

(1) USE FOR AC PLUS FF

1. Payment Method.

Payment under this Agreement will be made based on Actual Costs plus a Fixed Fee for profit.

2. Total Agreement Amount.

For performance of the Services as specified in this Agreement, Consultant will be paid a fixed-fee-for-profit of \$(2) and up to a maximum amount of \$(3) for actual costs in accordance with Section 7. Payments. The total agreement amount is \$(4).

Consultant's compensation shall not exceed this maximum amount without prior written approval of the State. (1) END USE FOR AC PLUS FF

(5) USE FOR MAX NOT TO EXCEED

1. Payment Method.

Payment under this Agreement will be made based on actual costs up to a Maximum-Not-To-Exceed amount of \$(4).

2. Total Agreement Amount.

For performance of the services as outlined in this Agreement, Consultant will be compensated for actual services performed up to a maximum amount of \$(4) in accordance with Section 7. Payments. Consultant's compensation shall not exceed this maximum amount without prior written approval of State.(5) END USE FOR MAX NOT

TO EXCEED

(6) USE FOR LUMP SUM

1. Payment Method. Payment under this Agreement will be made based on a total Lump Sum amount of \$(4).

2. Total Agreement Amount. For performance of the work as outlined in this Agreement, Consultant will be paid a lump sum amount of \$(4). This lump sum amount will constitute full payment for services necessary to complete the project as outlined.

Consultant's total compensation shall not exceed this maximum lump sum amount without prior written approval of State. The cost criteria for the computation of the lump sum amount and any renegotiation subsequently required is in 23 CFR 172 and 48 CFR 31.(6) END USE FOR LUMP SUM

3. Ineligible Costs.

State is not responsible for costs incurred prior to the Notice to Proceed date or after the completion deadline date set out in SECTION 9. NOTICE TO PROCEED AND COMPLETION section of this Agreement or as approved in writing by State.

4. Federal Cost Principles.

For performance of Services (11) USE FOR TASK ORDERS as detailed in each specific Task Order, (11) END USE FOR TASK ORDERS (11) DELETE FOR TASK ORDERS as specified in this Agreement,(11) END DELETE FOR TASK ORDERS 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 Regulation (48 CFR 31).

5. Subconsultant Over-runs and Under-runs.

Consultant shall require any Subconsultant to notify Consultant if at any time the Subconsultant determines that its costs will exceed its negotiated fee estimate (over-run). Consultant shall not allow any Subconsultant costs to over-run without prior written approval of the State. Consultant understands that the amount of any Subconsultant cost under-run will be subtracted from the total compensation to be paid to Consultant under this Agreement, unless prior written approval is obtained from State and, when applicable, FHWA.

6 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 Services may require an adjustment in costs, Consultant shall provide in writing:

- a. A description of the proposed services,
- b. An explanation of why Consultant believes that the proposed services are not within the original Scope of Services and additional work effort is required
- c. An estimate of the cost to complete the 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:

- a. The proposed services are not within the original Scope of Services and additional work effort is required;
- b. The proposed services are within the scope of the Request for Proposal under which Consultant was selected and Agreement entered into; and
- c. It is in the best interest of State that the proposed services be performed under this Agreement.

Once the need for a modification has been established, a supplemental agreement shall be prepared. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the State shall use the process set out below:

- a. The Consultant Work Order (CWO) – DR 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 Department of Roads website at <http://www.transportation.nebraska.gov/rfp/>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. This agreement will be supplemented after one or more CWOs have been authorized and approved for funding.

(6) USE FOR LUMP SUM

7. Payments.

Payment for Services under this Agreement will be made on a lump sum basis up to the amount identified in Section 2. Total Agreement Amount. Consultant will, upon proper billing to State, be paid based on the percentage of work completed at the end of each monthly period after the notice to proceed.

8. Invoices and Progress Reports.

Consultant shall submit invoices to State no more frequently than at monthly intervals. Each monthly invoice must include a completed "Cost Breakdown Form" (see State's webpage at <http://www.transportation.nebraska.gov/rfp>) and must be substantiated by a progress report which is to include/address, as a minimum, the following:

- a. A description of the Services completed for that period
- b. A description of the Services anticipated for the next pay period
- c. Information needed from State
- d. Percent of Services completed to date

Consultant shall submit a progress report monthly even if Consultant does not submit a monthly invoice.

All invoice packages must be submitted electronically through State's invoice workflow system OnBase, for review, approval, and payment. The user guide for the OnBase system along with training videos can be found at <http://vimeo.com/album/1798952>.

9. Progress Payments.

State will pay Consultant upon receipt of Consultant's invoices 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 monthly progress reports do 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.

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. Final Invoice and Payment.

Upon completion of the Services under this Agreement, Consultant shall submit its final invoice to State identifying it as the final invoice. Upon receipt of final 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,

State will pay Consultant. The acceptance by Consultant of the final payment 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.

12. Agreement Close-Out.

Upon submitting its final invoice, Consultant must complete and submit to State DR Form 39 – Pre-letting Professional Services Notification of Completion. The form must be submitted electronically in accordance with the instructions on the form. DR Form 39 is available on the Department of Roads' website at the following:

<http://www.transportation.nebraska.gov/rfp/>.

13. 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 State for any underpayment, no adjustment, or a billing to Consultant for overpayment. State's final audit may result in an additional cost adjustment.

14. Consultant Cost Record Retention.

Consultant shall maintain, (12) USE/DELETE and also require that its Subconsultants/Subcontractors maintain, END OF (12) all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of (13) USE WHEN FEDERAL FUNDS USED IN PE final cost settlement by FHWA and END OF (13) project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, Consultant shall furnish copies.

(6) END USE FOR LUMP SUM

(14) USE FOR AC PLUS FF AND FOR MAX NOT TO EXCEED

7. (1) USE FOR AC PLUS FF Payments.

Payment for Services under this Agreement will be made based on acceptable actual costs plus a fixed fee for profit up to the amount identified in (1) END USE FOR AC PLUS FF

(5) USE FOR MAX NOT TO EXCEED Payments.

Payment for Services under this Agreement will be made based on acceptable actual costs up to a Maximum-Not-To-Exceed amount identified in (5) END USE FOR MAX NOT TO EXCEED Section 2. Total Agreement Amount. Acceptable costs include direct labor costs, Subconsultant costs and other direct non-labor costs, and overhead costs.

a. Direct Labor Costs are the earnings that individuals receive for the time they are working directly on the project.

- 1) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's straight time hourly rate for the pay period in which the work was performed USE FOR NO PREMIUM OVERTIME. If overtime hours are worked

T-AGRS-9F

Consultant provided PE for State – to go with T-AGRS-9 and State TO's

*NOTE: for TO's exchange "agreement" with "Task Order"

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on this project, the premium pay portion of those hours is not allowable as a direct labor cost. END USE FOR NO PREMIUM OVERTIME (15) USE FOR PREMIUM OVERTIME and up to 150% of the employee's straight time hourly rate for overtime hours paid to the employee. Regular hours are defined as forty (40) hours of work per pay week performed on this project. Any hours worked by hourly employees over forty hours on this project per pay week, shall be eligible for overtime rates at up to 150% of the employees straight time hourly rate.

When premium overtime pay is included as an indirect cost in the Consultant's overhead rate calculation, the Consultant cannot bill premium overtime pay to the project and shall bill the actual straight time hourly rate for all hours worked. (15) END USE FOR PREMIUM OVERTIME

For salaried employees, the hourly earnings rate shall be their actual hourly rate as recorded in the Consultant's accounting books of record.

- 2) **Time reports:** The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects: such as project description, project number, pertinent work phase, dates of service, and the individual's name and position. There must be an adequate system of internal controls in place to ensure that time charges are correct and have the appropriate supervisory approval.
- b. Subconsultant Costs:** Subconsultant costs shall not exceed the costs shown on the attached Consultant's Fee Proposal for each Subconsultant unless agreed upon by the parties. These costs include the Subconsultant's wages and direct non-labor costs.
- c. Direct Non-Labor Costs:** These costs include all necessary, actual, and allowable costs related to the Consultant completing the Services, including but not limited to: meals, lodging, mileage, subject to the limitations specified below; communication costs; reproduction and printing costs; special equipment and materials required for the project; special insurance premiums if required solely for this Agreement; and such other allowable items.

A non-labor cost charged as a direct cost cannot be included in Consultant's overhead rate. If for reasons of practicality, Consultant is treating a direct non-labor cost category, in its entirety, as an overhead cost, then costs from that category are not eligible to be billed to this project as a direct expense.

Consultant shall submit to State an invoice or billing itemizing all direct non-labor costs claimed for Services under this Agreement, and all supporting receipts or invoices.

State will pay the Consultant for all necessary, allowable, eligible and properly documented direct non-labor costs related to the Services under this Agreement.

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

- 1) The reimbursement for mileage associated with the use of company owned vehicles shall 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:
 - a) The mileage rate which the Consultant reimbursed to the person who submitted the claim for POV use, or
 - b) The prevailing standard rate as established by the IRS.
- 2) Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable the Consultant shall give State the benefit of all discounts.
- 3) The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated on the website address for U.S. General Services Administration's (GSA) rates at <http://www.gsa.gov/portal/category/100120>.
 - a) For Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

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

Lunch:

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

Dinner:

 - Employee leaves for overnight travel at or before 5:00 p.m, or
 - Employee returns from overnight travel or work location at or after 7:00 p.m., or
 - Employee is on overnight travel.
 - b) Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.
 - c) The total daily meal costs must not exceed the GSA rates set out above. Consultant shall give State the benefit of all meal or lodging discounts. Consultant may submit meal receipts or billings itemizing all direct non-labor costs claimed for work under this agreement, and all supporting reports or invoices. Consultant shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town.
- d) **Overhead Costs** include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with 48 CFR 31. Overhead costs

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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 overhead rate. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in this agreement.

(1) USE FOR AC PLUS FF

8. Fixed Fee for Profit (Actual Cost Plus Fixed Fee).

The Fixed Fee for Profit was computed upon the negotiated direct labor and overhead costs. The Fixed Fee for Profit is not allowable upon direct non-labor costs. For monthly or progress invoices, the Fixed Fee for Profit is calculated by multiplying the sum of the direct labor and overhead costs billed by the negotiated Fixed Fee for Profit Rate of "(16)%."

Upon completion of the work under this agreement, the Consultant shall invoice the State any remaining Fixed Fee for Profit. If all of the work under this agreement is not completed for any reason, Fixed Fee for Profit will be adjusted based on the State's determination of the actual percentage of work completed. (1) END USE FOR AC PLUS FF

(5) USE FOR MAX NOT TO EXCEED

8. Fee for Profit (Maximum not to exceed).

The Fee for Profit is computed upon the direct labor and overhead costs. The Fee for Profit is not allowable upon direct non-labor costs. For monthly or progress invoices, the Fee for Profit is calculated by multiplying the sum of the direct labor and overhead costs billed by the negotiated Fee for Profit Rate of "(16)%". If all of the work under this agreement is not completed for any reason, Fee for Profit will be adjusted based on the State's determination of the actual percentage of work completed. (5) END USE FOR MAX NOT TO EXCEED

9. Invoices and Progress Reports.

Consultant shall submit invoices to State no more frequently than at monthly intervals. The invoices must present actual direct labor, Subconsultant costs and other direct non-labor costs, and actual overhead, as well as the Fee for Profit based upon the actual direct labor and overhead costs billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed. For Subconsultant Services, the invoice must include the same supporting documentation. Each monthly invoice must include a completed "Cost Breakdown Form" (see State's webpage at <http://www.transportation.nebraska.gov/rfp>) and must be substantiated by a progress report which is to include/address, as a minimum, the following:

- a. A description of the Services completed for that period
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- c. Information needed from State
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State will pay Consultant upon receipt of Consultant's invoices 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 monthly progress reports do 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.

11. 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.

12. Final Invoice and Payment.

Upon completion of the Services under this Agreement, Consultant shall submit their final invoice. Consultant shall review the overhead costs billed to-date to determine if the overhead rates used on the progress billings match the actual allowable rate applicable to the time period that the labor was incurred. If cost adjustments are necessary, it should be reflected on the final invoice. If a particular year's actual overhead has not yet been computed or approved by State, the most recent year's accepted rate should be applied.

Upon receipt of final 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, State will pay Consultant. The acceptance by Consultant of the final payment 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.

13. Agreement Close-out.

Upon submitting its final invoice, the Consultant must complete and submit to the State DR Form 39 – Pre-letting Professional Services Notification of Completion. The form must be submitted electronically in accordance with the instructions on the form. DR Form 39 is available on the Department of Roads' website at <http://www.transportation.nebraska.gov/rfp/>.

14. 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.

15. 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.

16. Consultant Cost Record Retention.

Consultant shall maintain, (12) USE/DELETE and also require that its Subconsultants/Subcontractors maintain, END OF (12) all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of (13) USE WHEN FEDERAL FUNDS USED IN PE final cost settlement by FHWA and END OF (13) project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, Consultant shall furnish copies.