nebraska.gov
 Date: February 25, 2020

TASKS	PERSONNEL CLASSIFICATIONS							Total
	PM	SENV	ENV	ENG	DES	ADM		
1 Categorical Exclusion Document and Resource Reviews	38	14	6		4		62	
a. Project Description and Purpose & Need	8	4					12	
b. CE Determination Form for Federal-Aid Projects (Smart Form)	10	4					14	
c. Prepare Project Vicinity & Location maps			2		4		6	
d. Documentation Reviews and Revisions	10	2	2				14	
e. CE Quality Control	8	2					10	
f. CE Comment Tracking Table	2	2	2				6	
2 Airport Coordination			2				2	
3 Farmland	1	1					2	
a. Farmland Conversion Form	1	1					2	
4 Section 106 SHPO/THPO	2				2		4	
a. Section 106 Review Request Letter	2				2		4	
5 Section 4(f) De Minimis or exception	2		1		2		5	
a. Section 4(f) Initial Assessment Form	2		1		2		5	
b. Section 4(f) Documentation (de Minimis or Exception, OWJ Coordination)								
c. Individual Section 4(f) Evaluation (Sup. to Agreement)								
6 Section 6(f) Analysis			1		1		2	
a. Determine if Section 6(f) are present, if present Sup. to Agreement			1		1		2	

TASKS	PERSONNEL CLASSIFICATIONS							Total
	PM	SENV	ENV	ENG	DES	ADM		
7 Floodplain Review	2			1	2			5
a. Determine if proj. is in a Zone A floodplain	2			1	2			5
b. Floodplain permitting (to be conducted by Design Engineer, or Sup. to Agreement)								
8 Water Quality Review	2							2
a. Determine if impaired water are in proj area	1							1
b. Coordination with NDEQ	1							1
9 T&E Review	1		7					8
a. Biological Evaluation (BE) Review Request Letter	1		6					7
b. Field Review			1					1
10 Hazardous Materials Review	2	6	18		2			28
a. Database review			4					4
b. Site visit			2					2
c. Complete the HMR Visual Reconnaissance Form			2					2
d. Conduct analysis per the Hazardous Materials Review manual			2					2
e. Subsurface investigation (Sup. to Agreement)								
f. Prepare a written Hazardous Materials Review Report		4	8		2			14
g. Quality Control	2	2						4
11 Noise Study and Report (assumed not required)								
12 Wetland and Stream Delineation Services	19	8	35		6			68
a. Site Visit	8		8					16
b. Review Existing Resources/Databases			4					4
c. Farm Service Agency (FSA) Wetland Review (Sup. to Agreement)								
d. Delineation Limits			4		2			6
Estimated Delineation Project Size:								
e. Plot Boundaries	2		2		4			8
f. Documentation of Findings	6	2	14					22
g. Quality Control		6						6
h. Waterway Permit Data Sheet Form	2		2					4
i. Electronic Files and Transmittal Letter or Email	1		1					2
13 Section 404 Nationwide Permitting Services	22	5	18		2	1		48
a. Pre-Application Meeting	4		2					6
b. 404 Nationwide Permit Application Package	12	4	12		2			30
c. Jurisdictional Determination (JD) from the USACE (Sup. to Agreement)								
d. Agency Coordination	4	1	4					9
e. Final Deliverables	2					1		3
14 Section 404 Individual Permitting Application (assumed not required)								
15 Mitigation Plan								
a. Mitigation Documentation, Sup.to Agreement								
a. Channel Mitigation, Sup.to Agreement								
16 Preparation of Public Involvement Materials	16	6	1			1		24
a. Develop a Public Involvement Plan	1	1						2
b. Distribution List	2							2
c. Official Legal Notice	1	1						2
d. Prepare a Project Information Packet	8	1	1			1		11
e. Draft responses to comments received from the public	2	1						3
f. Public Involvement Summary Report	1	1						2
g. Public Involvement Report	1	1						2
17 Green Sheet (NDOT Env has assumed this task)								
18 Project Management	30	4						34
a. Project Management	20							20
b. Project Schedule	2							2
c. Quality Control/ Quality Assurance	8	4						12
19 Project Meetings	12		4					16
a. Progress Meetings (preparation, attendance, minutes)	8		4					12
b. Plan-in-Hand Meeting (on-site)	4							4
20 Travel Time	3		5					8
a. Site Visits (wetland delineation and technical reviews)			5					5
b. Plan-in-Hand Meeting (on-site)	3							3
21 Misc								

TASKS	PERSONNEL CLASSIFICATIONS							Total
	PM	SENV	ENV	ENG	DES	ADM		
Total Days	19	5.5	12.25	0.125	2.625	0.25		40
Total Hours	152	44	98	1	21	2		318.0

Direct Expenses**Environmental**

Project Name: Logan Creek Stream Stabilization Project Number: ER-3490(13)
 Consultant: Feisburg Holt & Ullevig (FHU) Control Number: 22792
 Consultant PM: Allison Sambol, 402-445-4405, allison.sambol@fhueng.com
 LPA RC: Scott Huppert, 402-727-2722, dodgecoroads@hotmail.com
 NDOT PC: Rick Houck, 402-479-3600, richard.houck@nebraska.gov
 Date: February 25, 2020

Subconsultants:			Amount
Subtotal			
Printing and Reproduction:	Qty	Unit Cost	Amount
Color copies for Target Mailer (Public Involvement)	250	\$0.20	\$50.00
Color copies for wetland delineation	400	\$0.20	\$80.00
Black and White Copies	150	\$0.08	\$12.00
Subtotal			\$142.00
Mileage/Travel:	Qty	Unit Cost	Amount
120 miles round trip X 1 trip = 120 (delineation)	120	\$0.575	\$69.00
120 miles round trip X 1 trip = 120 (plan in hand)	120	\$0.575	\$69.00
Subtotal			\$138.00
Lodging/Meals:	Qty	Unit Cost	Amount
Subtotal			
Other Miscellaneous Costs:	Qty	Unit Cost	Amount
Postage for Targeted Mailer (Public Involvement)	35	\$0.50	\$17.50
Subtotal			\$17.50
TOTAL DIRECT EXPENSES			\$297.50

Project Cost & Breakdown**Environmental**

Project Name: Logan Creek Stream Stabilization Project Number: ER-3490(13)
 Consultant: Felsburg Holt & Ullevig (FHU) Control Number: 22792
 Consultant PM: Allison Sambol, 402-445-4405, allison.sambol@fhueng.com
 NDOT PC: Rick Houck, 402-479-3600, richard.houck@nebraska.gov
 Date: February 25, 2020

LABOR COSTS			
Classification	Hours	Weighted Rate	Amount
Project Manager	152.00	\$168.00	\$25,536.00
Sr. Environmental Scientist	44.00	\$178.90	\$7,871.60
Environmental Scientist	98.00	\$126.80	\$12,426.40
Engineer	1.00	\$163.00	\$163.00
Administrative	2.00	\$75.00	\$150.00
	297.00	Subtotal	\$46,147.00

DIRECT EXPENSES	Amount
Subconsultants:	
Printing And Reproduction:	\$142.00
Mileage/Travel:	\$138.00
Lodging/Meals:	
Other Miscellaneous Costs:	\$17.50
	Subtotal
	\$297.50

TOTAL PROJECT COSTS	Amount
Labor Costs	\$46,147.00
Direct Expenses	\$297.50
	TOTAL COST
	\$46,444.50

Travel Calculations & Notes

Environmental

Project Name: Logan Creek Stream Stabilization **Project Number:** ER-3490(13)
Consultant: Felsburg Holt & Ullevig (FHU) **Control Number:** 22792
Consultant PM: Allison Sambol, 402-445-4405, allison.sambol@fhueng.com
LPA RC: Scott Huppert, 402-727-2722, dodgecoroads@hotmail.com
NDOR PC: Rick Houck, 402-479-3600, richard.houck@nebraska.gov
Date: February 25, 2020

Trip Mileage and Time Calculations

	Lincoln	Omaha		Travel Summary	
Starting Location:	Lincoln	Omaha			
Ending Location:	Logan Creek	Logan Creek			
Roundtrip distance to/from (miles):	120	120		Miles	Hours
Roundtrip travel time (minutes):	140.00	140.00			
# of Roundtrips/Staff → PM:		1		140	2.3
→ SENV:					
→ ENV:	2			280	4.7
→ ENG:					
→ DES:					
→ ADM:					
→					
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→					
			Total:	420	7.0

Note: Total miles assumes each staff travels separately

Notes & Assumptions
2 ENV for wetland delineation.
1 ENV for PIH.
PM for progress meetings.

1. PAYMENT METHOD

Payments under this Agreement will be made based on a Specific Rates of Compensation (SRC) payment method up to a maximum not-to-exceed amount.

2. MAXIMUM AGREEMENT AMOUNTS

The following are the maximum amounts established in this Agreement for each category of cost. Consultant shall not exceed these amounts without prior written approval from LPA, or State on LPA's behalf.

AMOUNT	CATEGORY
\$ 46,147.00	for actual direct labor costs
<u>\$ 297.50</u>	for direct expenses
\$ 46,444.50	total agreement amount

3. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS

Consultant shall require all of its subconsultants to notify Consultant any time it has been determined that a subconsultant's costs will exceed its fee estimate (over-run). Consultant must provide acceptable justification and obtain LPA, or State on LPA's behalf, prior written approval before exceeding the subconsultant's fee estimate. If the amount of any subconsultant's cost is less than its fee estimate (under-run), Consultant understands that the amount of the under-run will be subtracted from the total compensation to be paid to Consultant under this Agreement, unless LPA, or State on LPA's behalf, gives prior written approval and, if necessary, approval from Federal Highway Administration (FHWA).

4. ALLOWABLE COSTS

Allowable costs are direct labor costs and direct non-labor costs, as defined below, which Consultant has incurred within 90 days before State received Consultant's invoice. Costs that Consultant incurred to correct mistakes or errors attributable to Consultant's or Subconsultant's own actions are not allowable costs, even if those costs would not exceed the amounts listed in Section 2. MAXIMUM AGREEMENT AMOUNTS.

A. Direct Labor Costs are based on the specific rate of compensation (SRC or billing rate)

Consultant will charge LPA for Consultant's employees' time working directly on this project. The direct labor costs is calculated by multiplying the SRC rate, as indicated on the Staffing Plan in Exhibit "A" Consultant's Fee Proposal, by the hours worked. The Staffing Plan must identify by name all employees of the Consultant who are reasonably expected to provide Services under this Agreement. For employees not listed on the Staffing Plan, the SRC rate for that employee shall be calculated in the same manner as employees listed on the staffing plan, using the same overhead and fee for profit rate, if applicable, and such calculation must be shown on the first invoice that includes direct labor.

2) Time Reports: The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours by all employees to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects, such as project description, project number, pertinent work phase, dates of service, and the employee's name and position. There must be an adequate system of internal

controls in place to ensure that time charges to projects are accurate and have the appropriate supervisory approval.

B. This section has intentionally been left blank.

C. Direct Non-Labor Costs (Direct Expenses) are all necessary, actual, properly documented, and allowable costs related to the Consultant completing the Services. All costs must be supported by detailed receipts or invoices. Direct non-labor costs include, but are not limited to, the following:

Transportation, mileage, lodging, and meals, subject to limitations specified below; Communication costs; Reproduction and printing costs; Special equipment and materials required for the project and approved by LPA, or State on LPA's behalf; Special insurance premiums if required solely for this Agreement; Subconsultant costs; Such other allowable items as approved by LPA, or State on LPA's behalf.

- 1) A non-labor cost charged as a direct cost cannot be included in Consultant's overhead rate. If, for reasons of practicality, Consultant is treating a direct non-labor cost category in its entirety as an overhead cost, then costs from that category are not eligible to be billed to this project as a direct expense.
- 2) Subconsultant costs may not exceed the costs shown on the attached Consultant's Fee Proposal for each subconsultant unless agreed upon by the Consultant and LPA, or State on LPA's behalf. Consultant shall require subconsultant costs to have the same level of documentation as required of Consultant. Consultant must review subconsultants' invoices and progress reports to ensure they are accurate, costs are allowable, and properly documented before sending invoices of those costs to State.
- 3) The following direct non-labor costs (direct expenses) will be reimbursed at actual costs, not to exceed the rates as shown below.
 - a) TRANSPORTATION – Automobile rentals, air fares, and taxi/shuttle transportation will be actual reasonable cost and, if discounts are applicable, the Consultant shall give LPA and State the benefit of all discounts. Receipts must be submitted with invoices. A bank card receipt alone is not sufficient documentation.
 - b) MILEAGE – The reimbursement for mileage associated with the use of company owned vehicles will be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:
 - (i) The mileage rate that the Consultant reimbursed to the person who submitted the claim for POV use; or
 - (ii) The prevailing standard rate as established by the IRS.
 - c) LODGING – The reimbursement for lodging rates will be limited to the prevailing standard rate as indicated on the U.S. General Services Administration's (GSA) website at <http://www.gsa.gov/portal/category/100120>. Consultant shall give LPA and State the benefit of all lodging discounts. Receipts must be submitted with invoices.
 - d) MEALS – The reimbursement for meals and incidental expenses will be limited to the prevailing standard rate as indicated on the GSA website noted above.

Expenses for alcoholic beverages are not allowed. Consultant shall give LPA and State the benefit of all meal discounts.

- (i) For Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

- Employee is required to depart at or before 6:30 a.m., or
- Employee is on overnight travel.

Lunch:

- Employee must be on overnight travel. No reimbursement for same day travel.
- Employee is required to leave for overnight travel at or before 11:00 a.m., or
- Employee returns from overnight travel at or after 2:00 p.m.

Dinner:

- Employee leaves for overnight travel at or before 5:00 p.m., or
- Employee returns from overnight travel or work location at or after 7:00 p.m., or
- Employee is on overnight travel.

- (ii) Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.
- (iii) Meal receipts must itemize all food and drinks purchased. A bank card receipt alone is not sufficient documentation. If receipt does not itemize all food and drink purchased at the meal, reimbursement is limited to a maximum of \$4.99 for that meal.
- (iv) Reimbursement for meal gratuities/tips will be whatever is usual or customary, but should not exceed 20 percent.

5. INELIGIBLE COSTS

State will not pay for costs incurred prior to the Notice to Proceed date or after the completion deadline date set out in the NOTICE TO PROCEED AND COMPLETION SCHEDULE Section of this Agreement or as approved in writing by LPA, or State on LPA's behalf. Per Section 4. ALLOWABLE COSTS, State will not pay for costs incurred, but not submitted to State within 90 days of the date incurred. Consultant (including its employees) is assumed to have incurred travel costs on the day travel occurred. Consultant is assumed to have incurred costs from a Subconsultant on the same day the Subconsultant incurred the cost.

6. This section has intentionally been left blank.

7. INVOICES AND PROGRESS REPORTS

- A. Consultant shall promptly submit invoices to State based on Consultant's billing period, but shall not submit more than one invoice per month. Invoices must include all services completed and allowable costs incurred during the billing period. Invoices may also include a request for services provided or costs incurred during a prior billing period, including subconsultant costs, with an explanation for why those costs were not previously included in an invoice, so long as those costs were incurred no more than 90 days prior to State's receipt of the invoice. Accordingly, State retains the sole discretion to not pay for costs incurred that have not been invoiced as provided above.
- B. In the event Consultant has incurred otherwise allowable costs, and such costs would exceed the maximum direct labor costs or total agreement amount listed in Section 2.

MAXIMUM AGREEMENT AMOUNTS, Consultant shall list such costs on the invoice, but they must be subtracted from the total invoice amount submitted to State for payment.

C. Content of Invoice Package (In order presented)

1) Consultant's Invoice:

- i. The first page of an invoice must identify the company's name and address, invoice number, invoice date, invoicing period (beginning and ending dates of services), and agreement or task order number.
- ii. The invoice or accompanying supporting documentation must identify each employee by name and classification, the hours worked, and the specific rate of compensation (billing rate) for each employee.
- iii. Direct non-labor expenses:
 1. Direct non-labor expenses, other than travel-related expenses, must be itemized and provide a complete description of each item billed with supporting receipts or invoices.
 2. Travel-related expenses must be summarized and submitted on NDOT Form 163 (see below). Supporting receipts must be submitted with NDOT Form 163 when invoicing for these expenses.
 3. All supporting receipts must be kept as required in Section 18.
CONSULTANT COST RECORD RETENTION.
- iv. Subconsultant Services: Consultant shall require subconsultants to provide the same supporting documentation, invoices, and receipts as Consultant is required to retain and submit.

2) Progress Report: A Progress Report must accompany the invoice package documenting Consultant's work during the service period. If an invoice is not submitted monthly, then a Progress Report must be submitted at least quarterly via email to LPA and State's Project Coordinator. All Progress Reports must include, but are not limited to, the following:

- i. A description of the Services completed for the service period to substantiate the invoiced amount.
- ii. A description of the Services anticipated for the next service period
- iii. A list of information Consultant needs from LPA, or State on LPA's behalf
- iv. Percent of Services completed to date

3) Cost Breakdown Form: Each invoice package must include a completed "Cost Breakdown Form" (NDOT Form 162). This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.

4) Travel Log: If an invoice contains any travel-related expenses, then a completed "Invoice Travel Log" (NDOT Form 163) must be included with the invoice package. This form is available on the State's website. Upon approval by State, Consultant may use a substitute Invoice Travel Log provided it documents substantially the same information as NDOT Form 163. The Travel Log must document the employee's name, locations traveled, date/time of departure to the project, date/time of return to the headquarters town, and expenses for transportation, meals, and lodging.

- D. All invoice packages (invoice, progress report, required NDOT Forms, supporting material) must be submitted electronically through State's OnBase Invoice Workflow System for review, approval, and payment. The user guide for the OnBase Invoice Workflow system, along with training videos can be found at <http://dot.nebraska.gov/business-center/consultant/onbase-help/>.
- E. Notice of Public Record: Documents submitted to State, including invoices, supporting documentation, and other information are subject to disclosure by State pursuant to the Nebraska Public Records Act found at Neb. Rev. Stat. § 84-712 et.seq.
- ACCORDINGLY, CONSULTANT SHALL REDACT OR NOT SUBMIT TO STATE INFORMATION THAT IS CONFIDENTIAL, INCLUDING, BUT NOT LIMITED TO, FINANCIAL INFORMATION SUCH AS SOCIAL SECURITY NUMBERS, TAX ID NUMBERS, OR BANK ACCOUNT NUMBERS. Consultant understands that State does not have sufficient resources to review and redact confidential information submitted by Consultant. If such confidential information is submitted, Consultant shall have no right of action of any kind against State for the disclosure of such information.

8. PAYMENTS

State, on LPA's behalf, will pay Consultant after receipt of Consultant's invoice and determination by LPA, or State on LPA's behalf, that the invoice and progress report adequately substantiate the Services provided, and the Services were completed in accordance with this Agreement. Payments will not be made if the progress report does not provide adequate substantiation for the Services, or LPA or State determines that the Services have not been properly completed. State, on LPA's behalf, will make a reasonable effort to pay Consultant within 30 days of receipt of Consultant's invoices.

9. PROMPT PAYMENT CLAUSE

Consultant shall include a "Prompt Payment Clause" as a part of every subcontract for work, including lower tier subcontracts. The "Prompt Payment Clause" will require progress payments to all subconsultants for all work completed, within twenty (20) calendar days after receipt of progress payments from the State for said work. If Consultant fails to carry out the requirements of the "Prompt Payment Clause" without just cause, is a material breach of this Agreement. In such situation, State may withhold any payment due to Consultant until all delinquent payments have been made (no interest will be paid for the period that payment was withheld), terminate this Agreement, or any other such remedy as State deems appropriate. Consultant may withhold payment from a subcontractor only for just cause, and must notify the State in writing of its intent to withhold payment before actually withholding payment. Consultant shall not withhold, delay, or postpone payment without first receiving written approval from the State.

10. SUSPENSION OF PAYMENTS

When work is suspended on this project, payments shall be suspended until the work resumes or this Agreement is terminated. Consultant shall not be compensated for any work completed or costs incurred on the project after the date of suspension. When work is suspended for convenience, Consultant shall be compensated for work completed, or costs incurred prior to the date of suspension. When work is suspended for cause, payments shall be withheld until all remedial action is completed by Consultant to the satisfaction of LPA and State, at Consultant's sole cost.

11. *This section has intentionally been left blank.*

12. FINAL INVOICE AND PAYMENT

Upon completion of the Services under this Agreement, Consultant shall submit their final invoice. After receipt of final invoice and determination by LPA, or State on LPA's behalf, that the final invoice and Progress Report adequately substantiate the Services provided and the Services were completed in accordance with this Agreement, State, on LPA's behalf, will pay Consultant. Acceptance of the final payment by Consultant will constitute and operate as a release to LPA and State for all claims and liability to Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the Services rendered by or in connection with this Agreement or any part thereof.

13. AGREEMENT CLOSE-OUT

Upon submitting its final invoice, the Consultant must complete and submit to LPA, or State on LPA's behalf, a Notification of Completion Form (NDOT Form 39). The form is generated and submitted electronically through State's OnBase Invoice Workflow System. Instructions for generating and submitting the NDOT Form 39 are available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Consultant shall submit NDOT 39 Form within 90 days of completion of the work under this Agreement, and if such Form is not timely submitted, State may audit and close the Agreement without accepting any further invoices from Consultant.

14. FEDERAL COST PRINCIPLES

LPA will not make payments directly to Consultant for services performed under this agreement. Instead, the State will serve as a paying agent for LPA, and will pay Consultant directly for properly submitted and approved invoices using both LPA and Federal funds based on the applicable project federal cost participation percentage. The following process shall apply whenever the LPA, the State or the FHWA determines that certain costs, previously paid to Consultant, should not have been paid with federal funds by the State to Consultant. Consultant shall immediately repay the State the federal share of the previously paid amount and may invoice LPA for the costs repaid to the State. LPA shall promptly pay the full amount of the invoice from its own funds unless LPA, in good faith, disputes whether the Consultant is entitled to the payment under the agreement or the amount of the invoice. In the event of a dispute between LPA and Consultant, the dispute resolution process, outlined Section 4.4.3.5 DISPUTE RESOLUTION of the LPA Manual, shall be used by the parties. For performance of Services as specified in this Agreement, State will pay Consultant subject to the terms of this Agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulations 48 CFR 31 (Contract Cost Principles and Procedures).

15. OUT-OF-SCOPE SERVICES AND CONSULTANT WORK ORDERS

LPA, or State on LPA's behalf, may request that Consultant provide services that, in the opinion of Consultant, are in addition to or different from those set out in the Scope of Services. When LPA, or State on LPA's behalf, decides that these out-of-scope services may require an adjustment in costs, Consultant shall provide in writing:

- A. A description of the out-of-scope services,
- B. An explanation of why Consultant believes that the out-of-scope services are not within the original Scope of Services and additional work effort is required,

C. An estimate of the cost to complete the out-of-scope services. Consultant must receive written approval from LPA, or State on LPA's behalf, before proceeding with the out-of-scope services. Before written approval will be given by LPA, or State on LPA's behalf, LPA or State must determine that the situation meets the following criteria:

- 1) The out-of-scope services are not within the original Scope of Services and additional work effort is required;
- 2) The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered into; and
- 3) It is in the best interest of LPA that the out-of-scope services be performed under this Agreement.

Once the need for a modification to the Agreement has been established, the State, on LPA's behalf, will prepare a supplemental agreement. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the State, on LPA's behalf, may issue a written notice to proceed prior to completing the supplemental agreement (for non-Federal aid projects) or shall use the process set out below (for Federal aid PE projects):

The Consultant Work Order (CWO) – NDOT Form 250 shall be used to describe and provide necessary justification for the additional scope of services, effort, the deliverables, modification of schedule, and to document the cost of additional services. The CWO form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. The agreement will be supplemented after one or more CWOs have been authorized and approved for funding.

16. TERMINATION COST ADJUSTMENT

If the Agreement is terminated prior to project completion, State and LPA will compare the percentage of work actually completed by Consultant, to the total amount of work contemplated by this Agreement. This comparison will result in a payment by the State, on LPA's behalf, for any underpayment, no adjustment, or a billing to Consultant for overpayment. The State's final audit may result in an additional cost adjustment.

17. AUDIT AND FINAL COST ADJUSTMENT

Upon LPA's and State's determination that Consultant has completed Services under this Agreement, State, or its authorized representative, may complete an audit review of the payments made under this Agreement. The Parties understand that the audit may require an adjustment of the payments made under this Agreement. Consultant agrees to reimburse State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

18. CONSULTANT COST RECORD RETENTION

Consultant, and all of its subconsultants or subcontractors, shall maintain originals or copies of any document required to be completed in this Agreement, that substantiate any expense incurred, or changes any legal obligations for three (3) years from the date of final cost settlement by FHWA and project closeout by the State.

Documents include, but are not limited to: written approvals; time reports; detailed receipts; invoices; transportation costs; mileage; lodging costs; cost of meals; all NDOT forms including NDOT cost breakdown form and NDOT travel form; books; papers; electronic mail; letters; accounting records; supplemental agreements; work change orders; or other evidence pertaining to any cost incurred.

Such materials will be available for inspection by the LPA, State, FHWA, or any authorized representative of the federal government, and copies of any document(s) will be furnish when requested.