*Template T-EXH-9 LS (rev 10-24-19)*

**DELETE THIS BOX BEFORE SAVING**

This exhibit is for LUMP SUM consultant provided PE services on State projects (to accompany T-AGRS-9 and State TO’s)

**1.** **PAYMENT METHOD**

Payments under this Agreement will be made based on a total Lump Sum (LS) payment method.

**2.** **TOTAL AGREEMENT AMOUNT**

For completion of services as outlined in this Agreement, Consultant will be paid a lump sum amount of $xxx. 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](http://www.ecfr.gov/cgi-bin/text-idx?&node=pt23.1.172&rgn=div5) (*Administration of Engineering and Design Related Service Contracts*) and [48 CFR 31](http://www.ecfr.gov/cgi-bin/text-idx?&node=pt48.1.31&rgn=div5) (*Contract Cost Principles and Procedures*).

**3. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS**

Consultant shall require all of its 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 acceptable justification and obtain State’s prior written approval before exceeding the subconsultant’s fee estimate. 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 State gives prior written approval and, if necessary, approval from Federal Highway Administration (FHWA).

**4. ALLOWABLE COSTS**

State must receive Consultant’s invoice within 90 days of the completion of the work. 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.

**5. 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 the NOTICE TO PROCEED AND COMPLETION SCHEDULE section of this Agreement or as approved in writing by State.

**6.** **FEE FOR PROFIT** – *This section has intentionally been left blank.*

**7. INVOICES AND PROGRESS REPORTS**

A. Consultant shall promptly submit invoices to State no more frequently than monthly. State retains the sole discretion to not pay for the lump sum fee if not received within 90 days of the completion of the work.

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

C. Content of Invoice Package

1) Consultant’s Invoice:

i. 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.

ii. The invoice must identify the percent of Services completed to date.

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 State’s Project Coordinator. All Progress Report must include, but is not limited to, the following:

1. A description of the Services completed for the service period to substantiate the invoiced amount.
2. A description of the Services anticipated for the next service period
3. A list of information Consultant needs from State
4. Percent of Services completed to date

3) Cost Breakdown Form: Each monthly invoice must include a completed Cost Breakdown Form (NDOT Form 162c). This form is available on the Department’s website at <http://dot.nebraska.gov/business-center/consultant/>).

D. All invoice packages must be submitted electronically through State’s OnBase Invoice Workflow System for review, approval, and payment. The user guide for the OnBase Invoice Workflow system, along with training videos can be found at <http://dot.nebraska.gov/business-center/consultant/onbase-help/>.

E. Notice of Public Record: Documents submitted to State, including invoices, supporting documentation, and other information are subject to disclosure by State pursuant to the Nebraska Public Records Act found at Neb. Rev. Stat. § 84-712 et.seq. ACCORDINGLY, CONSULTANT SHALL REDACT OR NOT SUBMIT TO STATE INFORMATION THAT IS CONFIDENTIAL, INCLUDING, BUT NOT LIMITED TO, FINANCIAL INFORMATION SUCH AS SOCIAL SECURITY NUMBERS, TAX ID NUMBERS, OR BANK ACCOUNT NUMBERS. Consultant understands that State does not have sufficient resources to review and redact confidential information submitted by Consultant. If such confidential information is submitted, Consultant shall have no right of action of any kind against State for the disclosure of such information

**8. PAYMENTS**

State will pay Consultant upon 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.

**9. PROMPT PAYMENT CLAUSE**

Consultant shall include a “Prompt Payment Clause” as a part of every subcontract for work, including 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, is 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 from 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. OVERHEAD ADJUSTMENT INVOICES** – *This section has intentionally been left blank.*

**12. 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 final invoice and Progress Report adequately substantiate the Services provided, and 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.

**13. 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 <http://dot.nebraska.gov/business-center/consultant/>. Consultant shall submit NDOT 39 Form within 90 days of completion of the work under this Agreement, and if such Form is not timely submitted, State may close the Agreement without accepting any further invoices from Consultant.

**14. 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).

**15. 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:

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 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:
4. The out-of-scope services are not within the original Scope of Services and additional work effort is required;
5. The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered into; and
6. 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.

**16. 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.

**17. AUDIT AND FINAL COST ADJUSTMENT**– *This section has intentionally been left blank.*

**18. CONSULTANT COST RECORD RETENTION**

Consultant, and all of 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; all NDOT forms including NDOT cost breakdown 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.