

Agreement No.	BK2052-002
Effective (NTP) Date	02/28/2022
Supplement Amount	\$123,218.63
Total Agreement Amount	CPFF \$783,346.38

PROFESSIONAL SERVICES AGREEMENT SUPPLEMENT NO. 2

CITY OF LEXINGTON, NEBRASKA
WSP USA, INC.
PROJECT NO. RRZ-TMT-1705(3)
CONTROL NO. 61457
LEXINGTON EAST VIADUCT

THIS SUPPLEMENTAL AGREEMENT is between the City of Lexington, Nebraska ("LPA") and WSP USA, Inc. ("Consultant"), collectively referred to as the "Parties".

WHEREAS, Consultant and LPA entered into an agreement ("Original Agreement") executed by LPA on September 22, 2020 for Consultant to provide Preliminary Engineering Services for LPA's project, and Supplemental Agreement #1 executed by LPA on January 12, 2021 for Consultant to provide additional Preliminary Engineering Services for LPA's project, and

WHEREAS, it is necessary that Preliminary Engineering Services as outlined in Exhibits "A" and "B" be added under this Supplemental Agreement, and

WHEREAS, it is necessary to increase Consultant's compensation by this Supplemental Agreement for the additional work necessary to complete the services under this Agreement, and

WHEREAS, LPA desires that this project be developed and constructed under the designation of Project No. RRZ-TMT-1705(3) and formally authorizes the signing of this Agreement, as evidenced by the Resolution of LPA dated _____ day of _____, 20____, attached as Exhibit "D" and incorporated herein by this reference.

NOW THEREFORE, in consideration of these facts and mutual promises, the Parties agree as follows:

SECTION 1. SCOPE OF SERVICES

Consultant will perform the additional work as set out in Exhibit "A", Consultant Work Order and Scope of Services, and Exhibit "B", Consultants Fee Proposal, attached and incorporated herein by this reference.

SECTION 2. NOTICE TO PROCEED AND COMPLETION

- 2.1 State issued Consultant a written Notice-to-Proceed on February 28, 2022. Any work or services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement.
- 2.2 Consultant will complete all work stipulated in the Original Agreement, Supplemental Agreement #1, and this Supplemental Agreement by August 31, 2023.

SECTION 3. FEES AND PAYMENTS

Section 2 in Exhibit "B" of the Original Agreement is hereby amended in accordance with Exhibit "A" and as shown below.

PROFESSIONAL SERVICES AGREEMENT – SUPPLEMENT

Previous Amount*	This Supplement Amount	Amended Agreement Amount	
\$ 224,384.63	\$ 44,009.42	\$268,394.05	For actual direct labor costs
\$ 373,396.81	\$ 67,238.57	\$440,635.38	For indirect labor costs & direct expenses
\$ 62,346.31	\$ 11,970.64	\$74,316.95	For a fixed fee for profit
\$660,127.75	\$123,218.63	\$783,346.38	Total agreement amount

*includes all prior supplements

SECTION 4. CONFIDENTIAL INFORMATION

Documents submitted to LPA, including invoices, supporting documentation, and other information are subject to disclosure by LPA under the Nebraska Public Records Act found at Neb.Rev.Stat. § 84-712 et.seq. Accordingly, Consultant shall redact or not submit to LPA 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 LPA 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 LPA for the disclosure of such information.

SECTION 5. CONSULTANT CERTIFICATION AND REAFFIRMATION

The undersigned duly authorized representative of Consultant, by signing this Supplemental Agreement, hereby reaffirms, under penalty of law, the truth of the certifications set out in the Original Agreement and all Supplements thereto, including this Supplement. Further, Consultant has a duty to inform LPA of any material changes in the accuracy of all assertions set out in the Original Agreement and all Supplements thereto.

SECTION 6. CERTIFICATION BY LPA

By signing this Supplemental Agreement, 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 agreement 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.

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

SECTION 7. ENTIRE AGREEMENT

The Original Agreement, any and all other previous supplements thereto, and this Supplemental Agreement, constitute the entire agreement (“The Agreement”) between the Parties. The Agreement supersedes any and all other previous communications, representations, or other understandings, either oral or written; all terms and conditions of the Original Agreement and all previous supplements thereto, to the extent not superseded, remain in full force and effect, and are incorporated herein as if set forth in their entirety.

PROFESSIONAL SERVICES AGREEMENT – SUPPLEMENT

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

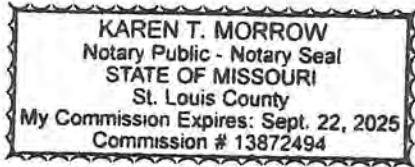
EXECUTED by the Consultant this 10th day of March, 20 22.

WSP USA, INC.
Dan DeArmond

[Handwritten Signature]
Senior Director

Missouri
STATE OF ~~NEBRASKA~~
St. Louis)ss
LANCASTER COUNTY)

SUBSCRIBED AND SWORN to before me this 10th day of March, 20 22.



[Handwritten Signature]
Notary Public

EXECUTED by LPA this _____ day of _____, 20____.

CITY OF LEXINGTON, NEBRASKA
John Fagot

Mayor

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

Clerk

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

Date

Consultant Work Order (Local Projects)

Project No.: RRZ-TMT-1705(3)		Control No.: 61457
Consultant: (Name and Representative) WSP USA Inc., Jane Jordan	Agreement No.: BK2052	Work Order No.: 2
LPA: (Name and Representative) City of Lexington, Joe Pepplitsch		Constr. 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) Additional services due to ROW acquisition work and negotiations. Additional services associated with project management and coordination due to schedule change with Sept 2022 letting. Additional services associated with construction engineering (consultation, shop drawings, shim calculations).</p>		
Work Title	Summary of Fee	
	A. Total Direct Labor Cost =	44,009.42
	B. Overhead (Factor * x A) =	57,436.69
	C. A + B =	101,446.11
	D. Profit/Fee (Factor ** x C) =	11,970.64
*Overhead Factor: 130.51%	E. FCCM (Factor*** x A) =	105.62
**Profit/Fee Factor: 11.80%	F. Direct Non-Labor Cost =	795.60
***Facility Capital Cost of Money (FCCM): 0.24%	G. Subconsultant Services =	8,900.66
Total Fee Notes:	TOTAL FEE: C + D + E + F + G =	\$123,218.63
	<input type="checkbox"/> ESTIMATED TOTAL FEE:	
	<input type="checkbox"/> FINAL TOTAL FEE:	

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

Consultant:
 Daniel DeArmond _____ 2/24/2022
Name Signature Date

LPA:
 Dennis Burnside _____ 2/24/2022
Name Signature Date

LPS PC (for Preliminary Engineering) and State Rep. (for Construction Engineering):

Name Signature Date

LPS Unit Head Review (for PE Phase):
 Nicole Taylor _____ 02/28/22
Name Signature Date

LPS Manager or Construction Engineer (Construction Phase):
 Jeff Soula _____ 2/28/22
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:
02/28/22

Notice to Proceed Date:
02/28/22

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

NDOT Form 250, November 18

EXHIBIT "A"

**Scope of Services with Schedule
Lexington East Viaduct
Project No. RRZ-TMT-1705(3)
CN: 61457
Supplemental Agreement No. 2**

This supplemental scope of services provides for right-of-way revisions as negotiations progress, including revisions to the plans for various features added or modified due to the negotiations, and work related to construction engineering for the project.

ROW SUPPORT SERVICES

This task includes work to assist NDOT and its staff by providing information for their use as they visit with property owners along the project and potentially modify the improvements to be shown on the plans for construction as a result of their discussion. Negotiations are not complete as of this date. Items listed here are known issues for which the Consultant's Consultant assistance is needed, and legal descriptions will be needed for any modifications to permanent and temporary easements. NDOT also requested the Consultant include a provisional amount of time for support of ROW negotiations and for adjustments needed to the construction or the right of way plans:

1. Tract 16 and Tract 17 - The owners have each requested a new drive and these will be across proposed Road B from each other. These drives will be paved commercial entrances. Temporary easement for construction will be needed. NDOT will advise the Consultant of final disposition, then plans will be revised to include the construction details and associated quantities.
2. Tract 10 – The owner has requested a drive on the north line to Road 755. NDOT provided hand sketches of the proposed location. The consultant will review the location relative to existing utilities and provide preliminary detail for NDOT's review and approval. Temporary easement for construction will be needed. NDOT will advise the

- Consultant of final disposition, then plans will be revised to include the construction details and associated quantities.
3. Tract 9 – Current plans show a drive relocation for this property. NDOT had directed that the drive relocation be deleted from the plans and associated quantities be deducted.
 4. Tract 8 – Move the entrances as far west as possible and revise plans and quantities. A temporary easement will be needed.
 5. Tract 6 – The owner requested another drive at the south end of the tract. This will be a commercial entrance and will required a temporary easement.
 6. Tracts 11, 12, 13, 14 – Shared access road. The improvements on Road 435 will close entrances to tracts 11, 12 and 13. Tract 14 with frontage to Road 755 currently has an existing ingress-egress easement for Tract 13 Lot 3. NDOT's discussion with the owners has included the offer to construction a new permanent easement for a granular surfaced road to serve these. NDOT provided a preliminary sketch. The consultant will revise the plans to show the new access and an easement on Tracts 12 and 13 where the road will be built and provide access to all tracts Temporary easements for construction will also be needed. NDOT will advise the Consultant of final disposition, then plans will be revised to include the construction details and associated quantities.
 7. Tract 8, 11 and 12 east of Road 435 – Remove all need for ROW and install a concrete lined ditch to hold limits of construction within existing right of way. NDOT learned from the local electric utility that a pole that is within the limits of construction would require a substantial expense and schedule delay. The Consultant will prepare temporary easements for the construction of the paved ditch, as well as revise the construction plans to include the details and associated quantities for construction.
 8. Tract 7 and Tract 18 – The owner of Tract 7 is a large equipment dealer with some retail customers. NDOT's initial discussions indicate that the negotiations could be considerably involved. No proposals different from that shown in the 90% ROW plans are suggested at this time. The Consultant should provide an allowance for this work to be approved by NDOT.
 9. Prepare legal descriptions for all items noted above for any modifications to permanent and temporary easements .
 10. Tract 4 – The owner of Tract 4 is concerned with the amount of new right-of-way encroachment on his property. An existing modular block retaining wall is currently located on the property line, parallel to the existing ditch bottom at approximately 36 feet

left of project centerline. NDOT and the City of Lexington would like to investigate if the wall could be reconstructed at the proposed toe of backslope, approximately 50' left of centerline. The Consultant will verify that the proposed 10' ditch width and the dual 42" round equivalent driveway culverts along this parcel are sized appropriately and will review the fixed obstacle clearance and clear zone to determine if a wall would be able to be constructed at the toe of the proposed backslope. If it is determined that a wall could be feasibly constructed at the toe of the backslope, the preferred solution would be to include the wall reconstruction as part of right of way negotiations and no plan modifications would be necessary. The City of Lexington or the County could then permit the wall to be constructed in the right of way by the parcel owner in the future or right of way could be sold back to the owner after the project is constructed.

Review Shop Drawings, Provide Construction Consultation and Girder Shim Calculations

This included services to provide construction engineering for:

1. General construction consultation, and services needed for the following:
2. Shop drawing review, anticipated for the following:
 - a. Pile dynamic analyzer (PDA) results
 - b. Girder bearings
 - c. Prestressed concrete girders
 - d. Girder diaphragms
 - e. MSE wall and wire wall plans and details
 - f. Geofoam material and details
3. Girder shim calculations.

SCHEDULE

The current schedule provided by NDOT in an email February 10, 2022 is shown in the table below.

Activity	Original Schedule	Current Schedule
PS&E Turn in	September 17, 2021	May 13, 2022
Let Project	November 4, 2021	September 22, 2022

Staffing Plan (CPFF)

Preliminary & Final Design

Project Name: Lexington East Viaduct
 Consultant: WSP USA Inc.
 Consultant PM: Jane Jordan, 816-702-4236, jane.jordan@wsp.com
 LPA RC: Glen Steffensmeier, 402-479-3845, glen.steffensmeier@nebraska.gov
 NDOT PC: Glen Steffensmeier, 402-479-3845, glen.steffensmeier@nebraska.gov
 Date: February 23, 2022

Project Number: RRZ-TMT-1705(3)
 Control Number: 61457



#	Code	Classification	#	Code	Classification
1	PR	Principal	6	SDES	Sr. Designer/Technician
2	PM	Project Manager	7	PI	Public Involvement Specialist
3	SENG	Sr. Engineer / Planner	8	SPC	Survey Party Chief
4	ENG	Engineer	9	SUR	Surveyor I
5	AENG	Assistant Engineer	10	ADM	Administrative

Overhead Rate ^[1]	130.51%
Fee for Profit Rate ^[2]	11.80%
FCCM (if applicable)	0.24%

BLENDED RATES TABLE

Template: T-WB-B-2 LPA PE (rev 10-23-2019) CPFF

Employee Name	Job Title & Certifications ^[3]	Current Actual Salary Rate/Hr ^[4]	% Assigned
Principal			
<u>Dan DeArmond</u>	<u>Vice President</u>	<u>\$103.37</u>	<u>100%</u>
_____	_____	_____	_____
_____	_____	_____	_____
Blended Rate:		\$103.37	
Project Manager			
<u>Jane Jordan</u>	<u>Sr. Engineering Manager</u>	<u>\$92.87</u>	<u>100%</u>
_____	_____	_____	_____
_____	_____	_____	_____
Blended Rate:		\$92.87	
Sr. Engineer / Planner			
<u>Kris Humphrey</u>	<u>Sr. Transportation Engineer</u>	<u>\$77.51</u>	<u>20%</u>
<u>John Elwell</u>	<u>Sr. Structural Engineer</u>	<u>\$ 83.69</u>	<u>80%</u>
_____	_____	_____	_____
_____	_____	_____	_____
Blended Rate:		\$82.45	
Engineer			
<u>Jawad Gull</u>	<u>Engineer II</u>	<u>\$55.47</u>	<u>100%</u>
_____	_____	_____	_____
_____	_____	_____	_____
Blended Rate:		\$55.47	
Assistant Engineer			
<u>Justin Kershaw</u>	<u>Engineer</u>	<u>\$35.87</u>	<u>60%</u>
<u>Layla McDaniel</u>	<u>Engineer</u>	<u>\$32.56</u>	<u>20%</u>
<u>Daniel Meliff</u>	<u>Engineer</u>	<u>\$36.77</u>	<u>20%</u>
_____	_____	_____	_____
_____	_____	_____	_____
Blended Rate:		\$35.39	
Sr. Designer/Technician			
<u>Georgia Baker</u>	<u>Sr. Supervising Designer</u>	<u>\$43.18</u>	<u>70%</u>
<u>Deb Williams</u>	<u>Sr. CADD Designer II</u>	<u>\$41.49</u>	<u>30%</u>
_____	_____	_____	_____
_____	_____	_____	_____

Consultant's Estimate of Hours

BLENDED RATES TABLE

Template: T-WB-B-2 LPA PE (rev 10-23-2019) CPFF

Employee Name	Job Title & Certifications ⁽³⁾	Current Actual Salary Rate/Hr ⁽⁴⁾	% Assigned
		Blended Rate:	\$42.67
Public Involvement Specialist			
_____	_____	_____	_____
_____	_____	_____	_____
		Blended Rate:	
Survey Party Chief			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
		Blended Rate:	
Surveyor I			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
		Blended Rate:	
Administrative			
Enrique Viteri	Project Accountant	\$35.54	100%
_____	_____	_____	_____
		Blended Rate:	\$35.54

Consultant's Estimate of Hours

Consultant's Estimate of Hours

Preliminary & Final Design

Project Name: Lexington East Viaduct

Project Number: RRZ-TMT-1705(3)

Consultant: WSP USA Inc.

Control Number: 61457

Consultant PM: Jane Jordan, 816-702-4236, jane.jordan@wsp.com

NDOT PC: Glen Steffensmeier, 402-479-3845, glen.steffensmeier@nebraska.gov

Date: February 23, 2022

TASKS	PERSONNEL CLASSIFICATIONS										
	PR	PM	SENG	ENG	AENG	SDES	PI	SPC	SUR	ADM	Total
I. Project Management		18	68							68	154
1. Project Management (34 months thru CE)		18	68							68	154
2. Project Description / Purpose and Need											
3. Quality Assurance / Quality Control											
II. Meetings		12	12								24
1. Owner Meetings (5)											
2. PCM 50 Meeting includes 1 site visit											
3. LPA/NDOT Coordination Meetings (12)		12	12								24
5. Section / Property Corners											
IV. Preliminary Roadway Design											
V. Functional Plans (60%)											
VI. Draft PS&E Submittal (90%) Plan Review											
1. Final PS&E Submittal											
2. Address comments or questions											
3. Opinion of probable construction cost											
VII. Final PS&E Submittal/Blue Line Corrections											
1. Final PS&E Submittal											
2. Address comments or questions											
3. Electronic CADD files											
4. Temporary erosion control											
5. Printing											
6. SWPPP - NOT USED											
7. QA/QC											
8. Letting Task											
VIII. Utilities											
IX. Right of Way Design		42	44	88							174
1. Existing Right-of-Way Base											
2. Proposed Right-of-Way											
3. Right-of-Way Plan Sheets											
4. Title Research											
5. Permit to occupy right of way											
6. Prepare ROW Cost Estimate - NOT USED											
7. Assistance to NDOT Staff for Owner discussions/nego		18	20	24							62
8. ROW plans, legals descriptions revisions		8	8	24							40
9. Provisional for assistance during discussions/nego		16	16	40							72
X. Bridge Design Services											
1. General PM, Field Inspections and Meetings - NOT USED											

Consultant's Estimate of Hours

TASKS	PERSONNEL CLASSIFICATIONS										
	PR	PM	SENG	ENG	AENG	SDES	PI	SPC	SUR	ADM	Total
2. Design Data Sheets and TS&L (Non-Hydraulic Str)											
3. Design Data Sheets and TS&L (Hydraulic Str) - NOT USED											
4. Final Bridge Design											
5. Final Bridge Plans											
6. Load Rating Services											
7. Review Shop Drawings - NOT USED											
8. Construction Consultation - NOT USED											
9. Girder Shim Calculations - NOT USED											
10. Extended abut. design/analysis, est. & Special prov.											
XI. Environmental Coordination - NOT USED											
XII. Public Involvement - NOT USED											
XIII. Water Line & Sanitary Sewer Reloc/Reconst -											
XIV. Geotechnical Evaluation											
1. Data Research - NOT USED											
2. Design Recommendations											
3. Geotechnical Report											
XV. Coordination for Railroad Viaducts											
1. Theoretical Cost Estimate											
2. Coordination with NDOT / UPRR											
XVII. Shop Drawings, Construction Consultation & Girder Shim Calculations		36	96	154							286
1. Shop Drawings		12	12	84							108
2. Construction Consultation		24	80	40							144
3. Girder Shim Calculations			4	30							34
Total Days		13.5	27.5	30.3						8.5	80
Total Hours		108	220	242						68	638.0

Consultant's Estimate of Hours

Direct Expenses

Preliminary & Final Design

Project Name: Lexington East Viaduct
 Consultant: WSP USA Inc.
 Date: February 23, 2022

Project Number: RRZ-TMT-1705(3)
 Control Number: 61457

Subconsultants:			Amount
Miller & Associates, Consulting Engineers, P.C.			\$8,900.66
Subtotal			\$8,900.66
Printing and Reproduction:	Qty	Unit Cost	Amount
Mileage/Travel:	Qty	Unit Cost	Amount
Mileage/Travel:			
Travel from Lincoln to Lexington (4 trips)	1360	\$0.585	\$795.60
Airline Ticket		\$600.000	
Lodging/Meals:	Qty	Unit Cost	Amount
Motel - Standard Rate \$96+tax		\$113.00	
Motel - Omaha/Douglas Co. \$110+tax		\$126.00	
Meals & Incidentals (GSA Standard Rate, full days)		\$55.00	
Meals & Incidentals (GSA Standard Rate, first and last days)		\$41.25	
Meals & Incidentals (GSA Std Rate, full days, Omaha/Douglas Co.)		\$61.00	
Subtotal			
Other Miscellaneous Costs:	Qty	Unit Cost	Amount
Subtotal			
TOTAL DIRECT EXPENSES			\$9,696.26

Direct Expenses

Project Cost & Breakdown

Preliminary & Final Design

Project Name: Lexington East Viaduct
Consultant: WSP USA Inc.
Consultant PM: Jane Jordan, 816-702-4236, jane.jordan@wsp.com
NDOT PC: Glen Steffensmeier, 402-479-3845, glen.steffensmeier@nebraska.gov
Date: February 23, 2022

Project Number: RRZ-TMT-1705(3)
Control Number: 61457

DIRECT LABOR COSTS			
Classification	Hours	Rate	Amount
Principal		\$103.37	
Project Manager	108	\$92.87	\$10,029.96
Sr. Engineer / Planner	220	\$82.45	\$18,139.00
Engineer	242	\$55.47	\$13,423.74
Assistant Engineer		\$35.39	
Sr. Designer/Technician		\$42.67	
Public Involvement Specialist			
Survey Party Chief			
Surveyor I			
Administrative	68	\$35.54	\$2,416.72
	638	Subtotal	\$44,009.42

DIRECT EXPENSES	Amount
Subconsultants:	\$8,900.66
Printing And Reproduction:	
Mileage/Travel:	\$795.60
Lodging/Meals:	

TOTAL PROJECT COSTS	Amount
Direct Labor Costs	\$44,009.42
Labor Cost Escalation Factor for Multi-year Projects (if allowed): Y 1.0 years @ 3.0% / year =	
Overhead @ 130.51%	\$57,436.69
Facility Capital Cost of Money (FCCM) @ 0.240% (labor costs x FCCM%)	\$105.62
Direct Expenses	\$9,696.26
Fee for Profit Rate @ 11.80%	\$11,970.64
TOTAL COST	\$123,218.63

BLENDED RATES TABLE

Template: T-WB-B-2 LPA PE (rev 10-23-2019) CPFF

Employee Name	Job Title & Certifications ⁽³⁾	Current Actual Salary Rate/Hr ⁽⁴⁾	% Assigned
		Blended Rate: \$27.00	
Environmental Scientist			
		Blended Rate:	
Registered Land Surveyor			
Chad A. Dixon	RLS	\$34.00	100%
		Blended Rate: \$34.00	
Survey Party Chief			
		Blended Rate:	
Surveyor I			
Todd R. Schepler	Surveyor	\$27.00	100%
		Blended Rate: \$27.00	
Administrative			
Jacque S. Haupt	Admin	\$40.00	100%
		Blended Rate: \$40.00	

SubConsultant Hours

Preliminary & Final Design

SUBCONSULTANT - SUBCONSULTANT - SUBCONSULTANT - SUBCONSULTANT - SUBCONSULTANT

Project Name: Lexington East Viaduct **Project Number:** RRZ-TMT-1705(3)
SubConsultant: Miller & Associates, Consulting Engineers, P.C. **Control Number:** 61457
Sub PM: Gary L. Steele 308-234-6456 gstele@miller-engineers.com
NDOT PC: Glen Steffensmeier, 402-479-3845, glen.steffensmeier@nebraska.gov
Date: January 19, 2022

TASKS	PERSONNEL CLASSIFICATIONS										
	PR	PM	SENG	ENG	SDES	ENV	RLS	SPC	SUR	ADM	Total
I. Project Management		8									8
1. Project Management		8									8
2. Project Description / Purpose and Need											
3. Quality Assurance / Quality Control											
IX. Right of Way Design							12		70	4	86
1. Existing Right-of-Way Base											
2. Proposed Right-of-Way							12		70	4	86
3. Right-of-Way Plan Sheets											
4. Title Research											
5. Permit to occupy right of way											
6. Prepare ROW Cost Estimate - NOT USED											
<i>Total Days</i>		1					1.5		8.8	0.5	12
Total Hours		8					12		70	4	94.0

Project Cost Breakdown

Project Cost & Breakdown

Preliminary & Final Design

SUBCONSULTANT - SUBCONSULTANT - SUBCONSULTANT - SUBCONSULTANT - SUBCONSULTANT

Project Name: Lexington East Viaduct **Project Number:** RRZ-TMT-1705(3)
SubConsultant: Miller & Associates, Consulting Engineers, P.C. **Control Number:** 61457
Sub PM: Gary L. Steele 308-234-6456 gstele@miller-engineers.com
NDOT PC: Glen Steffensmeier, 402-479-3845, glen.steffensmeier@nebraska.gov
Date: January 19, 2022

DIRECT LABOR COSTS			
Classification	Hours	Rate	Amount
Principal		\$65.00	
Project Manager	8	\$50.00	\$400.00
Sr. Engineer		\$50.00	
Engineer		\$32.00	
Sr. Designer/Technician		\$27.00	
Environmental Scientist			
Registered Land Surveyor	12	\$34.00	\$408.00
Survey Party Chief			
Surveyor I	70	\$27.00	\$1,890.00
Administrative	4	\$40.00	\$160.00
	94	Subtotal	\$2,858.00

DIRECT EXPENSES	Amount
Subconsultants:	
Printing And Reproduction:	\$50.00
Mileage/Travel:	
Lodging/Meals:	
Other Miscellaneous Costs:	
Subtotal	\$50.00

TOTAL PROJECT COSTS	Amount
Direct Labor Costs	\$2,858.00
Labor Cost Escalation Factor for Multi-year Projects (if allowed): Y 1.5 years @ 3.0% / year = 0.74%	\$21.15
Overhead @ 174.96%	\$5,037.36
Facility Capital Cost of Money (FCCM) @ (labor costs x FCCM%)	
Direct Expenses	\$50.00
Fee for Profit Rate @ 11.80%	\$934.15
SUBCONSULTANT TOTAL COST	\$8,900.66

1. PAYMENT METHOD

Payments under this Agreement will be made based on a Cost-Plus-Fixed-Fee for Profit (CPFF) payment method. Consultant will be paid for acceptable actual services performed in accordance with Section 4. ALLOWABLE COSTS, plus a fixed fee for profit in accordance with Section 6. FIXED FEE FOR PROFIT.

2. MAXIMUM AGREEMENT AMOUNTS

The following are the maximum payment amounts established under this Agreement for each category of cost. Consultant shall not be paid for any cost that exceeds these amounts without prior written approval from LPA, or State on LPA's behalf. The "indirect costs and direct expenses" category may be adjusted to exceed the amount listed below; however, any adjustment will not increase the total agreement amount.

AMOUNT	CATEGORY
\$ 44,009.42	for actual direct labor costs
\$ 67,238.57	for indirect costs and direct expenses
\$ <u>11,970.64</u>	for a fixed fee for profit
\$ 123,218.63	total agreement amount

3. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS

Over-run: Consultant shall require all 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 an acceptable justification for the over-run and obtain LPA, or State on LPA's behalf, prior written approval before incurring any cost over-run expenses. If approved by LPA, or State on LPA's behalf, a supplemental agreement will be prepared to either shift funds from Consultant to its subconsultant(s) or increase the contract maximum. Contract increases will be considered when additional scope of services are required.

Under-run: 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). If Consultant wishes to shift the balance of subconsultant's fee to Consultant, justification must be provided to LPA and State. Shifting of funds may be approved by LPA, or State on LPA's behalf, with no increase to the fixed fee for profit unless additional scope of services is required by Consultant, and additional fee is necessary to complete the work under this Agreement.

4. ALLOWABLE COSTS

Allowable costs are direct labor costs, indirect costs, and direct non-labor costs as defined below which Consultant has incurred within 90 days before State has 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 the costs Consultant pays its employees for the time they are working directly on the project and are calculated by multiplying the hourly rate of pay by the hours worked (in increments not less than one quarter hour).

1) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's regular hourly pay rate during regular (40) hours of work per pay week. If

overtime hours are worked on this project, State will only pay for employee's regular hourly pay rate. State will not pay the premium pay portion of the overtime hours. For salaried employees, the hourly earnings rate shall be the employee's actual hourly rate as recorded in the Consultant's accounting books of record, multiplied 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. Reference Staffing Plan Section of this Agreement regarding changes in personnel.

- 2) Time Reports: All hours charged to the project must be documented on time distribution records. The records must clearly indicate the daily number of hours each employee worked on any project or activities for the entire pay period. **Time reports must provide the employee's name and position, dates of service, and a clear, identifying link to the projects; such as project description, project number, control number, and pertinent work phase.** Consultant must establish an adequate system of internal controls to ensure that time charged to projects are accurate and have appropriate supervisory approval.
- B. Indirect Costs (Overhead and FCCM) are the indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with Federal Acquisition Regulations 48 CFR 31 (Contract Cost Principles and Procedures). Indirect costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable Indirect Cost Rates (ICR); or if the ICR is unknown or unavailable, Consultant will be allowed to use the most recent provisional ICR approved by State. Changes in the ICR that occur during the project period will not be cause for a change in the total agreement amount established in Section 2. MAXIMUM AGREEMENT AMOUNTS.
- C. Direct Non-Labor Costs (Direct Expenses) are all necessary, properly documented, and allowable costs related to the Consultant completing the Services. All costs must be supported by detailed receipts or invoices, unless otherwise specified below. 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 does treat a direct non-labor cost category in its entirety as an overhead cost, then such costs are not eligible to be additionally billed as a direct expense to this project.
 - 2) Costs for subconsultants may not exceed the amounts shown on the attached Consultant's Fee Proposal for each subconsultant unless agreed upon in writing 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, include only allowable costs, and have proper documentation before sending 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 reimbursed at the actual, reasonable cost and, if discounts are applicable, the Consultant shall give LPA and State the benefit of all discounts. Itemized receipts must be submitted with invoices. A bank card receipt that displays only the total cost of the transportation expense is not sufficient documentation. Tips must be included in the total fare amount claimed on the travel log form. Tips for complimentary transportation are considered an incidental expense and cannot be claimed as a transportation-related expense.
 - (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.
- NOTE: When Consultant is seeking only reimbursement for mileage, Consultant must itemize travel on State's Travel Log, itemize on invoice, or include a separate mileage log which includes the following information: employee name, vehicle identification, date of travel and miles driven, reimbursement rate and total expenses. The total expenses are to be shown on the invoice as a direct expense. State's Travel log form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.
- (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. Lodging receipts must be submitted with invoices.
- 4) Meal and incidental (M&I) expenses will be reimbursed on a per diem basis, not to exceed the rates as shown below. The incidental expenses portion of the per diem rate includes, but is not limited to, courtesy transportation related tips, such as hotel, park and ride, or airport shuttles; and fees and tips to porters, hotel employees, baggage carriers, and flight attendants. No receipts are required for M&I expenses.
- (a) The State per diem rate for the destination of travel is 70% of the applicable Federal GSA per diem rate. The State per diem breakdown amounts for breakfast, lunch, dinner, and incidental expenses are 70% of the Federal GSA per diem breakdown amounts.
 - (b) The State per diem rate shall be reduced by the State meal breakdown amount(s) for any meal provided by others. Examples include:

- (i) Meals included in a conference or event fee
 - (ii) Meals provided by lodging facility
 - (iii) Meals purchased by 3rd Party
 - (iv) Meals charged directly to and paid for by the State
- (c) MULTI-DAY TRAVEL – Travel that includes at least one overnight stay.
- (i) M&I reimbursement on the first and last day of travel will be reduced to 75% of the State per diem rate.
 - (ii) Except for a meal provided by others (see paragraph 4)(b) above), all meals may be claimed on the first and last day of travel irrespective of the start and stop times for those days.
- (d) SAME DAY TRAVEL – Travel that does not include an overnight stay.
- (i) Employee shall not claim reimbursement for a meal that was purchased within 20 miles of the city or town of the employee's residence or primary work location.
 - (ii) M&I reimbursement for same day travel will be reduced to 75% of the State per diem breakdown amounts.
 - (iii) The following criteria must be met for Consultant and its employees to be eligible for the M&I reimbursement on same day travel.
 - (1) Breakfast - Employee leaves for same day travel at or before 6:30 a.m. or 1-1/2 hours before the employee's shift begins, whichever is earlier, the breakfast rate may be claimed.
 - (2) Lunch – No reimbursement is allowed.
 - (3) Dinner/Supper – Employee returns from same day travel or work location at or after 7:00 p.m., or 2 hours after the employee's shift ends, whichever is later, the evening meal rate may be claimed.
 - (4) Incidental Expenses – No reimbursement is allowed unless the employee is also approved for breakfast or dinner meal expenses.
 - (5) The time limitations set forth above do not include the time taken for the meal.
 - (iv) EXCEPTION to same-day travel meal reimbursement for Construction Engineering (CE) Services Agreements – For CE Services Agreements, Consultant will not be eligible for reimbursement for meals related to same-day travel.
- 5) EXTENDED STAY/LONG TERM TRAVEL
- No extended stay arrangements, such as apartments or weekly/monthly meal reimbursement rates, have been approved.

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, unless 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. FIXED FEE FOR PROFIT

- A. The fixed fee for profit amount payable to Consultant is identified in Section 2. MAXIMUM AGREEMENT AMOUNTS. For each invoicing period, the Consultant may invoice State a portion of the fixed fee for profit equal to the sum of the actual direct labor costs and overhead (Indirect Costs, excluding FCCM if applicable) for the period, multiplied by the profit rate of 11.80%. Upon completion of the services outlined in this Agreement, the Consultant may invoice State any remaining fixed fee for profit not previously invoiced. If all of the services under this Agreement are not completed for any reason, LPA, or State on LPA's behalf may decrease the amount of fixed fee for profit based on LPA's and State's determination of the actual percentage of services completed.
- B. Subconsultants fixed fee for profit (if applicable): Consultant must apply the above provisions regarding fixed fee for profit to all Subconsultant contracts that utilize the cost plus fixed fee (CPFF) payment method. If all of the services allocated to Subconsultant(s) under this agreement are not completed for any reason, the fixed fee for profit paid to Subconsultant(s) must be reduced based on the LPA's and State's determination, or Consultant's determination with LPA's and State's concurrence, of the actual percentage of services completed by the Subconsultant.

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 allowable costs, and when applicable, the associated Fee for Profit, for services provided 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 (Presented in this order)
 - 1) Consultant's Invoice:
 - (a) 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.
 - (b) The invoice and, when applicable, accompanying supporting documentation must identify each employee by name and classification, the hours worked, and the actual labor cost for each employee.
 - (c) Direct non-labor expenses:

- (i) Direct non-labor expenses, other than travel-related expenses, must be itemized and provide a complete description of each item billed along with supporting receipts or invoices.
- (ii) Travel-related expenses must be summarized and submitted on NDOT Form 163 (see paragraph 7.C.4) below). Supporting receipts (excluding meal receipts) must be submitted with NDOT Form 163 when invoicing for these expenses.
- (iii) All supporting receipts must be kept as required in Section 18.

CONSULTANT COST RECORD RETENTION.

- (d) Time Records, as outlined in paragraph 4.A.2).
 - (e) Subconsultant Services: Consultant shall require subconsultants to provide the same supporting documentation, invoices, and receipts as Consultant is required to submit and retain.
- 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:
- (a) A description of the Services completed for the service period to substantiate the invoiced amount.
 - (b) A description of the Services anticipated for the next service period
 - (c) A list of information Consultant needs from LPA, or State on LPA's behalf
 - (d) Percent of Services completed to date
- NOTE: LPA or State's Project Coordinator may request more specific information or detail be included in Progress Reports.
- 3) Cost Breakdown Form: Each invoice package must include a current and completed "Cost Breakdown Form" (NDOT Form 162). This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Utilizing the Cost Breakdown Form helps reduce errors in calculating previously billed amounts and limitations on eligible costs billed.
- 4) Travel Log: If an invoice contains any travel-related expenses, then a current and completed "Invoice Travel Log" (NDOT Form 163) must be included with the invoice package. This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Upon pre-approval by State, Consultant may use a substitute Invoice Travel Log provided it documents substantially the same information as the current NDOT Form 163. The Travel Log must document the employee's name, vehicle identification (if applicable), date/time of departure to the project, date/time of return to the headquarters town, locations traveled, and expenses for transportation, meals, and lodging.
- 5) Mileage Log (when applicable): When Consultant is seeking reimbursement for mileage only, Consultant must itemize travel on State's Travel Log, itemize on invoice, or include a separate mileage log which includes the following: employee name, vehicle identification, date of travel and miles driven, reimbursement rate and total expenses. The total expenses are to be shown on the invoice as a direct expense.

- 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 and LPA, including invoices, supporting documentation, and other information are subject to disclosure by State and LPA 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 AND LPA 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 and LPA do 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 or LPA 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 all 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, it will be considered 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 to 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 State, at Consultant's sole cost.

11. ANNUAL OVERHEAD ADJUSTMENT (TRUE-UP) INVOICES

- A. After State receives Consultant's latest Indirect Cost Rate (ICR) submittal and State establishes an approved ICR for Consultant, it is State's preference that Consultant submit a separate Overhead Adjustment Invoice that reconciles the indirect costs billed during the past fiscal year covered by the latest ICR submittal. If reconciling the indirect costs requires the Consultant to reimburse State for overpayment of indirect costs, Consultant may request reimbursement of additional allowable costs that have not been already reimbursed, provided that the costs were documented and subtracted out on previous invoices. In no circumstance may Consultant request reimbursement of any costs incurred that are not in accordance with Section 4. ALLOWABLE COSTS.
- B. When uploading this invoice to OnBase, append "(OH ADJ)" to the invoice number when populating the invoice number keyword in OnBase. More information regarding Overhead Adjustment Invoices is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.
- C. Consultant shall require Subconsultant(s) to submit Overhead Adjustment Invoices to Consultant consistent with this Section. Consultant must include such subconsultant overhead adjustment invoices when Consultant submits their own invoices to State.

12. FINAL INVOICE, FINAL OVERHEAD (TRUE-UP) INVOICE, AND PAYMENT

- A. Upon completion of the Services under this Agreement, Consultant shall submit their final invoice to include all labor, expenses, and, if applicable, may include the balance of Fee for Profit.
- B. Consultant, and, if applicable, its subconsultant(s), shall review the indirect costs billed to-date to determine if the indirect cost rates (overhead and FCCM) used on prior invoices match the actual indirect cost rates applicable to the time period that the labor was incurred. If cost adjustments are necessary, they should be reflected on an Overhead Adjustment Invoice (**separate from final costs incurred invoice**). Refer to Section 11. OVERHEAD ADJUSTMENT INVOICE. If a particular year's actual overhead has not yet been computed or approved by State, the most recently approved yearly rate should be applied. Consultant shall submit any final Overhead Adjustment Invoice within 90 days of completion of the work under this Agreement, and if such invoice is not timely submitted, State may audit and close the Agreement without accepting any further invoices from Consultant. More information regarding Overhead Adjustment Invoices is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.
- C. After receipt of final invoice and Overhead Adjustment Invoice and determination by LPA, or State on LPA's behalf, that the final invoice and Progress Report adequately substantiate the Services provided and that 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 and, if required, a final Overhead Adjustment 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

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

B. 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):

- 1) 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 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; 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 furnished when requested.