*Template T-EXH-9 SRC (rev 2/26/2024)*

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This exhibit is for SRC consultant provided PE services on State projects (to accompany T-AGRS-9 and State TO’s) and CE services T-AGR-2c

# 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.

# 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 State.

**DELETE THIS BOX BEFORE SAVING**

Once you have entered the new amounts into rows A. & B., select the amount in row C. then press F9 to update the total agreement amount by adding rows A. & B.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  | AMOUNT | CATEGORY |
| A. |  | $ | 9,990,000.00 | for actual direct labor costs |
| B. |  | $ | 1,000.00 | for direct expenses (direct non-labor costs) |
| C. |  | **$** | **9,991,000.00** | total agreement amount |

# 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 are expected to exceed its fee estimate (over‑run). Consultant must provide acceptable justification for the over-run and obtain State’s written approval and, if necessary, approval from Federal Highway Administration (FHWA), before allowing subconsultants to incur any cost over-run expenses. State or FHWA’s written approval does not authorize an increase in the total agreement amount (Section 2.C.).

## Under-run: If the amount of any subconsultant’s cost is less than its fee estimate (under-run), the amount of the under-run may not be utilized by Consultant to offset Consultant’s own costs unless State gives prior written approval and, if necessary, approval from Federal Highway Administration (FHWA).

# 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. Allowable costs do not include those costs that Consultant incurred to correct mistakes or errors attributable to Consultant’s or Subconsultant’s own actions, even if those costs would not exceed the amounts listed in Section 2. MAXIMUM AGREEMENT AMOUNTS.

## 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 appropriate SRC rate, as indicated on the Staffing Plan in Exhibit “<fee proposal>” Consultant’s Fee Proposal, by the hours worked (in increments not less than one quarter hour).

The Staffing Plan identifies the name and SRC rate(s) of all employees of the Consultant who are reasonably expected to provide Services under this Agreement. SRC rates will not be modified for the duration of this Agreement unless expressly stated in a supplemental Agreement.

### 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.

### New Employee billing rates: For new employees not listed on the Staffing Plan, the SRC rate(s) for each rate period shall be calculated in the same manner as employees listed on the Staffing Plan, using the same overhead rate, fee for profit rate, and salary escalation rate, if applicable. SRC Rates for new employees shall be rounded to the nearest $0.10.

#### SRC rate(s) and calculation(s) must be provided on *NDOT Form 164 – SRC Billing Rates Table for New Employees* and submitted with the first invoice that includes direct labor from the new employees.

#### Calculations must include new employee’s full name, job title or classification, date in which employee first worked on the project and actual salary rate of employee on that date, the New Employee Multiplier as identified in the original Agreement, and salary escalation rate. SRC Rates must be calculated and shown for the current rate period through period 4.

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

## Direct Expenses (Direct Non-Labor Costs) 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 State; Special insurance premiums if required solely for this Agreement; Subconsultant costs; Such other allowable items as approved by State.*

### 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 as an overhead cost, then such costs are not eligible to be additionally billed as a direct expense to this project.

### 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.

### The following direct expenses will be reimbursed at actual costs, not to exceed the rates as shown below.

#### 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 State the benefit of all discounts. Transportation arrangements should be made by the most economical method available. 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.

#### 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:

##### The mileage rate that the Consultant reimbursed to the person who submitted the claim for POV use; or

##### 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, 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 <https://dot.nebraska.gov/business-center/consultant/manuals-forms/>.

#### 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.

### 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.

#### 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.

#### The State per diem rate shall be reduced by the State meal breakdown amount(s) for any meal provided by others. Examples include:

##### Meals included in a conference or event fee

##### Meals provided by lodging facility

##### Meals purchased by 3rd Party

##### Meals charged directly to and paid for by the State

#### MULTI-DAY TRAVEL – Travel that includes at least one overnight stay.

##### M&I reimbursement on the first and last day of travel will be reduced to 75% of the State per diem rate.

##### Except for a meal provided by others (see 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.

#### SAME DAY TRAVEL – Travel that does not include an overnight stay.

##### 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.

##### M&I reimbursement for same day travel will be reduced to 75% of the State per diem breakdown amounts.

##### The following criteria must be met for Consultant and its employees to be eligible for the M&I reimbursement on same day travel.

###### 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.

###### Lunch – No reimbursement is allowed.

###### 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.

###### Incidental Expenses – No reimbursement is allowed unless the employee is also approved for breakfast or dinner meal expenses.

###### The time limitations set forth above do not include the time taken for the meal.

##### 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.

### EXTENDED STAY/LONG TERM TRAVEL

### USE WHEN THERE IS NO EXTENDED STAY ARRANGEMENTS (APARTMENTS) No extended stay arrangements, such as apartments or weekly/monthly meal reimbursement rates, have been approved. END NO EXTENDED STAY SITUATIONS

USE WHEN EXTENDED STAY ARRANGEMENTS ARE APPROVED Consultant is allowed to rent temporary housing in lieu of lodging near the project location (<location. i.e. Omaha, NE>) for accommodating staff temporary assigned construction engineering duties associated with the performance of this Agreement. Items such as alcohol and tobacco products are unallowable costs. Items which are commonly provided by motels, hotels and restaurants would be eligible for reimbursement. Consultant will be reimbursed up to $xxxxx per month, and associated deposit, for long-term living arrangements (i.e. fully furnished apartment with all utilities/services).  Reimbursable costs include utilities/services if separate from rental fee. Consultant shall submit lease documents, and, when applicable, utilities/services bill(s), with initial invoice showing actual lease cost, and, when applicable, utilities/services costs, to support the reimbursement amount.  Need to add information for monthly meal reimbursement/allowances. END APPROVED EXTENDED STAY ARRANGEMENTS

# INELIGIBLE OR NON-ALLOWABLE 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 State. 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.

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# INVOICES AND PROGRESS REPORTS

## 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.

## In the event Consultant has incurred allowable costs, and such costs would exceed the maximum direct labor costs (Section 2.A.) or the total agreement amount (Section 2.C.), Consultant shall list such otherwise allowable costs on the invoice, but they must be subtracted from the total invoice amount submitted to State for payment.

## Content of Invoice Package (Presented in this order)

### Consultant’s Invoice:

#### 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.

#### 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 (SRC billing rate) for each employee. For new employees not listed on the Staffing Plan, the SRC billing rate(s) shall be provided on *NDOT Form 164 – SRC Billing Rates Table for New Employees* and **submitted with the first invoice that includes direct labor from the new employees**. This form is available on NDOT’s website at <https://dot.nebraska.gov/business-center/consultant/invoices/>.

#### Direct non-labor expenses:

##### 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.

##### 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.

##### All supporting receipts must be kept as required in Section 18. CONSULTANT COST RECORD RETENTION.

#### Time Records, as outlined in (Section 4.A.1).

#### Subconsultant Services: Consultant shall require subconsultants to provide the same supporting documentation, invoices, and receipts as Consultant is required to submit and retain.

### 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 State’s Project Coordinator. All progress reports must include, but are not limited to, the following:

#### A description of the Services completed for the service period to substantiate the invoiced amount.

#### A description of the Services anticipated for the next service period

#### A list of information Consultant needs from State

#### Percent of Services completed to date

NOTE: State’s Project Coordinator may request more specific information or detail be included in Progress Reports.

### 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.

### 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, date/time of departure to the project, date/time of return to the headquarters town, locations traveled, and expenses for transportation, meals, and lodging.

### 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, 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.

## 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/>.

## 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.

# PAYMENTS

State will pay Consultant after receipt of Consultant's invoice and determination by State 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 State determines that the Services have not been properly completed. State will make a reasonable effort to pay Consultant within 30 days of receipt of Consultant's invoices.

# 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.

# 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.

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# FINAL INVOICE AND PAYMENT

## 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 State has determined that the final invoice and Progress Report adequately substantiate the Services provided and that the Services were completed in accordance with this Agreement, State will pay Consultant.

## Acceptance of the final payment by Consultant will constitute and operate as a release to 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.

# AGREEMENT CLOSE-OUT

Upon submitting its final invoice, the Consultant must complete and submit to State 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 <https://dot.nebraska.gov/media/mfllv3k5/ndot39-instructions.pdf>. 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.

# FEDERAL COST PRINCIPLES

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*)](http://www.ecfr.gov/cgi-bin/text-idx?SID=28b37fcc48b096d19a22afb3d8b64305&node=pt48.1.31&rgn=div5).

# OUT-OF-SCOPE SERVICES AND CONSULTANT WORK ORDERS

State 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 State decides that these out-of-scope services may require an adjustment in costs, Consultant shall provide in writing:

## A description of the out-of-scope services,

## 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,

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

### The out-of-scope services are not within the original Scope of Services and additional work effort is required;

### The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered; and

### It is in the best interest of State 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 will prepare a supplemental agreement. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the State 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 251 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.

# TERMINATION COST ADJUSTMENT

If the Agreement is terminated prior to project completion, State 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 for any underpayment, no adjustment, or a billing to Consultant for overpayment. The State's final audit may result in an additional cost adjustment.

# **AUDIT** AND FINAL COST ADJUSTMENT

Upon 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.

# 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 WHEN FEDERAL FUNDS USED IN PE final cost settlement by FHWA and END USE WHEN FEDERAL FUNDS USED IN PE 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 State, FHWA, or any authorized representative of the federal government, and copies of any document(s) will be furnished when requested.