

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JANUARY 3, 2023 AGENDA**

Subject:	Type:	Submitted By:
PROFESSIONAL SERVICES AGREEMENT – 84 TH STREET TRAIL – GILES TO HARRISON	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

A resolution has been prepared to approve an Environmental Services Task Order agreement between Alfred Benesch and Company to provide professional consulting services related to the 84th Street Trail, Giles to Harrison in an amount not to exceed \$10,095.12.

FISCAL IMPACT

The FY23/FY24 Biennial Budget includes funding for this project.

RECOMMENDATION

Approval

BACKGROUND

As part of the Congressional Earmark for the 84th Street Trail, Giles to Harrison, Benesch will be providing NEPA (National Environmental Policy Act) Scoping Services to align the projects preliminary design with the NEPA process required for use of Federal funding. The scope is inclusive of a site visit, preparation of a project description, purpose and need, a project schedule and a project coordination meeting with the Nebraska Department of Transportation (NDOT) to align the project with the NEPA process.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH ALFRED BENESCH AND COMPANY TO PROVIDE PROFESSIONAL CONSULTING SERVICES RELATED TO THE 84TH STREET TRAIL, GILES TO HARRISON IN AN AMOUNT NOT TO EXCEED \$10,095.12.

WHEREAS, the City Council of the City of La Vista has determined that said services are necessary; and

WHEREAS, the FY23/FY24 Biennial Budget includes funding for this project; and

WHEREAS Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska authorize a professional services agreement with Alfred Benesch and Company to provide professional consulting services related to the 84th Street Trail, Giles to Harrison in an amount not to exceed \$10,095.12.

PASSED AND APPROVED THIS 3RD DAY OF JANUARY 2023.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

Task Order Agreement No.	BK2260
Master Agreement No.	VK2211
Effective (NTP) Date	12/12/2002
Task Order Amount	CPFF \$10,095.12

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT LPA PROJECTS

CITY OF LA VISTA, NEBRASKA
 ALFRED BENESCH & COMPANY, INC.
 PROJECT NO. DPS-77(67)
 CONTROL NO. 22885
 84TH ST TRAIL, GILES TO HARRISON, LA VISTA
 ENVIRONMENTAL SERVICES

THIS AGREEMENT is between the City of La Vista, Nebraska ("LPA") and Alfred Benesch & Company, Inc. ("Consultant"), and collectively referred to as the "Parties".

WHEREAS, Consultant entered into an On-Call Professional Services Master Agreement, No. VK2211 ("Master Agreement"), with the Nebraska Department of Transportation ("State"), wherein Consultant agreed to provide Environmental Services for future Federal-aid transportation projects when selected by LPA or State, and

WHEREAS, LPA desires that this project be developed and constructed under the designation of Project No. DPS-77(67) and formally authorizes the signing of this Agreement by the Mayor, 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 Environmental Services ("Services") for the project Consultant has been selected, and

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

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

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

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

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

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

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

SECTION 1. CONTACT INFORMATION

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

1.1 Consultant Project Manager

Firm Name	Alfred Benesch & Company, Inc.
Consultant/Vendor Number	6305
Address	825 M Street, Suite 100, Lincoln NE 68508
Project Manager's Name	Craig Mielke
Project Manager's Phone	402-590-8209

1.2 State Project Coordinator

Name	Jenna Habegger
Phone Number	402-479-3607

1.3 LPA RC

Name	Pat Dowse
Phone Number	402-331-8927

1.4 State Agreements Specialist

Name	Nicole Taylor
Phone Number	402-479-3859

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

- 2.1 State issued Consultant a written Notice to Proceed on December 12, 2022. Invoiced charges for services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be paid by State on LPA's behalf.
- 2.2 In the event that prior to the Effective Date of this Task Order, LPA, State on LPA's behalf, issue Consultant a Notice to Proceed and Consultant began work, State, on LPA's behalf, will pay for such work in accordance with this Task Order and the Parties are bound by this Task Order as if the work had been completed after the Effective Date of this Task Order.
- 2.3 Consultant shall complete all the Services required under this Task Order in a satisfactory manner by November 30, 2023. Costs incurred by Consultant after the completion date will not be eligible for reimbursement unless LPA, or State on LPA's behalf, has provided a written extension of time. Extensions of the time to complete the services must not be construed as an extension to the duration of this Task Order.
- 2.4 The completion date will not be extended because of any avoidable delay attributed to Consultant, but delays not attributable to Consultant, such as delays attributed to LPA or State, may, upon request, constitute a basis for an extension of time.

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

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

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

SECTION 4. TASK ORDER SCOPE OF SERVICES

- 4.1 LPA and Consultant understand that the Services provided by Consultant must be completed in accordance with all federal-aid reimbursement requirements and conditions. Consultant shall provide Environmental Services for Project DPS-77(67), 84th St Trail, Giles to Harrison, La Vista, in Sarpy County, Nebraska. The Scope of Services ("Services") is outlined in Exhibit "A", attached and incorporated herein by this reference.
- 4.2 Exhibits "A" and "B" are the result of the following process:
 - 4.2.1 Consultant was provided with a document describing 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, as shown in Exhibit "A" and Exhibit "B", attached and incorporated herein by this reference.
- 4.3 LPA, or State on LPA's behalf, reserves the unconditional right to add to, subtract from, or alter the Scope of Services at any time and such action on its part will in no event be deemed a breach of this Agreement. The addition, subtraction, or alteration will become effective seven (7) days after mailing written notice of such addition, subtraction, or alteration.
- 4.4 Any change in the Services will follow the process specified in the *Out-of-Scope Services* section in Exhibit "C", attached and incorporated herein by this reference.
- 4.5 Upon receiving a written notice to proceed from LPA, or State on LPA's behalf, Consultant shall complete the Services required under this Task Order and in accordance with the terms of the Master Agreement.

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

- 5.1 Consultant has provided LPA and State with a Staffing Plan or Staffing Plans, described in Exhibit "B", attached and incorporated herein by this reference. The Staffing Plan identifies the employees of Consultant and, when applicable, subconsultants who are anticipated to provide services under this Task Order. Consultant understands that LPA

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

and State are relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Task Order. LPA and State consider the principals, senior level staff, Project Managers, Team Leaders or other similar classifications, to be the key personnel for the services provided. Consultant and, when applicable subconsultants, may make occasional temporary changes to the key personnel. However, any permanent change to Consultant's or subconsultant's key personnel will require prior written approval from LPA, or State on LPA's behalf.

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 or subconsultant 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 set out on Exhibit "C" attached and incorporated herein by this reference.

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

6.1 Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Consultant agrees to contractually require any subconsultants to use a federal 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 Nebraska 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" and incorporated herein by this reference.
- 7.2 The maximum payment amounts and general provisions concerning payment under this Task Order are set out on Exhibit "C".

SECTION 8. SUSPENSION OR TERMINATION (Unique)

8.1 Suspension or Termination

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

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

8.2 Suspension

- a. Suspension for Convenience. LPA, or State on LPA's behalf, may suspend for convenience by giving Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide LPA, or State on LPA's behalf, a detailed summary of the current

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

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

For the convenience of the parties, for consistency for funding review, and in an effort to reduce the length of this Task Order, the LPA and Consultant agree to be bound by and hereby incorporate by this reference as if fully set forth herein, Sections 11 through 13, and 15 through 28 of Master Agreement (VK2211) between State and Consultant, dated March 30, 2022, for Environmental Services for LPA projects, with one recurring change:

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

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

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 services agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in this Task Order are accurate, complete, and current as of the date of this Task Order. I agree that this Task Order price and any additions thereto shall be adjusted to exclude any significant sums by which the LPA determines the agreement price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

SECTION 11. LPA CERTIFICATION

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

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

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

SECTION 12. ENTIRE AGREEMENT

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

ON-CALL PROFESSIONAL SERVICES TASK ORDER AGREEMENT

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

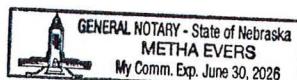
EXECUTED by Consultant this 21st day of December, 2022

ALFRED BENESCH & COMPANY
Jeffery A. Sockel, P.E.

Jeffrey S. Salkin
Senior Vice President

STATE OF NEBRASKA))ss.
DOUGLAS COUNTY)

SUBSCRIBED AND SWORN to before me this 21st day of December, 2022.



Julia E.
Notary Public

EXECUTED by 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:

Date

Consultant Work Order (Local Projects)

Project No.: DPS-77(67)		Control No.: 22885																														
Consultant: (Name and Representative) Benesch (Craig Mielke)	Agreement No.:	Work Order No.: 1																														
LPA: (Name and Representative) La Vista (Pat Dows)		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) Scoping Services for NEPA for trail project. Conduct red flag meeting, develop P&N, prepare NDOT 530, NDOT 53, and SOS for NEPA services. Also prepare schedule and determine deliverables for NEPA document. Also includes project management for this phase of work.</p>																																
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Work Title</th> <th colspan="2" style="text-align: center;">Summary of Fee</th> </tr> </thead> <tbody> <tr> <td rowspan="4" style="vertical-align: top;"> Scoping Services for NEPA - 84th Street Trail, Giles to Harrison, La Vista, NE </td> <td style="text-align: center;">A. Total Direct Labor Cost</td> <td style="text-align: right;">= 3,352.00</td> </tr> <tr> <td style="text-align: center;">B. Overhead (Factor * x A)</td> <td style="text-align: right;">= 5,688.68</td> </tr> <tr> <td style="text-align: center;">C. A + B</td> <td style="text-align: right;">= 9,040.68</td> </tr> <tr> <td style="text-align: center;">D. Profit/Fee (Factor ** x C)</td> <td style="text-align: right;">= 1,030.64</td> </tr> <tr> <td style="text-align: center;">*Overhead Factor:</td> <td colspan="2" style="text-align: center;">169.71%</td> </tr> <tr> <td style="text-align: center;">**Profit/Fee Factor:</td> <td colspan="2" style="text-align: center;">11.40%</td> </tr> <tr> <td style="text-align: center;">***Facility Capital Cost of Money (FCCM):</td> <td colspan="2" style="text-align: center;">0.26%</td> </tr> <tr> <td colspan="3" style="text-align: right;"> TOTAL FEE: C + D + E + F + G = \$10,095.12 </td> </tr> <tr> <td colspan="3" style="text-align: right;"> <input checked="" type="checkbox"/> ESTIMATED TOTAL FEE: \$10,095.12 </td> </tr> <tr> <td colspan="3" style="text-align: right;"> <input type="checkbox"/> FINAL TOTAL FEE: </td> </tr> </tbody> </table>		Work Title	Summary of Fee		Scoping Services for NEPA - 84th Street Trail, Giles to Harrison, La Vista, NE	A. Total Direct Labor Cost	= 3,352.00	B. Overhead (Factor * x A)	= 5,688.68	C. A + B	= 9,040.68	D. Profit/Fee (Factor ** x C)	= 1,030.64	*Overhead Factor:	169.71%		**Profit/Fee Factor:	11.40%		***Facility Capital Cost of Money (FCCM):	0.26%		TOTAL FEE: C + D + E + F + G = \$10,095.12			<input checked="" type="checkbox"/> ESTIMATED TOTAL FEE: \$10,095.12			<input type="checkbox"/> FINAL TOTAL FEE:			
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<input checked="" type="checkbox"/> ESTIMATED TOTAL FEE: \$10,095.12																																
<input type="checkbox"/> FINAL TOTAL FEE:																																
<p>Total Fee Notes:</p>																																

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

Consultant:

Jeff Sockel, PE - Benesch Jeffrey A. Sockel 12/6/2022
 Name Signature Date

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

Pat Dows - La Vista Pat Dows 12/9/22
 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 Nicole Taylor 12/12/22
 Name Signature Date

FMIS Approval Date:

11/2/22

LPS Manager or Construction Engineer (Construction Phase):

Name Signature Date

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

Name Signature Date

Notice to Proceed Date:

12/12/22

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
For
Scoping NEPA Services
Project Name: 84th Street Trail, Giles to Harrison, La Vista, NE
Project No. DPS-77(67)
CN: 22885

Description of Services

This scope of services (SOS) is for-developing a scope of services for reviewing the impact the construction project will have on the environment.

NDOT to provide:

The LPA and the Nebraska Department of Transportation (NDOT) will provide all available documentation or information needed to develop the SOS as requested by the Consultant.

- Instructions and guidance on the level of detail expected in preparing the "Local Public Agency (LPA) Project Programming Request, NDOT Form 530".
- A *"Local Public Agency (LPA) Project Programming Request, NDOT Form 530"*.
- The approved Probable Class of NEPA Action, NDOT Form 53.
- A draft copy of the Scope of Services for NEPA (Word doc).
- A draft copy of the Scope of Services, Workbook for NEPA (Excel file).
- A copy of the PCM 0 document

The NEPA Consultant will work with the Preliminary Engineering (PE) Consultant to develop the "Purpose and Need", "Project Description", and "Project Details" for the Local Public Agency (LPA) project using the following guidance material.

- LPA Purposed and Need Statement Template
- LPA Project Details Template
- LPA Project Description Template
- LPA Project Details Definitions

The Purpose and Need for the project developed by the NEPA Consultant will be used to complete the Local Public Agency (LPA) Project Programming Request, NDOT Form 530. The NEPA Consultant will work with the PE Consultant in completing the NDOT Form 530.

Using the current version of the Scope of Services and Workbook for National Environmental Policy Act (NEPA) services the NEPA Consultant will develop a site-specific scope of services (SOS). The SOS will address the study and documentation needs detailed in the approved Probable Class of NEPA Action NDOT Form 53. The goal of developing a project specific SOS is to address the items identified in the Probable Class of NEPA Action document is to ensure compliance with the National Environmental Policy Act.

Development of the SOS for NEPA services is a phased process starting with the site visit. After the site visit the NEPA Consultant will work with the PE Consultant in preparing the PCM 0 form as well as the NDOT Form 530 for review and approval by NDOT. After approval of the NDOT Form 530, NDOT Staff will prepare the Probable Class of NEPA Action NDOT Form 53. The NEPA Consultant will develop the SOS and fee proposal based on the Probable Class of NEPA Action, NDOT Form 53 prepared and approved by NDOT.

Schedule:

Notice to Proceed (NTP) with developing scope of NEPA services.

Attend Site Visit.

Submit LPA, Project Programming Request Form 530 to NDOT for approval.

NDOT Approves Project Programming Request Form 530

PE Consultant prepares SOS and Workbook upon receipt of approved NDOT Form 530.

NTP with PE services

NDOT Approves Probable Class of NEPA Action NDOT Form 53

NEPA Consultant prepares SOS and Workbook upon receipt of approved NDOT Form 53.

NTP with NEPA services

The NDOT Project Coordinator (PC)/Responsible Charge (RC) will schedule a site visit with the Design and National Environmental Policy Act (NEPA) Consultant along with a representative from each of the following sections to identify site conditions which may need to be addressed during the design and the NEPA phase of the project:

NDOT, LPA, Unit Head.

NDOT, LPA, PC/RC.

NDOT, LPA, Right of Way Coordinator.

NDOT, Bridge Division Representative.

NDOT, Environmental Coordinator

NDOT, Section 106 Cultural Resource Coordinator

NDOT District, Environmental Superteam Member

NDOT District, Design Superteam Member

LPA, Project Liaison (PL)

PE, Consultant

NEPA, Consultant

Representatives from known utilities, Public and Private.

Task:

Development of Scope of Services for NEPA

- Project Management
- Develop the Scope of services and corresponding workbook for NEPA
- Work with the PE Consultant in developing a schedule of professional services from Notice to Proceed to PS&E turn in of the project

Site Visit

- Attend a site visit
- Travel

SOS for NEPA Scoping Phase

Consultant Estimate of Hours

Project Name: 84th Street Trail, Giles to Harrison
 Project Number: DPS-77(67)
 Control Number: 22885
 Location (City, County): La Vista, NE
 Firm Name: Alfred Benesch & Company
 Consultant Project Manager: Craig Mieke
 Phone/Email: 402-590-8209 / cmieke@benesch.com
 County Project Liaison: Pat Dowse
 Phone/Email: 402.331.8927 / pdowse@cityoflavista.org
 NDOR RC: Jenna Habegger
 Phone/Email: 402-479-3607 / jenna.habegger@nebraska.gov
 Date: October 10, 2022

TASKS	PERSONNEL CLASSIFICATIONS**										Total
	PR	RLS	ENV	PM	SENG	ENG	SDES	ADM	SPC	SUR	
Development of Scope of Services for NEPA											44
1 Project Management					4						4
2 Prepare Project Description					8						
3 Prepare Project Details					4						
4 Prepare Purpose & Need					4						
5 Scope of services and corresponding workbook for NEPA					18						
6 Develop a schedule					4						
7 PCM 0					2						
Site Visit											18
1 Site visit					8	8					16
2 Travel	From Travel Calcs, Tab				1	1					2
Total Hours					8	52					60
Total Days (8 hrs)					1.0	6.5					7.5

CLASSIFICATIONS*:

PR = Principal
 RLS = Registered Land Surveyor
 ENV = Environmental Scientist
 ADM = Administrative

PM = Project Manager
 ENG = Engineer
 SDES = Senior Designer/Technician
 SENG = Senior Engineer

SPC Survey Party Chief
 SUR Surveyor I
 STRE Structural Engineer

*For Project Manager, use one of the technical classifications

** For User-Defined Classifications, you will need to edit the Classifications Legend located above. To enter a new classification, replace "UD1" with its abbreviation (ex. GRA) and replace "User Defined 1" with the

Travel Calculations & Notes

Project Name: _____
Project Number: _____
Control Number: _____
Date: _____

Starting Location:	Omaha	Bellevue		
Ending Location:	La Vista	LaVista		
Roundtrip distance to/from (miles):	20	6		
Roundtrip travel time (minutes):	60.00	30.00		
				Travel Summary
# of Roundtrips/Staff -->	PR			0 0.0
-->	RLS			0 0.0
-->	ENV	1		20 1.0
-->	PM		1	6 0.5
-->	SENG			0 0.0
-->	ENG			0 0.0
-->	SDES			0 0.0
-->	ADM			0 0.0
-->	SPC			0 0.0
-->	SUR			0 0.0
-->	STRE			0 0.0
				Total: 26 1.5

SOS for PE NEPA for BRO Labor Rates

Project Name: 84th Street Trail, Giles to Harrison
 Project Number: DPS-77(67)
 Control Number: 22885
 Location (City, County): La Vista, NE
 Firm Name: Alfred Benesch & Company
 Consultant Project Manager: Craig Mielke
 Phone/Email: 402-590-8209 / cmielke@benesch.com
 County Project Liaison: Pat Dowse
 Phone/Email: 402.331.8927 / pdowse@cityoflavista.org
 NDOR RC: Jenna Habbeger
 Phone/Email: 402-479-3607 / jenna.habegger@nebraska.gov
 Date: 10/10/2022

Labor Costs:		Hours	Blended Rate	Amount
Code	Classification Title			
PR	Principal			
RLS	Registered Land Surveyor			
ENV	Environmental Scientist	8	\$29.00	\$232.00
PM	Project Manager	52	\$60.00	\$3,120.00
SENG	Senior Engineer			
ENG	Engineer			
SDES	Senior Designer/Technician			
ADM	Administrative			
SPC	Survey Party Chief			
SUR	Surveyor I			
STRE	Structural Engineer			
TOTALS		60		\$3,352.00

Overhead Rate: 169.71%
 FCCM (if applicable) 0.26%

CLASSIFICATIONS:
 PR = Principal PM = Project Manager SPC = Survey Party Chief
 RLS = Registered Land Surveyor ENG = Engineer SUR = Surveyor I
 ENV = Environmental Scientist SDES = Senior Designer/Technician STRE = Structural Engineer
 ADM = Administrative DES = Designer/Technician

Blended Rates Worksheet

STAFFING PLAN			
EMPLOYEE NAME	CLASSIFICATION ¹	SALARY RATE	% ASSIGNED ²
Principal			
Registered Land Surveyor			Blended Rate:
Environmental Scientist	Zach Timperley	\$29.00	100.00%
Project Manager	Craig Mielke	\$60.00	100.00%
Senior Engineer			Blended Rate: \$60.00
Engineer			100.00% Blended Rate:
Senior Designer/Technician			Blended Rate:
Administrative			Blended Rate:
Survey Party Chief			Blended Rate:
Surveyor I			Blended Rate:
Structural Engineer			100.00% Blended Rate:

¹ Input actual employee classification as designated by firm.

² Total of "% Assigned" must equal 100% for each personnel classification category. If one person in classification, list them as 100% for "% Assigned".

SOS for PE NEPA for BRO

Direct Expenses

Project Name: 84th Street Trail, Giles to Harrison
 Project Number: DPS-77(67)
 Control Number: 22885
 Location (City, County): La Vista, NE
 Firm Name: Alfred Benesch & Company
 Consultant Project Manager: Craig Mielke
 Phone/Email: 402-590-8209 / cmielke@benesch.com
 County Project Liaison: Pat Dowse
 Phone/Email: 402.331.8927 / pdowse@cityoflavista.org
 NDOR RC: Jenna Habegger
 Phone/Email: 402-479-3607 / jenna.habegger@nebraska.gov
 Date: 10/10/2022

Subconsultants:	Quantity	Unit Cost	Amount
			Subtotal

Printing and Reproduction:	Quantity	Unit Cost	Amount
		\$0.50	
			Subtotal

Mileage/Travel:	Quantity	Unit Cost	Amount
From Travel Calcs. Tab	26	\$0.580	\$15.08
			Subtotal
			\$15.08

Lodging/Meals:	Quantity	Unit Cost	Amount
			Subtotal

Other Miscellaneous Costs:	Quantity	Unit Cost	Amount
Misc. Survey costs			
			Subtotal

TOTAL DIRECT EXPENSES \$15.08

Per Diem Rates: <http://www.gsa.gov/portal/category/104711>
 Mileage Rates: <http://www.gsa.gov/portal/category/104715>

2011 Standard Rates*		
Type	Rate	
Black and White Copies	Actual reasonable cost	
Color Copies	Actual reasonable cost	
Miscellaneous Postage, Mailing, Deliveries Etc.	Actual reasonable cost	
Equipment	Actual reasonable cost	
Privately Owned Vehicle	Actual reimbursement amount to employee, not to exceed rates for company vehicles outlined above	
Automobile Rental	Actual reasonable cost	
Air fare	Actual reasonable cost, giving the State all discounts	
Statewide Omaha/Douglas County		
Breakfast		
Lunch		
Dinner		
Incidentals		
Totals		

* A full list of rates can be found at the following website: www.gsa.gov/perdiem

SOS for PE NEPA for BRO

Project Cost

Project Name: 84th Street Trail, Giles to Harrison
 Project Number: DPS-77(67)
 Control Number: 22885
 Location (City, County): La Vista, NE
 Firm Name: Alfred Benesch & Company
 Consultant Project Manager: Craig Mielke
 Phone/Email: 402-590-8209 / cmielke@benesch.com
 LPA Responsible Charge: Pat Dowse
 Phone/Email: 402.331.8927 / pdowse@cityoflavista.org
 NDOR Project Coordinator: Jenna Habegger
 Phone/Email: 402-479-3607 / jenna.habegger@nebraska.gov
 Date: October 10, 2022

Direct Labor Costs:	Hours	Rate	Amount
Personnel Classification			
Principal			
Registered Land Surveyor			
Environmental Scientist	8	\$29.00	\$232.00
Project Manager	52	\$60.00	\$3,120.00
Senior Engineer			
Engineer			
Senior Designer/Technician			
Administrative			
Survey Party Chief			
Surveyor I			
Structural Engineer			
TOTALS	60		\$3,352.00

Direct Expenses:	Amount
Subconsultants	
Printing and Reproduction Costs	
Mileage/Travel	\$15.08
Lodging/ Meals	
Other Miscellaneous Costs	
TOTALS	\$15.08

Total Project Costs:	Amount
Direct Labor Costs	\$3,352.00
Overhead @ 169.71%	\$5,688.68
Total Labor Costs	\$9,040.68
Fixed Fee @ 11.40%	\$1,030.64
Facility Capital Cost of Money (FCCM) @ 0.26% (direct labor cost x FCCM%)	\$8.72
Direct Expenses	\$15.08
PROJECT COST	\$10,095.12

SOS for PE NEPA for BRO Assumptions - Notes

Project Name:	84th Street Trail, Giles to Harrison
Project Number:	DPS-77(67)
Control Number:	22885
Location (City, County):	La Vista, NE
Firm Name:	Alfred Benesch & Company
Consultant Project Manager:	Craig Mielke
Phone/Email:	402-590-8209 / cmielke@benesch.com
County Project Liaison:	Pat Dowse
Phone/Email:	402.331.8927 / pdowse@cityoflavista.org
NDOR RC:	Jenna Habegger
Phone/Email:	402-479-3607 / jenna.habegger@nebraska.gov
Date:	October 10, 2022

Assumptions and Notes

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
\$ 3,352.00	for actual direct labor costs
\$ 5,712.48	for indirect costs and direct expenses
<u>\$ 1,030.64</u>	for a fixed fee for profit
\$ 10,095.12	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 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 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 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. 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 11.40%. 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 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 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 180 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 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

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; and
 - (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.