

PROGRAM AGREEMENT- PL FUNDS

City of Grand Island
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO.PL-1 (52), STATE CONTROL NO. 00918A
FY 2015 PLANNING (PL) AGREEMENT

THIS AGREEMENT is between the City of Grand Island, Nebraska, a local public agency ("LPA"), and the State of Nebraska, Department of Roads ("State"), collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, there are Federal funds (PL Funds) available for use by Metropolitan Planning Organizations (MPOs) in their transportation program planning level activities ("PL Project"), and

WHEREAS, the purpose of this agreement is to provide partial funding of LPA's portion of the planning activities scheduled to be performed commencing July 1, 2014, as outlined in Grand Island Area Metropolitan Planning Organization's (GIAMPO) Unified Planning Work Program which is shown on attached Exhibit "A", and

WHEREAS, the Moving Ahead for Progress in the 21st Century (MAP-21) requires that a continuing, comprehensive transportation planning process be carried on cooperatively between state and local governments in urban areas of over 50,000 population and

WHEREAS, LPA has agreed to establish and maintain a continuing, comprehensive, and cooperative transportation planning process in the metropolitan area, and

WHEREAS, LPA has been designated as the recipient agency for the Grand Island metropolitan area for PL Funds pursuant to 23 U.S.C. Section 134 as amended by the Transportation Equity Act for the 21st Century, and

WHEREAS, the Federal share payable on any portion of a PL Project will be a maximum of 80 percent of the eligible and participating costs; the LPA's share will be the remaining 20 percent of the eligible and participating costs; and LPA will also be responsible for all other nonparticipating or ineligible costs, and

WHEREAS, Federal law provides that the Federal share of the cost of PL Projects will be paid only to the State, and

WHEREAS, the State is willing to assist LPA to obtain Federal approval and funding of these LPA PL Projects with the understanding that no State Funds are to be expended in support of these PL Projects, and

WHEREAS, the LPA has designated an available fully-qualified public employee or elected official to act as "Responsible Charge" (RC) for the subject PL Project, and

WHEREAS, the RC will be in day-to-day responsible charge of all aspects of the PL Project, and maintain the PL Project's eligibility for Federal-aid Transportation project funding, and

WHEREAS, the LPA understands that it must comply with all terms of 23 C.F.R. 635.105 in order for this PL Project to be eligible for Federal funding, and

WHEREAS, if the LPA is to receive Federal participation for any portion of the work on the proposed PL Project, it is necessary for the work to comply with Federal requirements and procedures, and

WHEREAS, the State will pay the eligible costs incurred directly to LPA's outside service providers when the LPA has contracted for such services, subject to reimbursement from LPA of LPA's share of such costs, and

WHEREAS, the State's role is federal funding eligibility, including providing quality assurance to ensure FHWA on the LPAs behalf that the PL Project is managed according to federal rules and regulations. The State will coordinate with the LPA on federal funding issues on behalf of the LPA, and

WHEREAS, this PL Project includes monies from the Federal Highway Administration (FHWA); therefore, if a non-federal entity expends \$500,000 or more in total federal awards in a fiscal year, then OMB Circular A-133 audit requirements must be addressed as explained further in this agreement, and

WHEREAS, the total cost of the Program is currently estimated to be \$135,177, the federal share is estimated to be \$108,142, and the LPA's share is estimated to be \$27,035, but such costs may increase or decrease due to variations between the estimated and actual Program costs.

WHEREAS, the federal share \$108,142 is the sum of the carryover funds from the last Fiscal Year (\$0) and funds from the upcoming Fiscal Year (\$108,142). The amount of new and carryover PL funds are estimated based on information available at the time of the agreement and are subject to change. The availability of the federal funds is based on the continuation of existing funding levels. The LPA has earmarked and has placed in its fiscal budget at least the amount of the local match. The LPA's share may include both in kind services and a local match. The in-kind services are for this Program is estimated to be \$27,035, and

WHEREAS, the LPA desires that GIAMPO's Unified Planning Work Program, which is shown on attached Exhibit "A", be developed under the designation of Project No. PL-1 (52), as evidenced by the Resolution of the LPA dated the 9th day of July 2014, attached as Exhibit "B" and made a part of this agreement.

NOW THEREFORE, in consideration of these facts, the LPA and State agree as follows:

SECTION 1. DEFINITIONS

For purposes of this agreement, the following definitions will apply:

"CFDA" means Catalog of Federal Domestic Assistance.

"CFR" means the Code of Federal Regulations.

"DOT" means the United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

"FHWA" means the Federal Highway Administration, United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

"FULLY QUALIFIED" means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified LPA "Responsible Charge" (RC's).

"LPA" means Local Public Agency sponsoring a federally funded transportation project and determined to be qualified to assume the administrative responsibilities for such projects by the State.

"NEB. REV. STAT" means the Nebraska Revised Statutes as set forth in Nebraska law.

"OMB" means the Federal Office of Management and Budget.

"FULL-TIME PUBLIC EMPLOYEE" means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which Federal-aid is sought.

"PUBLIC EMPLOYEE" for the purpose of selecting an RC for this project means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

“RESPONSIBLE CHARGE” or “RC” means the public employee or elected official who is fully empowered by the LPA and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project. The RC is the day-to-day project manager, and the LPA’s point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying options, working directly with stakeholders, making decisions, and actively monitoring the project. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents the LPA’s interests in the delegated technical tasks.

“UNIFIED PLANNING WORK PROGRAM (PROGRAM)” means a document of transportation planning activities performed within the metropolitan planning areas, or urbanized areas with populations of 50,000 or more. The Program describes planning activities to be completed, estimate the cost for these planning activities, and indicate the lead agency. Transportation activities to design and build transportation infrastructure are usually not included in Programs; however all federally funded studies should be included in the Program.

“STATE” means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. The State is a funding liaison between LPA and the United States Department of Transportation in LPA federally funded transportation projects.

“STATE CERTIFIED CONSULTANT” means a Consultant that has met the certification requirements of the Nebraska Department of Roads to provide professional services in certain work categories for federal and state funded work in Nebraska.

SECTION 2. TERM OF THE AGREEMENT

This agreement will begin with the fiscal year beginning July 1, 2014 and ending June 30, 2015.

SECTION 3. PURPOSE OF AGREEMENT AND RESPONSIBILITIES OF THE PARTIES

A. Purpose

The LPA wishes to complete a Federal-aid planning project for activities within its jurisdiction. The LPA and the State understand that the Federal Highway Administration (FHWA) will not provide funding directly to LPA for this project; instead, FHWA provides Federal funding for eligible and participating project costs through the State. The State, pursuant to Neb. Rev. Stat. § 39-1305, will act under this agreement as a steward of federal funds and as a liaison between LPA and FHWA. The purpose of this agreement is to set forth the understanding of the LPA and the State concerning their respective duties to enable the project

to be eligible for federal-aid funding. Under this agreement, the LPA shall continue to have all duties concerning any aspect of the planning processes. Nothing in this agreement shall be construed to create any duty of the State to LPA concerning such matters. LPA further agrees that LPA shall have no claim or right of action against the State under this agreement if FHWA determines that the project is not eligible in whole or in part, for federal-aid funding. The following sections of this agreement include the PL program requirements and other conditions State believes in good faith that LPA must meet for this PL Project to be eligible for federal funding.

LPA acknowledges that many conditions must be met by LPA in order to receive Federal-aid reimbursement. Those conditions include, but are not limited to, the unknown availability of federal-aid funds, the timely and satisfactory completion of all federal-aid funding requirements and the perceived priority of this project with other projects competing for limited federal-aid funds. Therefore, LPA agrees to develop this project in an effort to meet all federal and state eligibility requirements so the project may be determined eligible for federal-aid funding.

B. LPA RESPONSIBILITY

- Provide the necessary administration of committees and staff, and consult, collaborate and coordinate with the State to accomplish the objectives of the Program;
- Assign qualified LPA staff personnel as needed to execute LPA's portion of the Program and oversee the contractual service portion of the Program. LPA shall submit to the State a listing of all LPA personnel positions that may be selected or assigned to the work contemplated herein. Said listing shall indicate the title or classification, qualifications, and salary range of each such position. It is understood that the salaries and expenses of the Chairman or members of GIAMPO's Board will not be reimbursable as direct costs to the Program. It is agreed that employees of LPA whose time is directly assignable to the Program shall keep and sign a time record showing element of Program, date and hours worked. During FY 2015, the LPA may make occasional temporary changes to the primary team. However, any permanent change to the primary team will require prior written approval from the State;
- Arrange for and conduct meetings and conferences to review working details and make presentations to the principals, participants and other interested groups and bodies as will best promote and effect cooperation, coordination and understanding in the Program. Manuals, questionnaires, reports, forms and other technical documents prepared for use

in accomplishing the Program shall be submitted to the State and the Federal Highway Administration for review and approval prior to use;

- Select a Consultant following all guidelines and requirements outlined in the State's LPA Guidelines Manual for Federal Aid Projects in regard to the method of procurement, evaluation, selection, and contract types. The selected Consultant must be certified to provide Transportation Planning Services by the State. LPA shall be responsible to determine that the Consultant is qualified to provide the expertise and experienced personnel to accomplish the required work product. Price cannot be a selection factor. The LPA shall follow any applicable requirements including, but not limited to, requirements defined in Chapter 4 of the LPA Guidelines Manual.

C. STATE RESPONSIBILITY

- Assign qualified personnel as needed to accomplish tasks assigned to or agreed to by the State.
- Review the Consultant's Scope of Services and Fee Proposal and provide comments to the LPA.

D. PARTIES RESPONSIBILITY

- If, after consultation with the State, it is determined that changes to the Program are necessary, written approval by the State and the Federal Highway Administration shall be obtained.
- The parties to this Agreement agree to collaborate closely on the decisions affecting the composition, scope and duration of the work and those decisions shall receive the written approval of the State prior to proceeding with the Program.
- If, as the work progresses, major changes in the schedules, funding, scope, staffing or estimated total cost of the work to be performed is deemed necessary or desirable, adjustments for payment or modification in the performance of the work shall be submitted by supplemental agreement request to the State for review and approval by the State and the Federal Highway Administration.

SECTION 4. RESPONSIBLE CHARGE (RC) REQUIREMENTS

- A. The LPA hereby designates Terry Brown as the RC for this project.
- B. Duties and Assurances of the LPA concerning its designated RC for this project.
 1. The LPA understands the duties and responsibilities of the LPA and RC as outlined in the LPA Guidelines Manual for Federal-Aid Projects.

2. The LPA has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision making.
3. The RC is a full-time public employee or elected official of the LPA, or a full-time employee of another entity as defined in "Public Employee" above.
4. The LPA agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.
5. If, for whatever reason, the designated RC is no longer assigned to the project during the design phase, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's Highway Planning Manager; after such notification the LPA shall replace the RC no later than thirty calendar days or sooner if possible. With advance written approval by the State, the LPA may use a Provisional RC in accordance with the State's Provisional RC Policy.
6. The LPA agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid projects. The LPA understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the LPA or its agents or representatives result in a finding that a project is ineligible for Federal funding, the LPA will repay the State all previously paid Federal funds, as determined by the State, and any costs or expenses the State has incurred for the project, including but not limited to, any costs reimbursed for the time and expenses of the RC.

SECTION 5. FEDERAL AID PROJECT REQUIREMENTS

LPA agrees to comply with all Federal-aid project procedures and requirements applicable to this project, including federal laws, and when applicable, state and local laws, and the LPA Guidelines Manual for Federal-aid Projects.

A. The Applicable Legal and Contract Requirements.

1. **Title 23 U.S.C., 23 CFR, and 49 CFR** - Title 23, Chapter I, of the United States Code contains most of the federal laws governing this Federal-aid transportation project. Title 23 of the Code of Federal Regulations is a codification of the rules and regulations including provisions governing Federal-aid highway projects administered by the Federal

Highway Administration, Department of Transportation. Title 49 of the Code of Federal Regulations, Parts 1-99, also includes regulations applicable to LPA's Federal-aid transportation project. The Federal-aid highway program provisions of 49 CFR are found primarily in Parts 18, 19, 24, 26-29, 32, 37 and 38.

2. **LPA Guidelines Manual** - LPA also agrees to develop its project in strict compliance with the provisions of the LPA Guidelines Manual for Federal Aid Projects (The Manual), which is incorporated herein by this reference. The Manual is a document drafted in part, and formally approved, by the FHWA as a document setting out requirements for LPA projects funded with Federal-aid funds. A current version of The Manual can be found in its entirety at the following internet address: <http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html>. In the event the LPA believes that The Manual doesn't clearly address a particular aspect of the project work, the LPA shall seek guidance or clarification from the State's Local Project Section Engineer or Project Coordinator.
- B. **Federal Oversight.** If the project has been designated as full federal oversight, then additional federal oversight and approvals will be required. It is the responsibility of the LPA to understand the additional requirements and ensure that the State and FHWA are provided timely notice for additional oversight and approvals.
- C. **Loss of Funding.** In order for the LPA to receive Federal Funds for any part of this project, the LPA shall perform the services for all aspects of the PL Project, according to Federal procedures and requirements. Although Federal Funds may be allocated to the project, all aspects or certain aspects of the PL Project may become ineligible for Federal Funds if Federal procedures and requirements are not met.

SECTION 6. SUSPENSION OR TERMINATION

A. Suspension.

The State, in its sole discretion, reserves the right to suspend LPA's project when the State determines that there are issues related to project performance, responsiveness, quality or eligibility that must be corrected by LPA. Suspension of the project may include, but is not limited to, the State declaring LPA's continued work on the project ineligible for reimbursement and State discontinuing assistance with and review of LPA's work on this project. The State shall provide LPA notice of the suspension including: (1) a description of the reason(s) for the suspension, (2) a timeframe for LPA to correct the deficiencies, and when applicable, (3) a description of the actions that must be taken for the State to revoke the suspension.

A suspension may also be imposed by the State for any of the reasons listed in the Termination subsection below, or for any significant change in the scope of the project that has not been previously approved by the State or FHWA.

Failure to correct the deficiencies identified in a suspension will be grounds for the loss of eligibility for federal funding for the project and for termination of this agreement.

B. Termination.

This agreement may be terminated as follows:

1. The State and the LPA, by mutual written agreement, may terminate the agreement at any time.
2. The State may terminate this agreement for the following reasons:
 - (a) A decrease or shift in available federal-aid funding that will, in the sole discretion of the State, make it unlikely or impossible for this project to be prioritized to receive federal-aid funding.
 - (b) When LPA's project has not been properly advanced as evidenced by the occurrence of any of the following events:
 - (i) LPA has not sought reimbursement from State for any RC or other eligible project costs for a period of one year.
 - (ii) LPA's designated RC has not met all RC qualification requirements for the project by the time specified by the State.
 - (iii) LPA has failed to replace the RC with an RC approved by the State within 30 days during the design stage or 10 days during the project letting or construction stages, from when the RC leaves, or is removed from the project for any reason.
 - (iv) LPA has not included the Program within the LPA's one or six year plans or, when applicable, within the LPA's Transportation Improvement Program (TIP), in the correct fiscal year.
 - (v) LPA's failure to meet the requirements for Federal-aid local projects found in federal, state, or local law or policy, or the requirements of the LPA Guidelines Manual.
 - (d) A notice or declaration of FHWA or the State that any part of the project is or has become ineligible for federal funding.
 - (e) LPA's failure to sign any State drafted or approved project agreement including supplemental agreements.

- (f) LPA's failure to pay in full the local share specified in any agreement within 30 days after receipt of an invoice from the State.
- (g) LPA's breach of a provision of this agreement.
3. The LPA may terminate the agreement upon sixty (60) days written notice of termination to the State, subject to the LPA meeting the conditions of paragraph 5 below.
4. Prior to the State terminating this agreement, the State shall provide written notice to the LPA of the basis for termination and, when applicable, provide the LPA sixty (60) days to properly resolve all issues identified by the State.
5. Whenever the project is terminated for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project that have not been reimbursed under 5.(a). Further, the LPA will thereafter be solely responsible for all costs associated with LPA's project.

SECTION 7. OMB CIRCULAR A-133 AUDIT

The funding for the project under this agreement includes federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 and the implementing regulations contained in OBM Circular A-133, the A-133 Audit is required if the non-federal entity expends \$500,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.

The LPA shall have its finance officer or auditor; review the situation to determine what the LPA must do to comply with this federal mandate. Any federal funds for LPA projects paid directly to contractors and Consultants by the State, on behalf of the LPA, will be reported on the State's schedule of expenditures of federal awards (SEFA) and need not be reported by LPA. (as per FHWA's February 16, 2012 letter and State's February 24, 2012 letter). If an A-133 audit is necessary, the expenditures related to the federal funds expended under this project should be shown in the report's Schedule of Expenditures of the Federal Awards (SEFA).

If necessary, the Federal award information needed for the SEFA includes:

Federal Grantor: U.S. Department of Transportation – Federal Highway Administration

Pass-Through Grantor: Nebraska Department of Roads

Program Title: Highway Planning and Construction (Federal-Aid Highway Program)

CFDA Number: 20.205

Project Number: PL-1 (52)

If an A-133 Audit is submitted by the LPA, the LPA shall provide a copy of the audit report to the Nebraska Department of Roads, Highway Audits Manager, P.O. Box 94759, Lincoln, NE 68509-4759.

SECTION 8. FINANCIAL RESPONSIBILITY

A. TOTAL PROJECT COSTS AND FUNDING COMMITMENTS

The total cost of the Program is currently estimated to be \$135,177.

ESTIMATED PROJECT FUNDING			
	Federal	Local & In-Kind Match	Total
Recipient (Agreement)			
Grand Island (VL1404)	\$108,142	\$27,035	\$135,177
Subcontractors (if applicable)			
Not Applicable	N/A	N/A	N/A
Totals	\$108,142	\$27,035	\$135,177

Both the LPA and State recognize this is a preliminary estimate and the final cost may be higher or lower. In order to exceed the costs obligated for the Program, the LPA must seek and obtain from the State additional Federal funding obligation by:

- Submitting a detailed cost estimate, when applicable, and receiving State’s approval of such estimate,
- Receiving notification from the State that additional Federal funds have been obligated,
- Receipt of a notice to proceed from the State to incur costs, if applicable

B. LPA RESPONSIBILITY

The LPA understands that payment for the costs of this project, are the sole responsibility of the LPA when Federal participation is not allowable or available or if the project is subsequently determined to be ineligible for Federal-aid funding. Therefore, when the Federal government refuses to participate in the project or any portion of the project the LPA is responsible for full project payment with no cost or expense to the State in the project or in the ineligible portion of the project. Should the project be abandoned before completion, the LPA shall pay or repay the State for all costs incurred by the State prior to such abandonment.

C. REIMBURSEMENT OF COSTS INCURRED BY THE LPA

LPA incurred project costs of those listed in this section may be eligible for reimbursement from Federal-aid funds for this project if:

- The LPA submits a detailed cost estimate, when applicable, and the State approves such estimate,

- The State has obtained Federal funds obligation,
- The State issues notice to proceed to the LPA to incur costs. Work performed on the project prior to receipt of the Notice-to-Proceed is ineligible for Federal-aid reimbursement,
- The LPA obtains the approval of the State and of the FHWA prior to the purchase of any specialized equipment. Specialized equipment is equipment not ordinarily used or required in the regular administrative or planning operations of LPA. Such equipment must be required for and used primarily on work associated with this project. The cost of this specialized equipment must be reasonable as determined by the State or FHWA,
- The LPA agrees to certify that items of equipment included in direct costs have been excluded from the indirect costs,
- The LPA submits invoices no more frequently than monthly and no less often than quarterly and in accordance with the procedures below. The LPA is responsible for submitting for reimbursement the total actual costs expended that are eligible for Federal-aid. The State, on behalf of FHWA, will review the costs submitted and determine what costs are eligible for reimbursement. The State will reimburse the LPA for the Federal share of the eligible actual costs. The LPA shall retain detailed cost records supporting all invoices, and shall submit those records to the State upon request.
- The LPA is required to submit their reimbursement requests through OnBase; an electronic invoice workflow application utilized by the NDOR. Reimbursement requests should be submitted to NDOR Highway Planning Manager. In addition to a cover sheet showing the amount of the reimbursement request and the local share, the reimbursement request must also include: 1) Invoice, 2) Cost Breakdown Form, 3) Progress Report, and 4) proof of payment to any subcontractors.
 - 1) Invoice – the invoice must include the following breakdown of costs
 - a. For Actual Cost Agreements:
 - i. Direct Labor Costs (hours worked multiplied by the actual labor rate)
 - ii. Labor Fringe Benefits and/or if appropriate Indirect (Overhead) Costs
 - iii. Fee For Profit (as negotiated in the professional services agreement)
 - iv. Direct Non-Labor Costs
 - v. Dates of service
 - b. Federal balance due to the MPO for the current period

- c. Federal and Local share breakdown of the expenses
- 2) NDOR Cost Breakdown — NDOR Payment Request Form, properly prepared, signed and dated.
- 3) Progress Report — must include the following:
 - a. A description of the work completed within current billing period
 - b. A list of unresolved issues that will impede the progress of the work
 - c. The percent of authorized work completed
- 4) Proof of Payment to Subcontractors - Proof of payment (e.g. canceled checks or funds transfer) is required before invoice reimbursement can occur.

It is understood that when utilizing PL Funds for travel expenses related to planning activities outside the MPO area, the LPA will submit detailed travel information to the State either prior to the travel, or submitted with the PL billing statement. The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated in the current website address for U.S. General Services Administration's (GSA) rates which is indicated below:

<http://www.gsa.gov/portal/category/100120>

State will perform an initial check to verify that all necessary documentation is accurate and complete. The State will reimburse the LPA for the Federal share of the eligible actual costs and will make a reasonable effort to pay LPA within 15 days of State's receipt of the LPA's reimbursement request.

The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR 31) will be applied to determine whether the costs incurred by the LPA are allowable under this agreement, including any Professional Services agreements.

Project oversight costs include: direct costs, such as compensation of LPA employees for their time devoted and related directly to the performance of the project phase for which the federal-aid was approved; cost of materials consumed as part of the project; and indirect costs, with an approved Indirect Cost Allocation Plan as outlined in the LPA Guidelines Manual for Federal Aid Projects.

D. PAYMENT OF CONSULTANT PROFESSIONAL SERVICES BY THE STATE

When the LPA uses Consultant professional services for this project, the costs of these services may be eligible for payment from Federal-aid funds. For the State to pay for these professional services, the LPA must execute an agreement with the service provider using the State's template agreement. Such agreement shall include a detailed scope of services and fee

proposal. The State shall pay the Consultant directly, with Federal and local funds, for any eligible costs. Any non-participating costs, or costs determined to be ineligible, shall be the sole responsibility of the LPA and LPA shall reimburse the State for any such costs paid to the Consultant. **Any professional services performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

E. LPA PROJECT BUDGET AND INVOICING BY THE STATE

The LPA will earmark and place in its fiscal budget an amount sufficient to fund LPA's project commitments as shown in subsection A. above.

At times determined by the State, and after execution of this agreement, the State will invoice the LPA for some or LPA's entire share of the State incurred preliminary engineering project costs. After execution of a professional consultant services agreement for this project, the State will invoice the LPA their share of the total agreement amount.

F. AUDIT AND FINAL COST SETTLEMENT

The final settlement between the State and the LPA will be made after final funding review and approval by the State and after an audit, if deemed necessary, has been performed to determine eligible actual costs.

If deemed necessary, an audit will be performed by the State to determine whether the actual costs incurred on the project are eligible for reimbursement with Federal funds. The amount of the final settlement between the State and the LPA will be the LPA's share of the total eligible project costs, plus all ineligible project costs, less the total local funds previously paid to the State by the LPA.

If the LPA's calculated share is more than the amount of local funds previously paid to the State, the State will bill the LPA for the difference. The LPA agrees to pay the amount due the State within thirty (30) days of receipt of invoice.

If the LPA's calculated share is less than the amount of local funds previously paid to the State, the State will reimburse the LPA for the difference.

SECTION 9. PROCUREMENT OF PROFESSIONAL SERVICES

The LPA shall procure engineering and planning services providers using the Qualifications Based Selection process set out in the LPA Guidelines Manual. Professional services include, but are not limited to; planning studies and preliminary engineering

SECTION 10. PROFESSIONAL SERVICES

It is understood by the Parties that the LPA is solely responsible for the professional performance and ability of the LPA and their Consultant(s) in the planning, design, construction, operation and maintenance of this project. Any review or examination by the State, or acceptance or use of the work product of the LPA or their Consultant will not be considered to be a full and comprehensive review or examination and will not be considered an approval, for funding or for any other purpose, of the work product of the LPA and their Consultant which would relieve the LPA from any expense or liability that would be connected with the LPA's sole responsibility for the propriety and integrity of the professional work to be accomplished by the LPA for the project.

SECTION 11. INDEMNITY

The LPA agrees to hold harmless, indemnify, and defend the State and FHWA against all liability, loss, damage, or expense, including reasonable attorney's fees and expert fees, that the State and/or FHWA may suffer as a result of claims, demands, costs, or judgments arising out of LPA's project and the terms of this agreement.

SECTION 12. CONFLICT OF INTEREST LAWS

The LPA 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 the project to remain fully eligible for State or Federal funding. LPA should review, understand and follow the instructions provided in the **NDOR CONFLICT OF INTEREST GUIDANCE**

DOCUMENT FOR LPA OFFICIALS, EMPLOYEES & AGENTS FOR LOCAL FEDERAL-AID

TRANSPORTATION PROJECTS located on the State website at the following location:

<http://www.roads.ne.gov/gov-aff/ipa/chapter-forms/coi/coi-guidance-doc-ipa.pdf>

The LPA must also complete and sign the **NDOR CONFLICT OF INTEREST**

DISCLOSURE FORM FOR LPAS FOR LOCAL FEDERAL-AID TRANSPORTATION

PROJECTS, for each project. This form is located on the State website at the following location:

<http://www.roads.ne.gov/gov-aff/ipa/chapter-forms/coi/coi-disclosure-doc-ipa.pdf>

Consultants and Subconsultants providing services for LPA's, or submitting proposals for services, shall submit a Conflict of Interest Disclosure Form for Consultants. Consultants and Subconsultants shall submit a revised form for any changes in circumstances, or discovery of any additional facts that could result in someone employed by, or who has an ownership,

personal, or other interest with Consultant or Subconsultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

SECTION 13. DRUG FREE WORKPLACE

The LPA shall have an acceptable and current drug-free workplace policy on file with the State.

SECTION 14. RECORDS RESPONSIBILITY

The LPA shall maintain all correspondence, files, books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office. These records shall be available at all reasonable times during the contract period and for at least three years from the date of final cost settlement under this agreement. Such records must be available for inspection by the State and the FHWA/FTA or any authorized representatives of the Federal government, and the LPA shall furnish copies to those mentioned in this section when requested to do so.

Papers, interim reports, forms or other materials which are a part of the work under contract will not be copyrighted without written approval of the State and Federal Highway Administration.

Either party to the Agreement may initiate a request for publication of the final or interim reports, or any portions thereof.

Publication by either party shall give credit to the other party and to the Federal Highway Administration. However, if the State or Federal Highway Administration does not wish to subscribe to the findings or conclusions of the Study the following statement shall be included on the credit sheet: "The opinions, findings and conclusions expressed in this publication are those of the authors and not necessarily those of the State or Federal Highway Administration."

In the event of failure of agreement between the State and LPA relative to the publication of any reports during the period of the contract, each party reserves the right to publish independently, in which event the nonoccurrence of the other party shall be set forth, if requested.

Both written and oral releases are considered to be within the context of publication. However, there is no intention to limit discussion of the study with participants in the Transportation Planning Program, small technical groups or lectures to employees or students. Lectures to other groups which describe the plans are permissible.

Neither party shall publish nor otherwise disclose, nor permit to be disclosed or published, the results of the investigation herein contemplated, during the period of the Agreement, without notifying the other party.

When the scheduled time for presentation of a paper does not permit formal review and approval of a complete report, a statement must be included in the paper and in the presentation of the effect that the paper had not been reviewed by the appropriate other party.

SECTION 15. FAIR EMPLOYMENT PRACTICES

If the LPA performs any part of the work on this project itself, the LPA shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101, through 48-1126, and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 as set forth in the SECTION 30. TITLE VI NONDISCRIMINATION CLAUSES of this agreement. The reference to

“Contractor” in this section also means the “LPA”.

SECTION 16. DISABILITIES ACT

The LPA agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

SECTION 17. LAWFUL PRESENCE IN USA AND WORK ELIGIBILITY STATUS PROVISIONS

The LPA agrees to comply with the requirements of Neb.Rev.Stat. §4-108 to 4-114 with its Federal-aid project, including, but not limited to, the requirements of §4-114(2) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

SECTION 18. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

A. Policy

The LPA shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

B. Disadvantaged Business Enterprises (DBEs) Obligation

The LPA and State shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal Funds provided under this agreement. In this regard, the LPA shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

The LPA, acting as a sub-recipient of Federal-aid funds on this project shall adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the LPA enters into on this project.

Failure of the LPA to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the State or such remedy as the State deems appropriate.

SECTION 19. TITLE VI NONDISCRIMINATION CLAUSES

During the performance of this agreement, the LPA, for itself, its assignees and successors in interest agrees as follows:

- (1) Compliance with Regulations: The LPA shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: The LPA, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations

under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.

- (4) Information and Reports: The LPA shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to,
- (a) Withholding of payments to the LPA under this agreement until the LPA complies, and/or
- (b) Cancellation, termination or suspension of this agreement, in whole or in part.
- (6) Incorporation of Provisions: The LPA shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The LPA shall take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the State to enter into such litigation to protect the interests of the State, and in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 20. ENTIRE AGREEMENT

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

SECTION 21. CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

Project No. (PL-1(52)

Control No. (00918A)

City of Grand Island FY 2015 PLANNING (PL) AGREEMENT

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, subgrants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

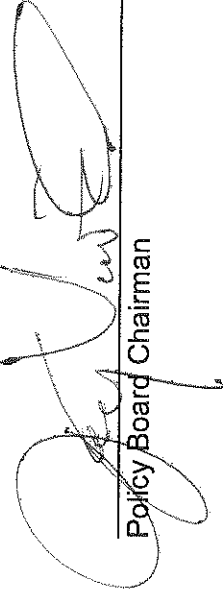
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

IN WITNESS WHEREOF, the Parties hereby execute this agreement pursuant to lawful authority as of the date signed by each party.

EXECUTED by the LPA this 20th day of July, 2014.


CITY OF GRAND ISLAND

Jay Vavricek, Mayor


Policy Board Chairman

EXECUTED by the State this 17th day of July, 2014.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Michael Owen, P.E.


Planning & Project Development Engineer