

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
SEPTEMBER 6, 2022 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
ON-CALL CONSTRUCTION ENGINEERING AGREEMENT – APPLEWOOD CREEK TRAIL	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

**SYNOPSIS**

A resolution has been prepared authorizing the Mayor to execute an On-Call Construction Engineering Agreement with Schemmer Associates, Inc. to provide construction engineering services, administrative services, and materials testing for the Applewood Creek Trail Project. These services are eligible for federal funds, therefore the City is anticipated to pay 20% of the agreement amount of \$371,904.51 or \$74,380.90.

**FISCAL IMPACT**

The FY21/FY22 Biennial Budget provides funding for this project.

**RECOMMENDATION**

Approval

**BACKGROUND**

The Applewood Creek Trail project was bid for construction in June of 2022 to which Hawkins was awarded the construction contract. Schemmer was selected from the NDOT's On Call Consultants for Construction Engineering Services as the Schemmer is capable of completing said construction phase services, and as the designer of the project, has the most first hand knowledge of the project. Schemmer was issued an early Notice to Proceed as Hawkins' was scheduled to begin construction prior to the finalization of the agreement.

A copy of the Construction Engineering agreement is available for review in the Office of the City Clerk.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A CONSTRUCTION ENGINEERING SERVICES AGREEMENT WITH SCHEMMER ASSOCIATES, INC. OMAHA, NEBRASKA TO PROVIDE CONSTRUCTION ENGINEERING SERVICES, ADMINISTRATIVE SERVICES AND MATERIALS TESTING FOR THE APPLEWOOD CREEK TRAIL PROJECT.

WHEREAS, City of La Vista is developing a transportation project for which it intends to obtain Federal funds; and

WHEREAS, City of La Vista 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; and

WHEREAS, City of La Vista and The Schemmer Associates, Inc. wish to enter into a Professional Services Agreement to provide Construction Engineering services for the Federal-aid project; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska that: Douglas Kindig, Mayor of the City of La Vista, is hereby authorized to sign the Construction Engineering services agreement between the City of La Vista and The Schemmer Associates, Inc.

NDOT Project Number: TAP-77(61)  
NDOT Control Number: 22757  
NDOT Project Name: Applewood Creek Trail, La Vista

PASSED AND APPROVED THIS 6TH DAY OF SEPTEMBER 2022

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, MMC  
City Clerk

Task Order Agreement No.	BK2248
Master Agreement No.	BK2212
Effective (NTP) Date	07/20/2022
Task Order Amount	SRC \$371,904.51

## ON-CALL CONSTRUCTION ENGINEERING SERVICES TASK ORDER AGREEMENT LPA PROJECTS

CITY OF LA VISTA, NEBRASKA  
THE SCHEMMER ASSOCIATES, INC.  
PROJECT NO. TAP-77(61)  
CONTROL NO. 22757  
APPLEWOOD CREEK TRAIL, LA VISTA

**THIS AGREEMENT** is between the City of La Vista, Nebraska ("LPA") and The Schemmer Associates, Inc. ("Consultant"); collectively referred to as the "Parties".

**WHEREAS**, Consultant entered into an On-Call Professional Services Master Agreement No. BK2212 ("Master Agreement") with the Nebraska Department of Transportation ("State"), wherein Consultant agreed to provide Construction Engineering services ("Services") for future Federal-aid transportation projects when selected by LPA or State, and

**WHEREAS**, plans, special provisions, and standard specifications are being completed for the letting and construction of a federal-aid transportation related project, and

**WHEREAS**, LPA desires that this project be developed and constructed under the designation of Project No. TAP-77(61) 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, and

**WHEREAS**, LPA, or State on LPA's behalf, selected Consultant to provide professional services for the project identified as Project No. TAP-77(61), 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

**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. The LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address: <http://dot.nebraska.gov/media/6319/lpa-guidelines.pdf>, 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.

**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 State 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	The Schemmer Associates, Inc.
Address	1044 N 115 <sup>th</sup> St #300, Omaha NE 68154
Project Manager's Name	Jon Goldie
Project Manager's Phone	712-355-0730

1.3 State Project Coordinator

Name	Sasha Tsvd
Phone Number	402-935-5414

1.4 LPA RC/PL

Name	Pat Dowse
Phone Number	402-331-8927

1.5 State Agreements Specialist

Name	Nicole Taylor
Phone Number	402-479-3859

**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 July 20, 2022.
- 2.2 As provided in the program agreement between State and LPA for this project, State, on behalf of LPA, may issue an early notice to proceed when necessary upon determination that federal funding approval has been obtained for the project.
- 2.3 In the event that prior to the Effective Date of this Task Order, Consultant is issued a Notice-to-Proceed and Consultant began work, Consultant will be paid 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 the Task Order.
- 2.4 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.
- 2.5 Consultant shall complete all the Services under this Task Order within 60 calendar days from the construction completion date stated on the DR Form 91 "Notification of Contract Completion." Consultant shall invoice the work within 150 calendar days of the construction completion date. The completion of the construction of this project is estimated to be June 3, 2023 and is subject to change. State's Construction Division Project Coordinator must approve any exception to this deadline. If justification is approved, a time extension will be granted. Any costs incurred by Consultant after the completion deadline will not be eligible for federal funding reimbursement.

**SECTION 3. DURATION OF THE 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 the Task Order -- This Task Order duration is from the Effective Date to the Expiration Date. The 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 the 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 (CE)**

- 4.1 Upon receiving a written notice to proceed from State, on behalf of LPA, Consultant must complete the Services in accordance with all federal-aid reimbursement requirements and conditions. 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 The Scope of Services in Exhibit A" is the result of the following process:
  - 4.2.1 Consultant was provided the detailed proposed Scope of Services for this project
  - 4.2.2 Consultant made necessary and appropriate proposed additions, deletions, and revisions to the detailed Scope of Services document.
  - 4.2.3 Consultant participated in a review of the proposed Scope of Services and the proposed revisions and negotiated the final detailed Scope of Services and Fee Proposal document, which is attached as Exhibit "B".
- 4.3 Exhibit "A" sets out the Services reasonably necessary for Consultant Services to adequately observe, monitor, inspect, measure, manage, document and report so that LPA's project is constructed by the contractor in compliance with the Construction Contract Documents and "the Manuals" (as defined in the Basic Scope of Services set out in the Master Agreement), State and Federal law, rule or regulation and policy.
- 4.4 Upon receiving a written notice to proceed from State on behalf of LPA, Consultant shall complete the Services required under this Task Order and in accordance with the terms of the Master Agreement.
- 4.5 Additional Requirements:
  - 4.5.1 Consultant shall advise the LPA, or State on behalf of LPA, when it appears any Disadvantaged Business Enterprise (DBE) working on the project is in need of assistance.
  - 4.5.2 Consultant shall make every effort to assist the Contractor or any Subcontractor in interpreting Project Plans, Special Provisions, Standard Specifications, other Construction Contract Documents, or the Manuals.
  - 4.5.3 Consultant shall be present at the project site or available locally beginning on the date specified in the notice to proceed to the contractor, unless project work has not begun at the site; or, with at least 24 hours' notice, at any prior date when contract work begins or when materials are delivered to the project that need to

- be tested, sampled or inspected to verify conformance to the requirements of the Construction Contract Documents.
- 4.5.4 Consultant shall promptly review and approve or reject all construction work on the project, with the right, but not the duty, for State and FHWA to review for compliance or funding eligibility.
- 4.5.5 Consultant shall submit to State, and to LPA if LPA is the primary point of contact, two copies weekly of all reports of field tests performed by Consultant. Consultant shall take prompt and appropriate action to reject or cause Contractor to remedy the work or materials that do not conform to the contract documents. Additionally, Consultant shall promptly notify State, and LPA if LPA is the primary point of contact, of work that does not conform to the contract documents.
- 4.5.6 Consultant shall comply with all Federal, State and local laws, rules or regulations, policies or procedures, and ordinances applicable to the work contemplated in this Task Order.
- 4.5.7 Project time delays attributed solely to the Contractor will constitute a basis for a request for an equivalent extension of time for Consultant. The Parties agree that federal reimbursement of extra compensation must be approved in advance as described in Exhibit "C", attached and incorporated herein by this reference.
- 4.5.8 Consultant shall complete the sampling and testing type, method, and frequency according to the current State of Nebraska Manuals, including the Materials Sampling Guide and the State Standard Methods of Tests ([www.transportation.nebraska.gov](http://www.transportation.nebraska.gov)), and the Construction Contract Documents. For sampling or testing issues or situations that are not covered in the Construction Contract Documents or the Manuals, Consultant shall notify LPA, or State on behalf of LPA, provide its advice and request that LPA, or State on behalf of LPA, decide what testing type, method or frequency should be applied for this project. Any test methods or procedures that are proposed to be used and are not covered by State procedures must receive prior concurrence for use from State and FHWA.
- 4.5.9 Any person logging onto the NDOT network with a VPN Connection and logging onto SiteManager must log-in using only that person's credentials. Logging in using someone else's credentials is not allowed on a State or Local Federal-aid project.

#### **SECTION 5. STAFFING PLAN (CE)**

- 5.1 Consultant has provided LPA and State with a Staffing Plan, described in Exhibit "B", 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. While providing Services under this Task Order. During construction, Consultant may make occasional temporary changes to the key personnel. However, any permanent change to the 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 "C", attached and incorporated herein by this reference.

#### **SECTION 6. NEW EMPLOYEE WORK ELIGIBILITY STATUS**

- 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 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 "B", attached and incorporated herein by this reference.
- 7.2 The general provisions concerning payment under this Task Order are set out in Exhibit "C".
- 7.3 For performance of the services as described in this Task Order, Consultant will be compensated based on **Specific Rates of Compensation** for actual work performed



and direct non-labor expenses up to a maximum not-to-exceed amount of \$371,904.51 in accordance with Exhibit "C".

**SECTION 8. SUSPENSION OR TERMINATION** (CE Task Order, 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 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.

**8.2.1 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 "C", 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 "C".

**SECTION 9. SECTIONS INCORPORATED BY REFERENCE**

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 On-Call Professional Services Master Agreement BK2212 between the Nebraska Department of Transportation and Consultant, dated January 25, 2022 with one recurring change:

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 has no obligations or duties under this Task Order, except for its duties acting on behalf of LPA.

**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.



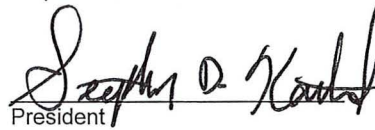
**SECTION 12. ENTIRE AGREEMENT**

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.

**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, attest and affirm the truth of each and every certification and representation set out herein.

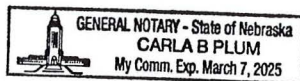
EXECUTED by Consultant this 15<sup>th</sup> day of August, 20 22.

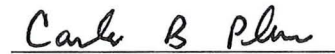
THE SCHEMMER ASSOCIATES, INC.  
Stephen D. Kathol

  
President

STATE OF NEBRASKA )  
 )ss.  
Douglas COUNTY)

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of August, 20 22.



  
Notary Public

EXECUTED by the City of La Vista, Nebraska this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF LA VISTA, NEBRASKA  
Douglas Kindig

\_\_\_\_\_  
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  
Jodi Gibson

\_\_\_\_\_  
Local Assistance Division Manager      Date

**From:** Taylor, Nicole  
**To:** Borer, Judy  
**Subject:** Fwd: Project TAP-77(61), APPLEWOOD CREEK TRAIL, LA VISTA, CN 22757: Early NTP  
**Date:** Wednesday, July 20, 2022 10:19:22 AM

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**From:** Taylor, Nicole  
**Sent:** Wednesday, July 20, 2022 11:17:55 AM  
**To:** Holle, Doug <dholle@schemmer.com>; 'Pat Dowse' <pdowse@cityoflavista.org>  
**Cc:** Gibson, Jodi <Jodi.Gibson@nebraska.gov>; Soula, Jeffrey <jeffrey.soula@nebraska.gov>; NDOT, Contract Start Date <NDOT.ContractStartDate@nebraska.gov>  
**Subject:** Project TAP-77(61), APPLEWOOD CREEK TRAIL, LA VISTA, CN 22757: Early NTP

NDOT is giving the City of La Vista an **Early Notice to Proceed** with Construction Engineering (CE) services for the above referenced project effective July 20, 2022. This is to allow your Consultant to work on the project as the CE Agreement makes its way through the routing process.

Should the City of La Vista or Schemmer fail to execute the Construction Engineering Agreement, the cost of the construction engineering performed by Schemmer will be the responsibility of the City of La Vista.

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Exhibit "A"  
SCOPE OF SERVICES

CONSTRUCTION ENGINEERING  
for

Project Name: Applewood Creek Trail  
Project Number: TAP-77(61)  
Control Number: 22757

**A. PROJECT DESCRIPTION**

This scope provides for construction engineering services for Applewood Creek Trail in Sarpy County, Nebraska. The project consists of the following improvements: Grading, Concrete Pavements, Culverts, Seeding, Bridge, Fence, Electrical, Signing, and General Items

The Schemmer Associates, Inc., (Consultant) shall serve as agent for City of La Vista, (LPA), representing the LPA in all matters related to construction engineering services for this project.

It shall be the responsibility of the Consultant to administer, monitor, and inspect construction such that the project is constructed in conformity with the plans, specifications, and special provisions.

The Consultant shall inspect the Contractor's work to determine the progress and quality of work identify discrepancies, report significant discrepancies to the LPA and Department, and direct the Contractor to correct such observed discrepancies.

**B. APPLICABLE PUBLICATIONS**

Work shall be done in accordance with the following materials as currently adopted at the time of letting:

1. AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing
2. The ASTM Standards
3. NDOT Materials Sampling Guide
4. NDOT Construction Manual
5. NDOT Standard Specifications for Highway Construction
6. Project Plans
7. Contract Special Provisions
8. Manual on Uniform Traffic Control Devices (MUTCD) and NDOT's supplement to the MUTCD.
9. NDOT Final Review Manual
10. NDOT Standard Method of Tests for Laboratory and Field

**C. LPA SHALL PROVIDE**

The LPA, on an as needed basis, will furnish the following documents for the project.

1. Project description
2. Electronic Construction Plan files including current aerial photographs with project alignment, existing and new rights-of way (ROW) and easements, and LOC, if available
3. Plans and Special Provisions are available on the NDOT website
4. Roadside safety guidelines (Survey Crew Traffic Control Policy, see NDOT website)
5. Survey Field Books with control points and benchmarks
6. NEPA Document
7. Other

These documents may be provided in either paper or electronic format.

**D. CONSULTANT SHALL PROVIDE**

1. Project Management and Coordination. 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 and monthly progress reports; prepare project correspondence with the LPA and/or NDOT; maintain project records; and perform other duties of the Project Manager as defined in the NDOT Standard Specifications for Highway Construction.
  - 1.1 Project Management activities shall include the following:
    - Project Management – Provide management of project including staffing, scheduling, invoicing, progress reports, and coordination with designer.
    - Prepare Change Orders and submit copies to the appropriate parties for approval and full execution.
    - Maintain detailed Project Records and keep them current. All records shall be available at the LPA's office.
    - Generate contractor's progress and final Estimates in Site Manager
    - Review Contractor's Construction Schedule
    - Coordinate with LPA and RC regarding all project activities.
    - Make entries of project data and diary information into Site Manager on a daily basis. Ensure that inspectors and lab personnel are maintaining appropriate daily work reports and all material records.
  2. Meetings. Project staff will meet with the LPA, the Contractor, and NDOT when requested by the State, and prepare minutes of the meeting. For some projects, a public meeting may be held and the consultant's attendance may be required.
    - 2.1 Construction Inspection Planning Meeting - The LPA shall coordinate this meeting prior to start of construction to ensure roles and responsibilities are clear. Attendees should include the LPA RC, construction inspection personnel and NDOT State Representative.
    - 2.2 Pre-Construction Meeting - Prepare the agenda, attend, and distribute meeting notes.
    - 2.3 Construction Progress Meetings - Prepare the agenda, attend, and conduct periodic progress meetings with the LPA and/or NDOT personnel, contractor, sub-contractors, utility personnel, and other agencies affected by the project. FHWA shall be included for full Federal oversight projects. There will be approximately 24 meetings.
    - 2.4 ~~Public Meeting (If Required) – Assist the LPA with scheduling and conducting a Public Meeting with Contractor and Residents prior to the start of project~~ Consultant will draft an informational flyer and distribute to residents adjacent to the project.
    - 2.5 Assume 26 trips to the project site for meetings.
3. Traffic Control Plan. Consultant shall prepare a traffic control plan for the project site. These plan sheet(s) are to be signed by a Professional Engineer licensed in the State of Nebraska. Traffic Control plans shall be reviewed by the State Representative prior to placing in service (Owner will use checklist 12-72 to audit and document the Consultant's completion of this activity). Once the plans are completed, they are to be submitted to the Person of Responsible Charge (RC).
  - 3.1 Prepare Traffic Control Plan in accordance to NDOT Standard Plans, MUTCD and the NDOT Supplement to the MUTCD. Sign and seal plans.
  - 3.2 Review and approve Traffic Control Plan (If Completed by Contractor) for conformance to the Contract's Special Provisions.
  - 3.3 Submit Plans to the RC for their records.
  - 3.4 Consultant will prepare two traffic control plans along Giles Road



4. SWPPP Inspections/Manual Updates. Consultant shall conduct inspections bi-weekly and after every ½" or greater rain event according to permit regulations. The Stormwater Pollution Prevention Plan (SWPPP) Manual shall be updated according to NDOT and/or LPA requirements.

- 4.1 Conduct 45 Inspections
- 4.2 Update SWPPP Manual and Temporary Erosion Control Plan
- 4.3 Assume 45 trips to the project site for SWPPP Inspections.

5. Construction Survey/Staking. The following tasks are required if the Consultant is providing Construction Surveying and Staking. This work shall be done in accordance with the NDOT Construction Manual.

- 5.1 Provide coordination of staking needs with Contractor.
- 5.2 Consultant shall verify and re-establish if necessary the survey control used during the preliminary engineering.
- 5.3 Stake limits of construction throughout project.
- 5.4 Mark removals including pavement removal limits. Stake right-of-way and construction easements.
- 5.5 Provide slope stakes for grading. Includes staking of retaining wall.
- 5.6 Provide paving hubs. For structures storm sewer and pipe culverts, the consultant will provide grade stakes. Includes staking of pedestrian underpass and bridge.
- 5.7 Provide cross-section for new culverts before providing a Culvert Order List to Contractor.
- 5.8 Stake fence relocation and guardrail.
- 5.9 Stake silt fence.
- 5.10 Verify existing tie-in elevations and locations and adjust new pavement grades to meet existing pavement.
- 5.11 Assume 33 trips to the project site for construction survey/staking.

All items will be staked one time. Except for re-staking required for staking done incorrectly, re-staking will be considered out-of-scope. Consultant will invoice the LPA for the re-staking. If re-staking is required because of the activities of the Contractor, the fee for re-staking will be withheld from Contractor payment.

6. Construction Consultation/Site Manager & Daily Work Report (DWR). Consultant shall contact RC/Designer as needed to obtain plan clarifications/interpretations. Maintain and review project materials and promptly enter information into Site Manager.

- 6.1 Construction Consultation/SiteManager & Daily Work Report (DWR)
  - Review and Enter Data into SiteManager
  - Maintain Project Field Diaries, Files, and Record data in SiteManager
  - Document and Review Daily Work Reports (DWRs)

7. ~~Girder Shim Surveying. (Bridge Projects Only) The Designer (PE) shall determine the girder shim values, which are defined as the differences in elevation between the top-of-girder elevation and the top-of-slab elevation necessary at known points along the length of the girder during placement of the deck to result in the finished top-of-slab elevation to be correct after the girder has deflected under the weight of the slab.~~

- 7.1 ~~Girder Shim Surveying~~
  - ~~Shim shots will be taken at the locations as determined by the designer.~~
  - ~~Elevations and rod readings need to be recorded by Consultant and submitted to PE at the time the shim shots are taken.~~

8. ~~Perform Bearing Calculations. If pile driving is required on the project, the Consultant shall perform bearing capacity calculations in accordance with the NDOT Construction Manual.~~

- 8.1 ~~Perform Bearing Calculations~~

9. Construction Inspection. Consultant shall perform material sampling and testing and complete inspection work and project management in accordance with the references list in Section B of this Exhibit. Consultant shall assume the duties of "Inspector, (also referred to in the NDOT Construction Manual as "Construction Technician"), "Project Manager", and also "Engineer" (unless the context of use of the term "Engineer" would otherwise require), as those terms are defined and duties set out in the Standard Specifications for Highway Construction. Consultant shall assume that it is responsible for all duties of the "Engineer" unless notified otherwise by RC on behalf of LPA.

9.1 Construction Inspection: Duties for construction inspection will include, but are not limited to, the following items:

- Conduct wage rate interviews and review payrolls for correctness and Davis-Bacon Wage Rate compliance
- Verify that the performance of the work is in conformance with the plans, specifications, and special provisions.
- Conduct reviews for compliance with Disadvantaged Business Enterprise (DBE) commitments
- The Environmental Compliance Oversight Database (ECOD) system is used to monitor and document construction activities for compliance with NEPA (Environmental Review Checklist, Section 404, NPDES, SWPPP, Threatened and Endangered Species, etc.). The LPA's Responsible Charge (RC)/Project Liaison (PL) or their Construction Engineering Consultant is required to use ECOD to document assessment and compliance with all environmental commitments for the project. An Environmental Compliance Inspection Audit will be conducted by NDOT personnel. (NDOT will use checklist 12-20 to document the audit the LPA CE.).

The LPA (RC/PL) will assume responsibility for entering data into the ECOD system and environmental compliance on the date of Letter of Tentative Acceptance.

- NDOT will provide the Initial Threatened and Endangered Species surveys required as outlined in the conservation conditions; and follow up survey training for the Consultant's environmental inspection personnel. Follow-up surveys as may be required will be the responsibility of the Consultant. Any required surveys for compliance with the Migratory Bird Treaty Act will also be the responsibility of the Consultant. NDOT will not conduct these surveys.
- The Consultant will provide NDOT 30 days advance notice of the need for the initial T&E surveys so that NDOT personnel can be scheduled to perform this work.
- Review work zone traffic control devices daily and, at a minimum weekly interval, conduct a nighttime drive through review of temporary traffic control devices (per ATSSA Quality Standards for Work Zone Traffic Control Devices). Perform reflectivity check (DR form 481) of temporary devices at the start of construction activities and at six (6) month intervals or as conditions warrant.
- Collect, sign/date, and file all delivery tickets and material certifications. All required material certifications shall be submitted to NDOT Materials & Research Division accompanied by a completed DR-12 sample ID form or Site Manager Sample Record ID.
- Consultant shall forward shop drawings to the RC for review and approval by the design engineer. Shop drawing review is part of the scope of services for this construction engineering agreement
- Draft and review change order or time extension request including explanation of the issue and resolution and the justification for accepted prices and forward to RC. Once reviewed by NDOT and FHWA, proceed with the approval process. Forward a signed hardcopy to NDOT for further processing.
- Communicate and coordinate plan revisions and change orders with the Designer.



- Prepare a field checked culvert order list
  - ~~Prepare guardrail order list~~
  - Generate periodic progress estimates using SiteManager and forward to RC for further approval.
  - Review critical path schedule prepared by the Contractor for appropriateness and Current Controlling Operation (CCO) designation.
  - On bridge projects, the Inspector shall take periodic survey shots with the assistance of one of the Contractor's to ensure compliance with the plans. Locate permanent pavement markings
- 9.2 Measure, calculate, and document quantities of pay items
- 9.3 Keep all records and data up to date so that all necessary information appears on the Weekly Report of Working Days when they are generated at mid-week.
- 9.4 Assume 115 trips to the site for construction inspection. It's assumed that half of the winter weekdays (12/1/22 to 3/31/23) will require a site visit for construction inspection.

10. Perform Material Sampling and Testing. The Consultant shall perform material testing as required in accordance with the references list in Section B of this Exhibit. All testing and sampling personnel shall be certified to perform these duties in accordance with the NDOT Materials Sampling Guide section 28. All non-NDOT Laboratories shall be pre-qualified by NDOT's Materials and Research Division to conduct the testing they are contracted to perform.

**NDOT SHALL PROVIDE:**

Typical testing done by NDOT Materials and Research's Central lab (sampling and delivery for these materials is done by Consultant and submitted to NDOT):

All Aggregate

- Quality and Soundness acceptance testing
- Gradation verification testing

PG Binders & Emulsions

- All required acceptance testing

All Steel Products

- All testing required for heat number pre-approval and acceptance testing

Chemical Lab

- All required source pre-approval and acceptance testing

Smoothness

- NDOT will run all 10% verification testing for projects with Smoothness
- Specifications for pavement. NDOT will perform bridge smoothness testing on bridges receiving pavement on either side of the bridge

**CONSULTANT SHALL PROVIDE:**

(List of tests to be provided by NDOT)

- 10.1 Collect, verify, document and deliver all samples to testing lab
- 10.2 Collect, verify, document and deliver a copy of all required material certifications to the NDOT Materials and Research Central Lab.
- 10.3 Review and document test results of all samples and coordinate with owner for acceptance and incorporation into the project.
- 10.4 Unsuitable soils or subgrade discovered during construction the agreement will be supplemented to allow the Consultant to evaluate the soils and determine an appropriate method of stabilization.
- 10.5 Assume 45 trips to the project site for Material Sampling and Testing.
11. As-Built Drawings. Prepare As-built drawings according to the LPA manual and the current directions from the NDOT Final Review Section.

11.1 As-Built Drawings

12. Final Inspections. Consultant shall prepare a punch list of items for the project site and conduct a final project walk-through inspection with the LPA RC and NDOT State Representative to verify that corrective work identified on the punch list has been completed.

12.1 Walkthrough of Site and Preparation of Punch List

- 12.2 Review Project to verify that Punch List work has been completed (Owner will use LPA Manual checklist 12-75 to audit and document the Consultant's completion of this activity)

13. Project Closeout. Assist RC with compiling project construction records as requested. Assemble and transmit Final Construction Records to LPA RC in paper format (printed single sided), including:

13.1 Project Closeout activities shall include the following:

- Project Manager's Final Estimate
- Copy of Consultant PM's (representing LPA) Concurrence/Non-Concurrence Letter w/ Certified Mail Receipt Enclosed.
- Copy of Contractor's signed Concurrence/Non-Concurrence Letter
- Memo of Major Item Review
- Memo of Time Allowance Review (Required only if the Contractor has overrun on the Contract Time Allowance.)
- Borrow Site Memo
- City Agreement Letter
- Project Completion Memo - The Consultant's PM should perform this in an e-mail to the NDOT Rep with the required information – check with the NDOT Rep for this. The Consultant should ensure that the LPA RC sends a letter of Tentative Acceptance (per NDOT format) to the Contractor – send copies to the NDOT Rep.
- Sign Deduction Memo (If required)
- Material Review Memo
- SiteManager PM Diary Report
- SiteManager Contract Item Report for all Contract Items
- All NDOT Spreadsheets and Workbooks used for Contract Item supportive documentation.
- All Contractor-provided Asphalt QA/QC Test Results (asphalt projects)
- Project Culvert Field Book with information per the NDOT Construction Manual
- Signed and stamped As Built Plans (full size)
- Copy of Evaluation(s) of Contractor
- LPA CE Project Closeout Checklist (LPA Manual Checklist 14-10)
- Deliver Final Construction Records to LPA RC, including Form DR-299 - Project Construction Conformity Certification and ensure that the LPA RC completes the LPA RC Project Closeout Checklist (LPA Manual checklist 14-20 and includes it in the Final Records provided to the NDOT State Representative for review)

14. Other. (Additional project specific tasks may be added here)

14.1 Other

14.2 Other

E. SCHEDULE

1. Notice to Proceed: July 20, 2022
2. The Consultant shall provide a schedule of activities and deliverables upon award

# Staffing Plan

# Construction Engineering

Project Name: Applewood Creek Trail

Project Number: TAP-77(61)

Consultant: The Schemmer Associates, Inc.

Control Number: 22757

Consultant PM: Jon Goldie, 712-355-0730, jgoldie@schemmer.com

**NEBRASKA**

NDOT PC: Example: Jane Smith, 402-479-0001 jane.smith@neb.gov

Good Life. Great Journey.

Date: July 15, 2022

DEPARTMENT OF TRANSPORTATION

#	Code	Classification	#	Code	Classification
1	PR	Principal	6	SCC	Survey Chief
2	PM	Project Manager	7	SCM	Survey Crew Member
3	SENG	Senior Engineer	8	INS	Inspector
4	ENG	Engineer	9	MAT	Materials Testing
5	DES	Designer/CADD Tech	10	ADM	Administrative

Financial Data	
Overhead Rate:	165.09%
Profit Rate:	11.80%
FCCM (if applies):	0.300%
Use latest available data	

## STAFFING PLAN

Template: T-WB-Construction Engr Fee Proposal (rev 10-23-2019) SRC Multi-year

Employee Name	Job Title & Certifications	Current Actual Hourly Rate	% Assigned
<b>Principal</b>			
Charles Huddleston, PE	Principal	\$88.00	100%
<b>Project Manager</b>			
Jon Goldie, PE	Project Manager - Construction	\$56.40	85%
Darin Brown, PE	Project Manager - QA	\$60.50	15%
<b>Senior Engineer</b>			
Doug Holle, PE	Traffic Engineer - QA	\$66.90	65%
Shane Swope, PE	Transportation Engineer	\$66.90	10%
Matt Rasmussen, PE	Structural Engineer	\$49.00	20%
Loras Klostermann, PE	Materials Engineer	\$57.20	5%
<b>Engineer</b>			
Tyler Lerdahl, PE	Traffic Engineer	\$45.00	20%
Alex Roth, PE	Hydraulic Engineer	\$47.25	20%
Marie Stamm, PE	Public Involvement	\$46.70	20%
Ian Plummer, PE	Structural Engineer	\$40.00	20%
Leslie Steele, PE	Materials Engineer	\$47.00	20%
<b>Designer/CADD Tech</b>			
Kim Greiner	Survey CADD Tech	\$26.50	80%
Gavin Acker	Structural CADD Tech	\$20.00	10%
Efrain Quintanilla	Transportation CADD Tech	\$38.00	10%
<b>Survey Chief</b>			
Tony Bruckner	RLS	\$43.60	75%
Jeremy Bender	RLS	\$42.00	25%
<b>Survey Crew Member</b>			
Ray Flock	Surveyor	\$33.00	50%
Joe Poole	Surveyor	\$34.50	20%
Noah Chigas	Surveyor	\$23.50	20%
Bill Hahn	Surveyor	\$33.00	10%
<b>Inspector</b>			
Greg Kizzier	Senior Inspector	\$35.50	85%
Michael Johansson	Inspector	\$27.40	5%
Jake Sutton	Inspector	\$30.50	5%
Ian Plummer, PE	Structural Inspector	\$40.00	5%
<b>Materials Testing</b>			
Rob McClenahan	Field Technician	\$39.40	30%
Julia Stebbins	Field Technician	\$26.00	70%
<b>Administrative</b>			
Dawn Kirchert	Administrative Support	\$22.50	50%
Carla Noble	Administrative Support	\$20.00	50%



**SRC Billing Rates****Construction Engineering**

Date: July 15, 2022

Consultant: The Schemmer Associates, Inc.

## SRC Billing Rates Calculated based on:

Overhead:	165.09%
Profit Rate:	11.80%
FCCM (if applies):	0.30%
Salary Escalation Factor:	3.0%

## Weighting:

50%	Period 1: NTP through: December 31, 2022
50%	Period 2: Labor beginning: January 1, 2023
	Period 3: Labor beginning: January 1, 2024
	Period 4: Labor beginning: January 1, 2025
100%	% of work estimated during each period

## SRC BILLING RATE per employee

New Employee Multiplier = 2.96

Employee Name	Current Rate	SRC Billing Rate				%
		Period 1	Period 2	Period 3	Period 4	
<b>Principal</b>						
Charles Huddleston, PE	\$88.00	\$261.00	\$269.00	\$277.00		100%
Weighted Rate For Calculating Contract Max:	\$265.00					
<b>Project Manager</b>						
Jon Goldie, PE	\$56.40	\$167.00	\$172.00	\$177.00		85%
Darin Brown, PE	\$60.50	\$179.00	\$184.00	\$190.00		15%
Weighted Rate For Calculating Contract Max:	\$171.30					
<b>Senior Engineer</b>						
Doug Holle, PE	\$66.90	\$198.00	\$204.00	\$210.00		65%
Shane Swope, PE	\$66.90	\$198.00	\$204.00	\$210.00		10%
Matt Rasmussen, PE	\$49.00	\$145.00	\$149.00	\$153.00		20%
Loras Klostermann, PE	\$57.20	\$170.00	\$175.00	\$180.00		5%
Weighted Rate For Calculating Contract Max:	\$188.78					
<b>Engineer</b>						
Tyler Lerdahl, PE	\$45.00	\$134.00	\$138.00	\$142.00		20%
Alex Roth, PE	\$47.25	\$140.00	\$144.00	\$148.00		20%
Marie Stamm, PE	\$46.70	\$139.00	\$143.00	\$147.00		20%
Ian Plummer, PE	\$40.00	\$119.00	\$123.00	\$127.00		20%
Leslie Steele, PE	\$47.00	\$139.00	\$143.00	\$147.00		20%
Weighted Rate For Calculating Contract Max:	\$136.20					
<b>Designer/CADD Tech</b>						
Kim Greiner	\$26.50	\$79.00	\$81.00	\$83.00		80%
Gavin Acker	\$20.00	\$59.00	\$61.00	\$63.00		10%
Efrain Quintanilla	\$38.00	\$113.00	\$116.00	\$119.00		10%
Weighted Rate For Calculating Contract Max:	\$81.45					
<b>Survey Chief</b>						
Tony Bruckner	\$43.60	\$129.00	\$133.00	\$137.00		75%
Jeremy Bender	\$42.00	\$125.00	\$129.00	\$133.00		25%
Weighted Rate For Calculating Contract Max:	\$130.00					
<b>Survey Crew Member</b>						
Ray Flock	\$33.00	\$98.00	\$101.00	\$104.00		50%
Joe Poole	\$34.50	\$102.00	\$105.00	\$108.00		20%
Noah Chigas	\$23.50	\$70.00	\$72.00	\$74.00		20%
Bill Hahn	\$33.00	\$98.00	\$101.00	\$104.00		10%
Weighted Rate For Calculating Contract Max:	\$94.60					
<b>Inspector</b>						
Greg Kizzier	\$35.50	\$105.00	\$108.00	\$111.00		85%
Michael Johansson	\$27.40	\$81.00	\$83.00	\$85.00		5%
Jake Sutton	\$30.50	\$90.00	\$93.00	\$96.00		5%
Ian Plummer, PE	\$40.00	\$119.00	\$123.00	\$127.00		5%
Weighted Rate For Calculating Contract Max:	\$105.25					
<b>Materials Testing</b>						
Rob McClenahan	\$39.40	\$117.00	\$121.00	\$125.00		30%
Julia Stebbins	\$26.00	\$77.00	\$79.00	\$81.00		70%
Weighted Rate For Calculating Contract Max:	\$90.30					
<b>Administrative</b>						
Dawn Kirchert	\$22.50	\$67.00	\$69.00	\$71.00		50%
Carla Noble	\$20.00	\$59.00	\$61.00	\$63.00		50%
Weighted Rate For Calculating Contract Max:	\$64.00					

# Consultant's Estimate of Hours

# Construction Engineering

Project Name: Applewood Creek Trail  
 Consultant: The Schemmer Associates, Inc.

Project Number: TAP-77(61)  
 Control Number: 22757

Consultant PM: Jon Goldie, 712-355-0730, jgoldie@schemmer.com

NDOT PC:

Date: July 15, 2022

TASKS	PERSONNEL CLASSIFICATIONS										
	PR	PM	SENG	ENG	DES	SCC	SCM	INS	MAT	ADM	Total
1. Project Management & Coordination	2	90	5	8				10			115
1.1 Project Management	2	80	5								87
1.2 Plan and Spec review, project setup		10		8				10			28
2. Meetings	3	89	17			7		37	7	8	168
2.1 Construction Inspection Planning Meeting		4	4			4		4	4		20
2.2 Pre-Construction Meeting	3	8	3			3		3	3	2	25
2.3 Construction Progress Meetings		48	4					24		6	82
2.4 Public Meeting (If Required)		3						6			9
2.5 Trips to Site (Travel Time) for Meetings		26	6								32
3. Traffic Control Plan	2	12	16								30
3.1 Prepare Traffic Control Plan		2	10	16							28
3.2 Review Traffic Ctrl Plan (If completed by Contractor)											
3.3 Sign and Submit Plans to the RC			2								2
4. SWPPP Inspections/Manual Updates								66			66
4.1 Conduct Inspections								45			45
4.2 Update SWPPP Manual								6			6
4.3 Trips to Site (Travel Time) for SWPPP Inseptions								15			15
5. Construction Survey/Staking					74	42	576				692
5.1 Provide coordination of staking needs w/ Contractor						4	4				8
5.2 Verify and re-establish the survey control, if needed					2	2	16				20
5.3 Stake limits of construction throughout project					8	2	48				58
5.4 Mark removal limits. Stake ROW & const easements					4	2	24				30
5.5 Provide slope stakes for grading					10	5	72				87
5.6 Provide paving hubs					40	21	300				361
5.7 Provide cross-section for new culverts					1	1	8				10
5.8 Stake fence relocation and guardrail					1	1	6				8
5.9 Stake silt fence					6	2	24				32
5.10 Verify exist tie-in elevations, adjust pavement grades					2	2	8				12
5.11 Trips to Site (Travel Time) for Const Survey/Staking							66				66
6. Construction Consultation/Site Manager & Daily Work Report (DWR)		84	8	8				140			240
6.1 Construction Consultation/Site Manager & DWR		84	8	8				140			240
7. Girder Shim Surveying (Bridge Projs Only)											
7.1 Girder Shim Shots for Steel Girder Bridges											
7.2 Concrete Slab Bridge Deck Form Checks											
7.3 Trips											
8. Perform Bearing Calculations											
8.1 Perform Bearing Calculations											
9. Construction Inspection		170	10					1370			1550
9.1 Construction Inspection		60	10					950			1020
9.2 Measure, calculate, and document qty of pay items		10						140			150
9.3 Maintain records/data, prepare Weekly Report of WDs		80						140			220
9.4 Trips to Site (Travel Time) for Const Inspection		20						140			160
10. Perform Material Sampling and Testing		55							150		205
10.1 Collect, verify, document, deliver all samples to test lab									100		100
10.2 Provide all req'd material certs to the NDOR M&R Lab		25							5		30
10.3 Review and document all test results of all samples		25							5		30
10.4 Trips to Site (Travel) for Delivery & Collecting Samples		5							40		45
11. As-Built Drawings		2			16			8			26
11.1 Prepare As-Built Drawings		2			16			8			26
12. Final Inspections		50						32			82
12.1 Walkthrough of Site and Preparation of Punch List		8						8			16
12.2 Review Project to verify Punch List has been completed		2						4			6
13. Project Closeout											
13.1 Project Closeout		40						20			60
14. Other											
14.1											
14.2											
Total Days	0.63	67.8	6.5	4	11.3	6.13	72	208	20	1	397
Total Hours	5	542	52	32	90	49	576	1663	157	8	3,174.0



**Direct Expenses****Construction Engineering**

Project Name: Applewood Creek Trail  
Consultant: The Schemmer Associates, Inc.

Project Number: TAP-77(61)  
Control Number: 22757

Subconsultants:			Amount
Subtotal			
Printing and Reproduction:	Qty	Unit Cost	Amount
Field Plan Sets	4	\$50.000	\$200.00
As-Built Plan Sets	2	\$100.000	\$200.00
Subtotal			\$400.00
Mileage/Travel:	Qty	Unit Cost	Amount
Mileage/Travel:	8400	\$0.625	\$5,250.00
Subtotal			\$5,250.00
Lodging/Meals:	Qty	Unit Cost	Amount
Motel - Standard Rate \$94+tax		\$110.00	
Motel - Omaha/Douglas Co. \$109+tax		\$125.00	
Meals & Incidentals (Standard Rate)		\$55.00	
Meals & Incidentals (Omaha/Douglas Co.)		\$61.00	
Subtotal			
Other Miscellaneous Costs:	Qty	Unit Cost	Amount
Subtotal			
TOTAL DIRECT EXPENSES			\$5,650.00



## Construction Engineering

Project Number: TAP-77(61)  
Control Number: 22757

## This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is a vertical margin line on the left side, creating a narrow left margin. The paper appears to be from a notebook or a standard ruled sheet of paper.

**Project Cost & Breakdown****Construction Engineering**

Project Name: Applewood Creek Trail

Project Number: TAP-77(61)

Consultant: The Schemmer Associates, Inc.

Control Number: 22757

Consultant PM: Jon Goldie, 712-355-0730, jgoldie@schemmer.com

NDOT PC:

Date: July 15, 2022

LABOR COSTS			
Classification	Hours	Weighted Rate	Amount
Principal	5	\$265.00	\$1,325.00
Project Manager	542	\$171.30	\$92,844.60
Senior Engineer	52	\$188.78	\$9,816.56
Engineer	32	\$136.20	\$4,358.40
Designer/CADD Tech	90	\$81.45	\$7,330.50
Survey Chief	49	\$130.00	\$6,370.00
Survey Crew Member	576	\$94.60	\$54,489.60
Inspector	1,663	\$105.25	\$175,030.75
Materials Testing	157	\$90.30	\$14,177.10
Administrative	8	\$64.00	\$512.00
	3174	Subtotal	\$366,254.51

DIRECT EXPENSES	Amount
Subconsultants:	
Printing And Reproduction:	\$400.00
Mileage/Travel:	\$5,250.00
Lodging/Meals:	
Other Miscellaneous Costs:	
Subtotal	\$5,650.00

TOTAL PROJECT COSTS	Amount
Labor Costs	\$366,254.51
Direct Expenses	\$5,650.00
TOTAL COST	\$371,904.51

## Construction Engineering

### Trip Mileage and Time Calculations

Ending Location:

20

30.0

PR:

PM:

ENG:

DES:

SCC:

SCM:

INS1:

INS2:

ADM:

UD:

Total:	20	0.5
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Obtain # of working days from NDOR

Assumed \_\_\_\_\_ hours/Working Day

### Notes & Assumptions



**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. Consultant will be paid for acceptable actual services performed in accordance with Section 4. ALLOWABLE COSTS.

**2. MAXIMUM AGREEMENT AMOUNTS**

The following are the maximum amounts established in 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.

AMOUNT	CATEGORY
\$ 366,254.51	for actual direct labor costs
\$ <u>5,650.00</u>	for direct expenses
\$ 371,904.51	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, and direct non-labor costs as defined below which Consultant has incurred within 180 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 based on the specific rate of compensation (SRC or billing rate) Consultant will charge State for Consultant's employees' time working directly on this project. The direct labor costs are calculated by multiplying the SRC rate, as indicated on the Staffing Plan in Exhibit "B" Consultant's Fee Proposal, by the hours worked (in increments not less than one quarter hour).
- 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**. Reference the Staffing Plan Section of this Agreement regarding changes in personnel.

- 1) 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. *This section has intentionally been left blank.*

- 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 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 180 days of the date incurred. Travel costs are deemed to have been incurred on the day the travel occurs. Subconsultant costs are deemed to have been incurred on the day the Subconsultant actually incurs the cost, not the day the subconsultant invoices the cost to the Consultant.

**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 allowable costs 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 180 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 specific rate of compensation (billing rate) for each employee. 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.**

(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.1).
- (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 162a). 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, 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 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. *This section has intentionally been left blank.*

**12. FINAL INVOICE AND PAYMENT**

- A. Upon completion of the Services under this Agreement, Consultant shall submit their final invoice to include all labor and expenses. 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 that the Services were completed in accordance with this Agreement, State, on LPA's behalf, will pay Consultant.
- B. 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 180 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; and
  - 2) The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered; 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 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.