

NTP Date	
Agreement Amount	CPFF \$174,505.27

PROFESSIONAL SERVICES AGREEMENT MPO PROJECTS

GRAND ISLAND AREA METROPOLITAN PLANNING ORGANIZATION (GIAMPO)
HDR
PROJECT NO. C990(221)
CONTROL NO. 00546Y
Transportation Planning Development

THIS AGREEMENT is between the GIAMPO eg Grand Island Area Metropolitan Planning Organization, who is a Metropolitan Planning Organization ("MPO"), and HDR ("Consultant"), collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, federal law requires that MPO establish and maintain a continuing, comprehensive transportation planning process in cooperation with state and local governments in urban areas of over 50,000 population, and

WHEREAS, MPO has established and maintains a planning process that complies with federal law, and

WHEREAS, there are federal-aid planning funds available to provide pro-rata reimbursement to MPO for its Eligible Planning Activities, and

WHEREAS, MPO is interested in hiring a Consultant to assist MPO with a project as part of MPO's planning process, and

WHEREAS, MPO desires that this project be developed under the designation of Project No. C990(220) and formally authorizes the signing of this Agreement, as evidenced by the Resolution of MPO dated _____ day of _____, 20____, attached as Exhibit "D" and incorporated herein by this reference, and

WHEREAS, MPO used a qualification-based selection process to select Consultant to provide for transportation planning development hereinafter referred to as "Services", and

WHEREAS, Consultant is qualified to do business in Nebraska and, when applicable, has met all requirements of the Nebraska Board of Engineers and Architects to provide the Services in the State of Nebraska, and

WHEREAS, MPO and Consultant wish to enter into this Agreement to specify the duties and obligations of the Parties for the Services described herein, and

WHEREAS, MPO and Consultant intend that this Agreement 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, Consultant is willing to perform Services in accordance with the terms hereinafter provided, agrees to comply with all federal, state, and local laws and ordinances applicable to

PROFESSIONAL SERVICES AGREEMENT

this Agreement, and agrees to comply with all applicable federal-aid transportation related planning and program requirements, so that Consultant's costs under this Agreement will be eligible for federal reimbursement, and

WHEREAS, the Parties understand that the State of Nebraska Department of Transportation (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 and mutual promises, the Parties hereto 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	HDR Engineering Inc.
Consultant/Vendor Number	6511
Address	1917 S. 67th Street, Omaha, NE 68106
Project Manager's Name	Jason Carbee
Project Manager's Phone	402-399-1370

1.3 State Project Coordinator

Name	Craig Wacker
Phone Number	402-479-4623

1.4 MPO RC

Name	Andres Gomez
Phone Number	308-389-0273

1.5 State Agreements Specialist

Name	Stephanie Camerone
Phone Number	402-479-3187

SECTION 2. *This section has intentionally been left blank.*

SECTION 3. *This section has intentionally been left blank.*

SECTION 4. NOTICE TO PROCEED AND COMPLETION SCHEDULE

- 4.1 MPO will issue Consultant a written Notice to Proceed upon 1) complete execution of this Agreement, 2) MPO's determination 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. Invoiced charges for services performed by Consultant on the project prior to the date specified in the written Notice to Proceed will not be eligible for reimbursement.
- 4.2 In the event that prior to the Effective Date of this Agreement, Consultant is issued a Notice to Proceed and Consultant began work, Consultant will be paid for such work in accordance with this Agreement and the Parties are bound by this Agreement as if the work had been completed after the Effective Date of the Agreement.
- 4.3 Consultant shall complete the Services and shall complete all Services required under this Agreement in a satisfactory manner by December 31, 2022. Costs incurred by Consultant after the completion date, are not eligible for reimbursement unless Consultant has received a written extension of time from MPO. Extensions of the time to

PROFESSIONAL SERVICES AGREEMENT

complete the Services must not be construed as an extension to the duration of the agreement.

- 4.4 The completion date will not be extended because of any avoidable delay attributed to Consultant, but delays not attributable to Consultant, such as delays attributable to MPO may, upon request, constitute a basis for an extension of time.

SECTION 5. DURATION OF THE AGREEMENT (Matches Project Lifespan)

- 5.1 Effective Date – This Agreement is effective when executed by the Parties.
- 5.2 Expiration Date – This Agreement expires when State has (a) completed the project final audit and cost settlement or (b) waived the requirement of a financial audit.
- 5.4 Identifying Date – This Agreement may be identified by the date MPO signed the agreement.
- 5.5 Termination or Suspension – MPO reserves the right to terminate or suspend this Agreement at any time for any of the reasons provided herein.

SECTION 6. SCOPE OF SERVICES

- 6.1 MPO 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 transportation planning for project C990(221), Grand Island in Hall County, Nebraska. The Scope of Services ("Services") is outlined in Exhibit "A" attached and incorporated herein by this reference.
- 6.2 Exhibit "A" is the result of the following process:
- Consultant drafted a Scope of Services for the work under this Agreement in consultation with MPO.
 - Consultant and MPO made necessary and appropriate proposed additions, deletions, and revisions to the detailed Scope of Services document.
 - Consultant and MPO participated in a review of the proposed Scope of Services, and the proposed revisions, and negotiated the final detailed Scope of Services as shown in Exhibit "A"
- 6.3 MPO 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.
- 6.4 Any change in the Services will follow the process specified in the *Out of Scope Services* section in Exhibit "B" attached and incorporated herein by this reference.

SECTION 7. STAFFING PLAN (PE)

- 7.1 Consultant has provided MPO with a Staffing Plan or Staffing Plans, described in Exhibit "". The Staffing Plan identifies the employees of Consultant, and when applicable subconsultants, who are anticipated to provide Services under this Agreement. Consultant understands that MPO is relying on key personnel from the Staffing Plan to be primarily responsible for completing the Services under this Agreement. MPO considers 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 MPO.

PROFESSIONAL SERVICES AGREEMENT

- 7.2 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 Agreement, with settlement to be made as set out on Exhibit "B"

SECTION 8. *This section has intentionally been left blank.*

SECTION 9. NEW EMPLOYEE WORK ELIGIBILITY STATUS

- 9.1 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.
- 9.2 The undersigned duly authorized representative of Consultant, by signing this Agreement, 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.
- 9.3 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 Agreement. This form is available on the Department of Transportation's website at <http://dot.nebraska.gov/media/2802/ndot289.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 10. FEES AND PAYMENTS

- 10.1 Consultant's fee proposal is attached as Exhibit "C" and incorporated herein by this reference.
- 10.2 The maximum compensation amounts and general provisions concerning payment under this Agreement are attached as Exhibit "<C>".

SECTION 11. CONSULTANT'S PERFORMANCE (MPO)

11.1 Standard of Performance

Consultant shall complete the Services under this Agreement exercising the degree of skill, care, and diligence consistent with the applicable professional standards recognized by such profession and observed by national firms performing services of the type provided for in this Agreement. Consultant shall complete the Services exercising good and sound professional judgment and practices. Consultant's Services shall conform to applicable licensing requirements, industry standards, statutes, laws, acts, ordinances, and rules and regulations.

11.2 Quality of Service

Consultant agrees to perform all Services hereunder using qualified personnel consistent with good professional practice in the state of the art involved, and that performance of its personnel will reflect their best professional knowledge, skill, and judgment. Consultant agrees to permit MPO access at all times to the work product for purposes of reviewing same and determining that the Services are being performed in accordance with the terms of this Agreement.

11.3 Performance Evaluation

11.3.1 MPO retains the discretion to conduct an evaluation of Consultant's performance at any time. Consultant's performance may be subject to an evaluation in the following performance categories: (1) Communication, Cooperation, and Project Management; (2) Schedule; (3) Scope and Budget; and (4) Quality and Technical Performance. Consultant understands that if MPO determines that Consultant's performance is not meeting, has not met, or is at risk of not meeting the Standard of Performance set out herein, MPO may conduct a Consultant Performance Evaluation based on the applicable foregoing performance categories. If MPO chooses to conduct a Consultant Performance Evaluation, MPO will notify Consultant of the evaluation including necessary instructions and procedures for complying with the evaluation.

11.3.2 Consultant shall, to the fullest extent reasonable, implement and make modifications and changes in response to the evaluation, correct deficiencies, implement improvements, and improve performance to comply with the terms of this Agreement in response to the Performance Evaluation. MPO's remedies for substandard performance will apply even in the absence of a Consultant Performance Evaluation.

11.4 MPO's Remedies for Substandard Performance

Upon notice of substandard performance of Services revealed while performing the Services, Consultant shall re-perform the Services at no cost to MPO. Further, Consultant shall reimburse MPO for any costs incurred by MPO for necessary remedial work. Consultant shall respond to MPO's notice of any errors, omissions, or negligence within twenty four (24) hours and give immediate attention to necessary corrections to minimize any delays to the project. If Consultant discovers errors, omissions, or negligence in its Services, Consultant shall notify MPO of the errors within three (3) business days. Failure of Consultant to notify MPO constitutes a breach of this Agreement.

PROFESSIONAL SERVICES AGREEMENT

If Consultant fails to re-perform the Services, or if MPO determines that Consultant will be unable to correct substandard Services before the time specified for completion in this Agreement, MPO may correct such unsatisfactory Services (or by the use of third parties) and charge Consultant for the costs incurred.

If MPO requires Consultant to remedy any deficiencies in the Services, Consultant shall make such corrections at no additional cost to MPO. Any increase or decrease in the scope of the Services or any modification of the specifications will be made only by written agreement signed by the Parties. Consultant shall bear legal liability for all damages incurred by MPO caused by Consultant's errors, omissions, or negligent acts without liability or expense to MPO. The rights and remedies of MPO provided herein are in addition to any other remedies provided by law.

SECTION 12. CONSULTANT'S ACCOUNTABILITY FOR ITS SERVICES (MPO)

- 12.1 Consultant agrees that MPO will rely on the professional training, experience, performance and ability of Consultant. Consultant agrees that examination by MPO, State, or Federal Highway Administration of the United States Department of Transportation (FHWA), approval, acceptance, use of, or acquiescence in Consultant's Services, will not be considered a full and comprehensive examination and will not be considered approval of Consultant's Services that would relieve Consultant from liability or expense connected with Consultant's sole responsibility for the propriety and integrity of Consultant's Services pursuant to this Agreement. Consultant agrees that MPO's declining to approve Consultant's services will not be deemed an acceptance of defective services or relieve Consultant of its obligations and liabilities with respect to such services.
- 12.2 Consultant agrees that acceptance or approval of any of the services of Consultant by MPO or of payment, partial or final, will not constitute a waiver of any rights of MPO to recover from Consultant damages caused by Consultant due to error, omission, or negligence of Consultant in its services.
- 12.3 Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
- 12.4 Clarification: The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

SECTION 13. DISPUTES

Any dispute concerning a question of fact in connection with the work will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE RESOLUTION.

SECTION 14. SUSPENSION OR TERMINATION (PE 2-25-16)

14.1 Suspension or Termination

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

- a. A loss, elimination, decrease, or re-allocation of funds that make it difficult, unlikely or impossible to have sufficient funding for the Services or the project
- b. The Services or the project are abandoned for any reason
- c. Funding priorities have changed
- d. MPO's interests are best protected by suspension or termination of this Agreement
- e. Consultant fails to meet the schedule, milestones, or deadlines established in this Agreement or agreed to in writing by the Parties
- f. Consultant fails to provide acceptable replacement personnel or qualified new personnel
- g. Consultant has not made sufficient progress to assure that the Services are completed 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 Agreement
- j. Consultant's breach of a provision of this Agreement or failure to meet a condition of this Agreement
- 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

14.2 *This section has intentionally been left blank.*

14.3 Suspension

- a. Suspension for Convenience. If MPO suspends Consultant's work for convenience, Consultant will be given 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 MPO 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.
- b. Suspension for Cause. If MPO suspends the work for cause or for issues related to performance, responsiveness or quality that must be corrected by Consultant, Consultant will be given notice of the date of suspension, which date will be no fewer than three (3) business days after notice is given. The notice of suspension will provide Consultant with the reason(s) for the suspension, a timeframe for

PROFESSIONAL SERVICES AGREEMENT

Consultant to correct the deficiencies, and when applicable, and a description of the actions that must be taken for MPO 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 MPO. Failure to correct the deficiencies identified in a suspension will be grounds for termination of this Agreement.

14.4 Termination

If MPO terminates this Agreement, Consultant will be given notice of the date of termination, which will be no fewer than three (3) business days after notice is given. The notice of termination will provide Consultant with a description of the reason(s) for the termination. The notice must specify when the Agreement will be terminated along with the requirements for completion of the work under the Agreement. Consultant's right to incur any additional costs will cease at the end of the day of termination or as otherwise provided.

14.5 Compensation upon suspension or termination

If MPO suspends the work or terminates the Agreement, 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 Agreement, MPO will have the power to suspend payments, pending Consultant's compliance with the provisions of this Agreement. In the event of termination of this Agreement for cause, MPO may make the compensation adjustments set out in Exhibit "C"

SECTION 15. OWNERSHIP OF DOCUMENTS

- 15.1 All surveys, maps, studies, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other project documents prepared or obtained under the terms of this Agreement are the property of MPO. Consultant shall deliver these documents to MPO at the conclusion of the project for inclusion in MPO's federal-aid file without restriction or limitation as to further use.
- 15.2 MPO acknowledges that such data may not be appropriate for use on an extension of the Services covered by this Agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at MPO's sole risk and without legal exposure or liability to Consultant.
- 15.3 Further, Consultant shall keep time sheets and payroll documents in Consultant's files for at least three years from the completion of final cost settlement by FHWA and project closeout by State.

SECTION 16. CONFLICT OF INTEREST LAWS

Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for MPO's project to remain fully eligible for federal funding. By signing this Agreement, Consultant certifies that Consultant is not aware of any financial or other interest Consultant has that would violate the terms of these federal provisions.

SECTION 17. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

PROFESSIONAL SERVICES AGREEMENT

- 17.1 Certain information provided by MPO or State to Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by MPO or State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an MPO or State employee and Legal Counsel. This confidential and privileged information is vital and essential to Consultant in order that Consultant adequately design the project at hand on behalf of MPO or State.
- 17.2 Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for MPO or State for the project at hand only. Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. MPO or State agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information (Approved 11/4/11):
- "CONFIDENTIAL INFORMATION: Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The State of Nebraska [or MPO] has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient."*
- 17.3 Consultant agrees to obtain the written approval of MPO and State prior to the dissemination of any privileged or confidential information or documentation if it is unclear to Consultant whether such information or documentation is in fact privileged or confidential.
- 17.4 Consultant and MPO or State agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant will create liability on the part of Consultant to MPO or State for any damages that may occur as a result of the unauthorized dissemination. Consultant agrees to hold harmless, indemnify, and release MPO or State from any liability that may ensue on the part of MPO or State for any unauthorized dissemination of any privileged or confidential information or documentation on the part of Consultant.

SECTION 18. FORBIDDING USE OF OUTSIDE AGENTS (Standard provision)

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, MPO has the right to annul this Agreement without liability or, in its discretion, to deduct from

PROFESSIONAL SERVICES AGREEMENT

the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

SECTION 19. GENERAL COMPLIANCE WITH LAWS

Consultant agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work. If Consultant is found to have been in violation of any applicable federal, state, or local laws and ordinances, such violation may be the basis for the suspension or termination under this Agreement.

SECTION 20. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE (3-2-21)

- 12.1 Legal Relationship.** Vendor is an independent Vendor. This Agreement does not create a partnership, joint venture, employment, or agency relationship between Vendor and MPO. Vendor represents that it has, or will secure at its own expense, all personnel required to perform the Services under this Agreement. The Vendor's employees and other persons engaged in work or Services required by the Vendor under this Agreement shall have no contractual relationship with the MPO; they shall not be considered employees of the MPO. Each Party is responsible for its own acts and omissions undertaken in the performance of this Agreement. Neither Party has the right or obligation to supervise or control the acts or omissions of the other Party in the performance of this Agreement. Further, Vendor agrees to keep the premises where its work is being completed under this Agreement in a reasonably safe condition for persons rightfully on the premises.
- 12.2 Indemnity.** Consultant will indemnify, save and hold harmless the MPO and all of its departments, agents and employees of and from any and all claims, demands, actions or causes of action of whatsoever nature or character (including reasonable attorney's fees) arising out of or by reason of the execution or negligent performance of the work provided for herein by Consultant or its agents and anyone contracting under or for Consultant's obligations hereunder, and further agrees to defend at its own sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising out of or as a result of work performed by Consultant or its agent, or anyone contracting with Vendor for such work hereunder.
- 12.3 Insurance.** Consultant shall obtain, and keep in full force and effect throughout the duration of this Agreement, all insurance required by all applicable MPO, federal and local laws, rules and regulations.

SECTION 21. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION (2-1-18)

21.1 Coordinating Professional:

To the extent of any design work applicable to the Services under this Agreement, the following Coordinating Professional language applies:

If MPO's project involves more than one licensed professional engineer, MPO shall designate a Coordinating Professional (defined in Neb. Rev. Stat. § 81-3408) for this project as required by Neb. Rev. Stat. § 81-3437.02 of the Nebraska Engineers and Architects Regulation Act (Neb. Rev. Stat § 81-3104 et seq.). The Coordinating Professional will apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional will verify that all design disciplines involved in the project are

PROFESSIONAL SERVICES AGREEMENT

working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. Consultant agrees to cooperate with the designated Coordinating Professional to meet the requirements of state law. Consultant further agrees to contractually require its subconsultants to cooperate with the designated Coordinating Professional.

If Consultant's engineer has been identified as the Coordinating Professional for this project, and, for whatever reason, the designated Coordinating Professional is no longer assigned to the project, Consultant shall provide MPO written notice of the name of the replacement within 10 business days.

21.2 Professional Registration:

To the extent the work requires engineering services, Consultant will affix and sign the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all applicable documents, plans, specifications, and reports prepared under any Agreements as required by the Nebraska Engineers and Architects Regulations Act.

SECTION 22. SUCCESSORS AND ASSIGNS

This Agreement is binding on successors and assigns of either party.

SECTION 23. DRUG-FREE WORKPLACE POLICY

Consultant shall have, and comply with, an acceptable and current drug-free workplace policy on file with MPO. Consultant's employees shall not use illegal drugs or consume alcohol during work hours and while performing Services for State under this Agreement.

SECTION 24. FAIR EMPLOYMENT PRACTICES ACT

Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. §§ 48-1101 through 48-1126.

SECTION 25. DISABILITIES ACT

Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35.

SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES

26.1 Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this Agreement.

26.2 Consultant shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the award and performance of FHWA-assisted contracts. Failure of Consultant to carry out the requirements set forth above will constitute a breach of this Agreement and, after the notification of the FHWA, may result in termination of this Agreement by MPO or State or such remedy as MPO or State deem appropriate.

SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES

27.1 Compliance with Regulations

During the performance of this Agreement, Consultant, for itself and its assignees and successors in interest, agrees to comply with the regulations of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 CFR 21 and 27, hereinafter referred to as the Regulations).

27.2 Nondiscrimination

Consultant, with regard to the work performed by it after award and prior to completion of this Agreement, shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.

27.3 Solicitations for Subagreements, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subagreement, including procurements of materials or equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, age, disability, or national origin.

27.4 Information and Reports

Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MPO, State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall certify to MPO, State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.

27.5 Sanctions for Noncompliance

In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, MPO will impose such agreement sanctions as it or State and FHWA may determine to be appropriate, including but not limited to withholding of payments to Consultant under this Agreement until Consultant complies, and/or cancellation, termination, or suspension of this Agreement, in whole or in part.

27.6 Incorporation of Provisions

Consultant shall include the provisions of subsections 27.1 through 27.5 of this Agreement in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. Consultant shall take such action with respect to any subagreement or procurement as MPO, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a subconsultant/ subcontractor as a result of such direction, Consultant may request that MPO or State

PROFESSIONAL SERVICES AGREEMENT

enter into such litigation to protect the interests of MPO or State and, in addition, Consultant may request that the MPO, State and the United States enter into such litigation to protect the interests of the MPO, State and the United States.

SECTION 28. SUBLETTING, ASSIGNMENT, OR TRANSFER

- 28.1 Any subletting, assignment, or transfer of any professional services to be performed by Consultant is hereby prohibited unless prior written consent of MPO is obtained.
- 28.2 At MPO's discretion, Consultant may enter into an agreement with any subconsultants/subcontractors for work covered under this Agreement. All subconsultant/subcontractor agreements for work covered under this Agreement must contain identical or substantially similar provisions to those in this Agreement. No right-of-action against MPO will accrue to any subconsultant/subcontractor by reason of this Agreement.
- 28.3 As outlined in SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES, Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other services must include documentation of efforts to employ a disadvantaged business enterprise.

SECTION 29. CONSULTANT CERTIFICATIONS (MPO)

The undersigned duly authorized representative of Consultant, by signing this Agreement, hereby swears, under the penalty of law, to the best of my knowledge and belief, the truth of the following certifications, and agrees as follows:

- 29.1 Neb. Rev. Stat. § 81-1715(1). I certify compliance with the provisions of Section 81-1715 and, to the extent that this Agreement is a lump sum, actual cost-plus-fixed-fee, or specific rates of compensation type professional service agreement, I hereby certify that wage rates and other factual unit costs supporting the fees in this Agreement are accurate, complete, and current as of the date of this Agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which MPO determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 29.2 Neb. Rev. Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:
- a. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement, or
 - b. Has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out this Agreement, or
 - c. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this Agreement, except as here expressly stated (if any).

PROFESSIONAL SERVICES AGREEMENT

29.3 Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions. Section 29.3a below contains 10 instructions that consultant agrees to follow in making the certifications contained in 29.3b.

a. Instructions for Certification

1. By signing this Agreement, Consultant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with MPO's determination whether to enter into this Agreement. However, failure of Consultant to furnish a certification or an explanation will disqualify Consultant from participation in this Agreement.
3. The certification in this clause is a material representation of fact upon which reliance was placed when MPO determined to enter into this Agreement. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, MPO may terminate this Agreement for cause or default.
4. Consultant shall provide immediate written notice to MPO if at any time Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 – Debarment and suspension. Exec. Order No. 12,549, 51 Fed. Reg. 6370 (1986).
6. Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by MPO before entering into this Agreement.
7. Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by MPO without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

PROFESSIONAL SERVICES AGREEMENT

10. Except for transactions authorized under paragraph a.6. of these instructions, if Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, MPO may terminate this Agreement for cause or default.

b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. By signing this Agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b) above; and
 - d) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this Agreement. I acknowledge that this certification is to be furnished to MPO, State and the FHWA in connection with this Agreement involving participation of federal-aid planning funds and is subject to applicable, state and federal laws, both criminal and civil.

SECTION 30. MPO CERTIFICATION

- 30.1 By signing this Agreement, 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 Agreement 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.
- 30.2 I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this Agreement involving participation of federal-aid planning funds and is subject to applicable state and federal laws, both criminal and civil.

SECTION 31. ENTIRE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

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

EXECUTED by Consultant this 9 day of September, 2021.

HDR
Matthew Tondl

Matthew B. Tondl
Senior Vice President

STATE OF NEBRASKA)
Douglas)ss.
HALL COUNTY)

SUBSCRIBED AND SWORN to before me this 9 day of September, 2021.



Theresa McKinley
Notary Public

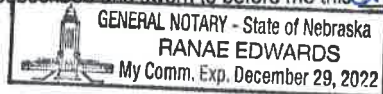
EXECUTED by the GIAMPO this 29th day of Sept., 2021

Grand Island Area Metropolitan Planning Organization

Roger G. Steele

Roger G. Steele
Mayor for the City of Grand Island

Subscribed and sworn to before me this 29th day of Sept., 2021



Ranae Edwards

Stacy R. Wankhof
Interim City Attorney