**ON-CALL PROFESSIONAL SERVICES**

**TASK ORDER AGREEMENT**

**LPA PROJECTS**

<NAME OF LPA>

<CONSULTANT NAME>

PROJECT NO. <Project #>

CONTROL NO. <Control #>

<Project Location – ex. BROWNSON EAST>

<Type of Service – ex. PRELIMINARY AND FINAL ROADWAY DESIGN SERVICES>

**THIS AGREEMENT**, is between the <Name of LPA> ("LPA") and Consultant Name ("Consultant”), and collectively referred to as the “Parties”.

**WHEREAS**, Consultant entered into an On-Call Professional Services Master Agreement, No. Master AGR # (“Master Agreement”), with the Nebraska Department of Transportation (“State”) wherein Consultant agreed to provide <Type of Service> 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. <project # > and formally authorizes the signing of this Agreement by the Mayor or the County Board Chair, as evidenced by the Resolution of LPA dated \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, attached as Exhibit “resolution” and incorporated herein by this reference, and

**WHEREAS,** LPA, or State on LPA’s behalf, selected Consultant to provide <describe services to be provided> (“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.

**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 | Firm name |
|  | Consultant/Vendor Number | xxxx |
|  | Address | Firm address |
|  | Project Manager’s Name | PM’s name |
|  | Project Manager’s Phone | xxx-xx-xxxx |

USE/DELETE FOR SUBS

|  |  |  |
| --- | --- | --- |
| 1.2 Subconsultant Project Manager | |  |
|  | Firm Name | Sub name |
|  | Consultant/Vendor Number | xxxx |
|  | Address | Sub address |
|  | Project Manager’s Name | PM’s name |
|  | Project Manager’s Phone | xxx-xx-xxxx |

END USE/DELETE FOR SUBS

|  |  |  |
| --- | --- | --- |
| 1.3 State Project Coordinator | |  |
|  | Name | name |
|  | Phone Number | xxx-xx-xxxx |
| 1.4 LPA RC | |  |
|  | Name | name |
|  | Phone Number | xxx-xx-xxxx |
| 1.5 State Agreements Specialist | |  |
|  | Name | name |
|  | Phone Number | xxx-xx-xxxx |

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

2.1 LPA, or State on LPA’s behalf, will issue Consultant a written Notice to Proceed upon 1) complete execution of this Agreement, 2) State’s determination on LPA’s behalf, that federal funding approval has been obtained for the project and 3) State’s concurrence that the form of this Agreement is acceptable for federal funding eligibility.

<OR> LPA, or State on LPA’s behalf, issued Consultant a written Notice to Proceed on (15). 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 <use this extra language when there is also a schedule in the attached SOS>according to the schedule in attached Exhibit “<project schedule>” and shall complete all Services <End>required under this Task Order in a satisfactory manner by <completion date>. 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.

**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 <type of service> for project <project number>, <project location>, in <county name> County, Nebraska. The Scope of Services (“Services”) is outlined in Exhibit “<scope of services>”, attached and incorporated herein by this reference.

4.2 Exhibit “<scope of services>” is 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 “<scope of services>” and Exhibit “<fee proposal”>, 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 “<fees & payments>”, 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)**

**>**USE WHEN STAFFING PLAN IS A STANDALONE EXHIBIT>

5.1 Consultant has provided LPA and State with a Staffing Plan or Staffing Plans, described in Exhibit “<staffing plan>”, 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 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, or when applicable subconsultant’s, key personnel will require prior written approval from LPA, or State on LPA’s behalf.

**>**USE WHEN STAFFING PLAN IS INCLUDED WITH THE FEE PROPOSAL WORKBOOK >

5.1 Consultant has provided LPA and State with a Staffing Plan or Staffing Plans, described in Exhibit “<fee proposal exhibit #>”, 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 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 “<fees and payments exhibit>” 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 “<fee proposal>”, 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 “<fees and payments>”.

**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:

1. 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
2. LPA, or State on LPA’s behalf, abandons the Services or the project for any reason
3. Funding priorities of LPA, or State on LPA’s behalf, have changed
4. 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
5. Consultant fails to meet the schedule, milestones, or deadlines established in this Task Order or agreed to in writing by the Parties
6. Consultant fails to provide acceptable replacement personnel or qualified new personnel as determined by LPA, or State on LPA’s behalf
7. Consultant has not made sufficient progress to assure that the Services are completed in accordance with the schedule in attached Exhibit “<Scope of Services>” or in a timely manner
8. Consultant fails to meet the standard of care applicable to the Services
9. Consultant fails to meet the performance requirements of this Task Order
10. Consultant's breach of a provision of this Task Order or failure to meet a condition of this Task Order
11. Consultant's unlawful, dishonest, or fraudulent conduct in Consultant's professional capacity
12. 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
13. <ADD ANYTHING ELSE OR DELETE>

8.2 Suspension

1. Suspension for Convenience. LPA, or State on LPA’s behalf, may suspend for convenience by giving Consultant notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. Such notice will provide the reason(s) for such suspension. Consultant will not be compensated for any Services completed or costs incurred after the date of suspension. Consultant shall provide LPA, or State on LPA’s behalf, a detailed summary of the current status of the Services completed and an invoice of all costs incurred up to and including the date of suspension.
2. 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 “<fees & payments exhibit>”, 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 “<fees & payments exhibit>”.

**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 (MA#) between State and Consultant, dated <Date State signed Master Agreement>, for <Type of Service such as On-call Preliminary Engineering> 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.

**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. SEVERABILITY**

The invalidity or unenforceability of any such clause, provision, section, or part shall not affect the validity or enforceability of the balance of the Agreement, which shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable clause, provision, section or part.

**SECTION 13. COMPLETENESS**

This Agreement is the complete and exclusive statement of the arrangement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the Parties hereto.

**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 \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

<CONSULTANT FIRM NAME>

<Consultant Signatory Name>

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

<Consultant Signatory Title>

STATE OF <State of notary>)

)ss.

<County of notary) COUNTY)

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**EXECUTED** by <Name of LPA> this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

<Name of LPA>

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

<LPA Signatory Title>

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