



City of Grand Island

Tuesday, July 14, 2015

Council Session

Item G-11

#2015-175 - Approving Agreement with NDOR for the Grand Island Area Metropolitan Planning Organization (GIAMPO) for the 2016 Fiscal Year Transportation Planning Program

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Terry Brown PE, Assistant Public Work Director

Meeting: July 14, 2015

Subject: Approving Agreement with NDOR for the Grand Island Area Metropolitan Planning Organization (GIAMPO) for the 2016 Fiscal Year Transportation Planning Program

Presenter(s): John Collins PE, Public Works Director

Background

All agreements must be approved by the City Council.

In March 2013 the City of Grand Island was designated as an urbanized area with a population over 50,000 which requires the metropolitan area to establish a transportation planning process in accordance with Title 23 CFR 450 of the current federal transportation bill.

As a designated MPO, a multimodal Long Range Transportation Plan (LTRP) must be developed and approved by March 27, 2016. During FY 2015 (July 1, 2014 – June 30, 2015), the following key activities will be taking place to insure that the City of Grand Island, and the Grand Island Area Metropolitan Planning Organization (GIAMPO) will continue to receive federal transportation funding for projects:

- September 2014 – June 30, 2015 – Development of the traffic model and public outreach
- November 2015 – “Draft” plan will be completed and made available for further public review and comment
- January/February 2016 – Approval from GIAMPO Policy Board with concurrence from NDOR
- Prior to March 27, 2016 – Approval of the LRTP by Federal Highway Administration and Federal Transit Administration

Discussion

The Nebraska Department of Roads has drawn up a Program Agreement with the City of Grand Island for the purpose of assisting the LPA in obtaining Federal approval and financial assistance to ensure a continued, comprehensive, and cooperative transportation

planning process between the state and local governments for the Grand Island Metropolitan Planning Area for fiscal year 2016.

The maximum Federal participation under this agreement is not to exceed \$214,305 for Fiscal Year 2016, which begins July 1, 2015 and ends June 30, 2016. The Federal share on any portion of this project will be a maximum of 80% of the eligible costs. The local 20% funds would be the City's obligation not to exceed \$53,576 and can be part of in-kind services (staff time & expenses). Total cost of the program is expected to be \$267,881.

The attached Grand Island Area Metropolitan Planning Organization (GIAMPO), Unified Planning Work Program describes the work to be carried out in accordance with 23 U.S.C Section 134 of the Moving Ahead for Progress in the 21st Century (MAP-21), Transportation Bill and has been reviewed and approved by the GIAMPO Policy Board, Nebraska Department of Transportation, Federal Highway Administration, and Federal Transit Administration.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve a resolution authorizing the Mayor to sign the agreement.

Sample Motion

Move to approve authorization for the Mayor to sign the agreement.

Agreement No.	VL1502
Funding Period Fiscal year	July 1, 2015 through June 30, 2016
Agreement Amount	\$267,881.00

PROGRAM AGREEMENT FEDERAL PLANNING FUNDS METROPOLITAN PLANNING ORGANIZATIONS

City of Grand Island (GIAMPO)
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. PL-1 (53), STATE CONTROL NO. 00934a
FY 2016 PLANNING (PL) AGREEMENT

THIS AGREEMENT is between the City of Grand Island Metropolitan Area Planning Agency (GIAMPO), who is a Metropolitan Planning Organization ("MPO"), and the State of Nebraska, Department of Roads ("State"), collectively referred to as "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 (PL Funds) available to provide pro-rata reimbursement to MPO for its Eligible Planning Activities, and

WHEREAS, MPO has been designated as the recipient agency for the City of Grand Island metropolitan area for PL Funds, and

WHEREAS, Federal law provides that State will be a representative for the Federal Highway Administration (FHWA) in reviewing requests for reimbursement of MPO planning activities, and that reimbursements will be made through State, and

WHEREAS, MPO has developed and submitted a Unified Planning Work Program document ("UPWP") which is attached hereto as **Exhibit "B"**; it has been reviewed and approved by FHWA, and

WHEREAS, this Agreement applies only to the part of MPO's UPWP planning activities overseen by FHWA, and

WHEREAS, this Agreement governs the reimbursement of Eligible Planning Activities conducted between July 1, 2015, and June 30, 2016, and

WHEREAS, for this Agreement, if a non-federal entity expends \$750,000 or more in total federal awards in a fiscal year, then the audit requirements of 2 CFR, Subtitle A, Chapter 2, Part 200, Subpart F, must be addressed as explained further in this Agreement, and

WHEREAS, the total cost reimbursable under this Agreement is currently estimated to be \$267,881.00; the federal share is estimated to be \$ 214,305.00, and MPO's share is estimated to be \$53,576.00, and

WHEREAS, MPO's UPWP has been approved and MPO desires to incur costs for eligible tasks and activities that will be reimbursed with PL funds under the designation of Project No. PL-1 (53), and has authorized the City of Grand Island's Mayor to sign this Agreement, as evidenced by the Resolution of City Council, attached as **Exhibit "A"**.

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

SECTION 1. DEFINITIONS

WHEREVER in this Master Agreement the following terms are used, they mean the following:

"CFDA" means Catalog of Federal Domestic Assistance.

"CFR" means the Code of Federal Regulations.

"ELIGIBLE PLANNING ACTIVITIES" means tasks or activities performed by MPO or its consultants or representatives that are eligible for reimbursement with PL funds and which have been identified in MPO's approved UPWP.

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

"MPO" means a Metropolitan Planning Organization qualified under federal law.

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

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

“RESPONSIBLE CHARGE” or “RC” means the employee of MPO or of a city/county within MPO, or elected official of a city/county within MPO, who has been empowered by MPO to represent MPO on planning issues and has actual day-to-day working knowledge and responsibility for significant aspects of MPO’s planning program and process. The RC works regularly with planning issues and is MPO’s point-of-contact for planning activities. 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 planning activities. It is understood that RC may delegate or contract certain technical tasks associated with the planning activities so long as RC actively manages and represents MPO’s interests in the delegated technical tasks.

“UNIFIED PLANNING WORK PROGRAM (UPWP)” means a document of transportation planning activities performed within the metropolitan planning areas, or urbanized areas with populations of 50,000 or more. The UPWP describes planning activities to be completed, estimates the cost for the planning activities, and indicates the lead agency. Transportation activities to design and build transportation infrastructure are usually not included in the UPWP; however all federally funded studies should be included in the UPWP. This Agreement applies only to the part of MPO’s UPWP related to highway, road, street or other planning activities overseen by FHWA. This Agreement does not apply to transit planning activities of MPO’s UPWP overseen by the Federal Transit Administration. State and MPO will enter into a separate agreement for reimbursement of transit planning activities.

“STATE” means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. State is a funding liaison between MPO and the United States.

SECTION 2. DURATION OF THE AGREEMENT (PL)

- 2.1 ***Effective Date*** – This Agreement is binding on the date it is fully executed by the Parties.
- 2.2 ***Identifying Date*** – For convenience, this Agreement’s identifying date will be the date State signed the agreement.
- 2.3 ***Duration*** – The benefits and obligations of this Agreement, though binding when signed, are operative for activities beginning July 1, 2015, and ending June 30, 2016 and will conclude or become inactive upon the happening of either (1) the final completion of an audit review by State or its authorized representative and the resolution of all issues identified in the audit report, (2) the waiver of an audit review, or (3) termination of this Agreement.

SECTION 3. PURPOSE OF AGREEMENT AND RESPONSIBILITIES OF THE PARTIES

3.1 **WHEREAS**, MPO desires that MPO's attached UPWP be developed under the designation of Project No. PL-1 (53), and has authorized the City of Grand Island's Mayor to sign this Agreement, as evidenced by the Resolution of City Council, attached as **Exhibit "B"**, and incorporated herein by this reference.

3.2 Purpose

MPO wishes to be reimbursed with PL funds for Eligible Planning Activities. MPO understands that FHWA will not provide funding directly to MPO; but will provide reimbursement by State with Federal funds for Eligible Planning Activities. State, pursuant to Neb. Rev. Stat. § 39-1305, will act under this Agreement as a steward of federal funds and as a liaison between MPO and FHWA. The purpose of this Agreement is to set forth the understanding of MPO and State concerning their respective duties to enable the planning activities to be eligible for federal-aid funding. Under this Agreement, MPO 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 State to MPO concerning such matters. In the event that State or FHWA find that the planning activities are ineligible for PL funding, MPO will repay State all previously paid federal funds, as determined by State, and any costs or expenses State has incurred under this Agreement. MPO further agrees that MPO shall have no claim or right of action against State under this Agreement if FHWA determines that planning activities are not eligible in whole or in part, for Federal-aid funding. The following sections of this Agreement include the eligibility requirements and other conditions State believes in good faith that MPO must meet for MPO to be reimbursed with PL funding. MPO acknowledges that many conditions must be met by MPO in order to receive Federal-aid reimbursement. MPO agrees to develop its UPWP in an effort to meet all federal eligibility requirements so the planning activities may be determined eligible for PL funding.

3.2 MPO RESPONSIBILITIES

- 3.2.1 MPO shall meet all federal transportation planning requirements and shall select and manage necessary committees and staff, and consult, collaborate and coordinate with State to accomplish the Eligible Planning Activities".
- 3.2.2 MPO shall select qualified personnel as needed to complete the Eligible Planning Activities, and oversee any consultants selected to perform such activities. MPO shall submit to State a listing of all qualified personnel that may be selected or

assigned to the work contemplated therein prior to submitting the first invoice to State. Said listing shall indicate each person's job title or classification, qualifications, and salary range. MPO may make occasional temporary changes to qualified personnel. However, MPO shall submit an updated list to reflect permanent changes to qualified personnel.

- 3.2.3 MPO, when choosing to use a Consultant to complete Eligible Planning Activities under this Agreement, shall follow all guidelines and requirements outlined in 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 State. MPO 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 when hiring for professional engineering or architectural services. MPO shall follow any applicable requirements including, but not limited to, requirements defined in Chapter 4 of LPA Guidelines Manual.
- 3.2.4 MPO shall 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 UPWP.
- 3.2.5 MPO shall obtain written approval from State and FHWA when, after consultation with State, MPO determines that amendments to the UPWP are necessary. MPO shall obtain written concurrence from State when, after consultation with State, MPO determines that administrative modifications to the UPWP are necessary.
- 3.2.6 MPO shall only seek reimbursement for actual costs incurred for Eligible Planning Activities. The salaries and expenses of "the Chair or members of GIAMPO's Board" will not be reimbursed as an Eligible Planning Activity.
- 3.2.7 MPO shall submit accurate and complete invoices in accordance with SECTION 8. FINANCIAL RESPONSIBILITY, and shall provide additional documentation when requested by State. MPO shall be solely responsible for all costs not reimbursed under this Agreement.
- 3.2.8 MPO shall keep signed time records detailing time spent on Eligible Planning Activities, including the date and hours worked. When requested by State, MPO shall submit time records to State.

3.2.9 MPO agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid planning activities. MPO understands that failure to meet any eligibility requirements for PL funding may result in the loss of all PL funds. In the event that the acts or omissions of RC, MPO or its agents or representatives result in a finding that planning activities are ineligible for PL funds, MPO will repay State all previously paid PL funds, as determined by State, including but not limited to, any costs reimbursed for the time and expenses of the RC.

3.3 STATE RESPONSIBILITIES

- 3.3.1 Complete the duties assigned to State in this Agreement.
- 3.3.2 Determine and notify MPO of the estimate of PL funding availability, including carry-over and annual allocation target.
- 3.3.3 Provide technical assistance to MPO regarding funding eligibility issues, when requested by MPO.
- 3.3.4 Verify all invoices submitted by MPO are complete, accurate, and represent actual costs for Eligible Planning Activities.
- 3.3.5 Pay MPO the federal share of the actual costs of Eligible Planning Activities as reflected on an approved invoice.
- 3.3.6 Bill and collect from MPO any previously paid funds determined to be ineligible by FHWA.

3.4 PARTIES RESPONSIBILITY

- 3.4.1 Parties agree to cooperatively review and adjust, when necessary, the scope, schedules, funding, priorities, or staffing of MPO's work to make sure the UPWP needs and goals are accomplished by MPO in accordance with the federal requirements for use of PL funds.
- 3.4.2 Parties will supplement this Agreement to reflect any changes resulting from 3.3.1, with advance approval of the Federal Highway Administration.

SECTION 4. RESPONSIBLE CHARGE (RC) REQUIREMENTS

- 4.1 MPO hereby designates Terry Brown as the RC for the Eligible Planning Activities.
- 4.2 Duties and Assurances of MPO concerning its designated RC for the Eligible Planning Activities.
 - 4.2.1 MPO understands the duties and responsibilities of MPO and RC as outlined in the LPA Guidelines Manual for Federal-Aid Projects.

- 4.2.2 MPO has authorized and fully empowered the RC to be in day-to-day responsible charge of the planning activities; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the planning activities including identifying issues, investigating options, working directly with stakeholders, and decision making.
- 4.2.3 The RC is a full-time public employee or elected official of MPO, or a full-time employee of another entity as defined in "Public Employee" above.
- 4.2.4 MPO agrees to take all necessary actions and make its best good faith efforts to ensure the RC's work meets the same standards that State must meet under federal law.
- 4.2.5 If, for whatever reason, the designated RC is no longer assigned to the planning activities, MPO shall, within one day or sooner if possible, notify verbally and in writing State's Highway Planning Manager; after such notification MPO shall replace the RC no later than thirty (30) calendar days or sooner if possible. With advance written approval by State, MPO may use a Provisional RC in accordance with State's Provisional RC Policy.

SECTION 5. FEDERAL AID PROJECT REQUIREMENTS

- 5.1 MPO agrees to comply with all Federal-aid procedures and requirements applicable to this Agreement, including federal laws, and when applicable, state and local laws, and the LPA Guidelines Manual for Federal-aid Projects.
- 5.2 **The Applicable Legal and Contract Requirements.**
 - 5.2.1 **Title 23 U.S.C., and 23 CFR,** – The primary provisions of law applicable to this Agreement are generally found in 23 U.S.C. Section 134; and 23 CFR Part 420, subpart A, and Part 450, subpart C.
 - 5.2.2 **LPA Guidelines Manual** - MPO also agrees to comply with applicable 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 FHWA as a document setting out requirements for LPA's or MPO's planning activities funded with PL 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 MPO believes that The Manual doesn't clearly address a particular aspect of the planning activities work, MPO shall seek guidance or clarification from State's

Local Project Section Engineer or State's Highway Planning Manager, and shall make its best effort to comply with such guidelines or clarification.

- 5.3 **Loss of Funding.** In order for MPO to receive federal funds for any part of the planning activities under this Agreement, MPO shall perform the services for all aspects of the planning activities, according to federal procedures and requirements. Although federal funds may be allocated to the planning activities, all or certain planning activities may become ineligible for federal funds, if federal procedures and requirements are not met.

SECTION 6. SUSPENSION OR TERMINATION

State may suspend or terminate this Agreement in the event federal funds are not available, for any reason, to make reimbursements under this Agreement.

SECTION 7. FEDERAL AUDIT REQUIREMENT

- 7.1 The funding for the Eligible Planning Activities under this Agreement includes federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 and the implementing regulations contained in 2 CFR, Subtitle A, Chapter 2, Part 200, Subpart F (hereinafter Part 200), the Part 200 Audit is required if the non-federal entity expends \$750,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.
- 7.2 MPO shall have its finance officer or auditor; review the situation to determine what MPO must do to comply with this federal mandate. Any federal funds for MPO Eligible Planning Activities paid directly to contractors and Consultants by State, on behalf of MPO, will be reported on State's schedule of expenditures of federal awards (SEFA) and need not be reported by MPO. (as per FHWA's February 16, 2012, letter and State's February 24, 2012, letter). If a Part 200 audit is necessary, the expenditures related to the federal funds expended for the Eligible Planning Activities should be shown in the report's Schedule of Expenditures of the Federal Awards (SEFA).
- 7.3 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 (53)

- 7.4 If a Part 200 Audit is submitted by MPO, MPO 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

8.1 TOTAL COSTS AND FUNDING COMMITMENTS

The total cost of the Eligible Planning Activities is \$267,881.00 as set out in the table below. The federal share \$214,305.00 is the sum of the carryover PL funds from the last Fiscal Year \$108,095.00 and PL funds from the upcoming Fiscal Year \$106,210.00. 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 PL funds is based on the continuation of existing funding levels. MPO has earmarked and has placed in its fiscal budget at least the amount of the local match. MPO's share may include both in kind services and a local match. The in-kind services for these Eligible Planning Activities are estimated to be \$0.00.

ESTIMATED FUNDING				
	Federal	Local Match	In-Kind Match	Total
Recipient (Agreement)				
GIAMPO VL1404, Carryover	\$108,095.00	\$ 26,552.00	0	\$132,763.00
GIAMPO VL1502	\$106,210.00	\$27,024.00	0	\$135,119.00
Subcontractors (if applicable)				
	\$	\$	\$	\$
Totals	\$214,305.00	\$ 53,576.00	\$	\$ 267,881.00

This Agreement may be supplemented if additional funding becomes available.

8.2 MPO'S FINANCIAL RESPONSIBILITY

MPO understands that payment for the costs of the planning activities, are the sole responsibility of MPO when Federal participation is not allowable or available or if the planning activities are subsequently determined to be ineligible for Federal-aid funding. Therefore, when the Federal government refuses to participate in the costs of the planning activities, MPO is responsible for all costs with no reimbursement under this Agreement.

8.3 REIMBURSEMENT OF COSTS INCURRED BY MPO

8.3.1 MPO incurred costs of planning activities may be eligible for reimbursement from federal funds if:

- a. MPO submits an UPWP budget and FHWA approves such budget
- b. State has obtained federal funds obligation
- c. Planning activities performed prior to July 1, 2015, and after June 30, 2016, is ineligible for Federal-aid reimbursement
- d. MPO obtains the approval of State and of FHWA prior to the purchase of any specialized equipment over \$5,000. Specialized equipment is equipment not ordinarily used or required in the regular administrative or planning operations of MPO. Such equipment must be required for and used primarily for Eligible Planning Activities. The cost of this specialized equipment must be reasonable as determined by State or FHWA
- e. MPO agrees to certify that items of equipment included in direct costs have been excluded from the indirect costs
- f. MPO submits invoices no more frequently than monthly and no less often than quarterly and in accordance with this Agreement. MPO is responsible for submitting for reimbursement the total actual costs expended that are eligible for Federal-aid. State, on behalf of FHWA, will review the costs submitted and determine what costs are eligible for reimbursement. State will reimburse MPO for the Federal share of the eligible actual costs. MPO shall retain detailed cost records supporting all invoices for three (3) years after final cost settlement by FHWA and project closeout by the State. MPO shall submit those records to State upon request.
- g. Invoices must be submitted by August 29, 2016.

8.3.2 MPO is required to submit their reimbursement requests electronically through State's invoice workflow system OnBase for review, approval, and payment. OnBase information, user guide, and instructional videos are available at <http://www.transportation.nebraska.gov/mat-n-tests/onbase/obinfo.html>.

Reimbursement requests should be submitted to State's Highway Planning Manager. The reimbursement request must include the following:

1. Invoice – the invoice must include the following:
 - a. MPO name and address
 - b. Invoice number

- c. Invoice date
 - d. Services provided to and from dates
 - e. Contact person for questions about the invoice
 - f. Breakdown of MPO's expenses
 - 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
 - g. Federal balance due to MPO for the current period
 - h. Federal and Local share breakdown of the expenses
2. NDOR Cost Breakdown Form (DR Form 162C or 162D); properly prepared, signed and dated. The form can be found on State's webpage at <http://www.transportation.nebraska.gov/rfp>.
 3. Progress Report – must include the following in accordance with 23 CFR 420.117:
 - a. Comparison of actual performance with established goals
 - b. Progress in meeting schedules
 - c. Comparison of budgeted (approved) amounts and actual costs incurred.
 - Cost overruns and underruns
 - e. Approved planning program revisions, and
 - f. Other pertinent supporting data
 4. Breakdown of Subcontractors/Subconsultant expenses and Proof of Payment (e.g. canceled checks or funds transfer)
- 8.3.3 It is understood that when utilizing PL Funds for travel expenses related to Eligible Planning Activities outside MPO area, MPO will submit detailed travel information to 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>
- 8.3.4 State will perform an initial check to verify that all necessary documentation is accurate and complete. State will reimburse MPO for the Federal share of the eligible actual costs and will make a reasonable effort to pay MPO within thirty (30) days of State's receipt of MPO's reimbursement request.

- 8.3.5 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 MPO are allowable under this agreement, including any Professional Services agreements.
- 8.3.6 Oversight costs include: direct costs, such as compensation of MPO employees for their time devoted and related directly to the performance of the Eligible Planning Activities for which the federal-aid was approved; cost of materials consumed for the Eligible Planning Activities; and indirect costs, with an approved Indirect Cost Allocation Plan as outlined in the LPA Guidelines Manual for Federal Aid Projects.

8.4 AUDIT AND FINAL COST SETTLEMENT

- 8.4.1 The final settlement between State and MPO will be made after final funding review and approval by State and after an audit, if deemed necessary, has been performed to determine eligible actual costs.
- 8.4.2 If deemed necessary, an audit will be performed by State to determine whether the actual costs incurred for planning activities are eligible for reimbursement with federal funds. The Parties understand that the audit may require an adjustment of the reimbursement made under this Agreement. MPO agrees to reimburse State for any overpayments identified in the audit review, and State agrees to reimburse MPO for underpayments when appropriate.
- 8.4.3 If MPO's calculated share is more than the amount of local funds previously paid to State, State will bill MPO for the difference. MPO agrees to pay the amount due State within thirty (30) days of receipt of invoice.
- 8.4.4 If MPO's calculated share is less than the amount of local funds previously paid to State, State will reimburse MPO for the difference.

SECTION 9. PROCUREMENT OF PROFESSIONAL SERVICES

MPO 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 PERFORMANCE

It is understood by the Parties that MPO is solely responsible for all Eligible Planning Activities (work product) completed under this Agreement. Any review or examination by State, or acceptance or use of the work product of MPO or its 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 MPO and its Consultant which would relieve MPO from any expense or liability that would be connected with MPO's sole responsibility for the propriety and integrity of the work product to be accomplished by MPO or its Consultant.

SECTION 11. INDEMNITY

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

SECTION 12. CONFLICT OF INTEREST LAWS

- 12.1 MPO shall review the Conflict of Interest provisions of 23 CFR 1.33, 49 CFR 18.36(b)(3) and 2 CFR, and agrees to comply with all the Conflict of Interest provisions (including applicable State and local provisions) in order for the planning activities to remain fully eligible for State or Federal funding. MPO 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 State's website at the following location:
<http://www.transportation.nebraska.gov/gov-aff/lpa/chapter-forms/coi/coi-guidance-doc-lpa.pdf>
- 12.2 MPO must also complete, sign and submit to State's Highway Planning Manager, the **NDOR CONFLICT OF INTEREST DISCLOSURE FORM FOR LPAS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS**. This form is located on State's website at the following location:
<http://www.transportation.nebraska.gov/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-lpa.pdf>
- 12.3 Consultants and Subconsultants providing services for MPO's, or submitting proposals for services, shall submit to MPO and State's Highway Planning Manager 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 MPO federal-aid transportation planning activities.

SECTION 13. DRUG FREE WORKPLACE

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

SECTION 14. RECORDS RESPONSIBILITY

- 14.1 MPO 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 by FHWA and project closeout by the State. Such records must be available for inspection by State and the FHWA, Federal Transit Administration, or any authorized representatives of the Federal government, and MPO shall furnish copies to those mentioned in this section when requested to do so.
- 14.2 Papers, interim reports, forms or other materials which are a part of the work under contract will not be copyrighted without written approval of State and Federal Highway Administration.
- 14.3 Either party to the Agreement may initiate a request for publication of the final or interim reports, or any portions thereof.
- 14.4 Publication by either party shall give credit to the other party and to the Federal Highway Administration. However, if 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 State or Federal Highway Administration."
- 14.5 In the event of failure of agreement between State and MPO 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.
- 14.6 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.
- 14.7 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.

- 14.8 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 MPO performs any planning activities itself, MPO shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. § 48-1101 to 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 "MPO".

SECTION 16. DISABILITIES ACT

MPO 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

MPO agrees to comply with the requirements of Neb.Rev.Stat. § 4-108 to 4-114 with the planning activities, 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)

18.1 Policy

MPO 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.

18.2 Disadvantaged Business Enterprises (DBEs) Obligation

MPO 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, MPO 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. MPO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

SECTION 19. TITLE VI NONDISCRIMINATION CLAUSES

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

19.1 Compliance with Regulations:

MPO 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.

19.2 Nondiscrimination:

MPO, 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. MPO 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.

19.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment:

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

19.4 Information and Reports:

MPO 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 State or 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, MPO shall so certify to State, or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

19.5 Sanctions for Noncompliance:

In the event of MPO's noncompliance with the nondiscrimination provisions of this agreement, State will impose such contract sanctions as it or FHWA may determine to be appropriate, including but not limited to,

- (a) Withholding of payments to MPO under this agreement until MPO complies, and/or
- (b) Cancellation, termination or suspension of this agreement, in whole or in part.

19.6 Incorporation of Provisions:

MPO shall include the provisions of sections 19.1 through 19.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. MPO shall take such action with respect to any subcontract or procurement as State or 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, MPO may request State to enter into such litigation to protect the interests of State, and in addition, MPO may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 20. ENTIRE AGREEMENT

This Agreement 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 REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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

21.1.1 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.

21.1.2 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.

21.1.3 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.

21.2 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.

PAPERWORK REDUCTION ACT PUBLIC BURDEN STATEMENT

A Federal agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number. The OMB Control No. for this information collection is 2105-0555. The information requested on this form is being collected and disseminated by the U.S. Department of Transportation, Office of the Secretary as a courtesy to the public. Public burden reporting for this collection of information is estimated to be

15 minutes per response, including time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection are mandatory. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Office, US Department of Transportation, Office so Small and Disadvantaged Business Utilization, Financial Assistance Division, 1200 New Jersey Ave., S.E., 5th Floor, W56-448, Washington, DC 20590.

PRIVACY ACT STATEMENT

The Privacy Act requires that we provide you with the following information regarding our use of your Personally Identifiable Information. The information on this form is solicited under the authority of Title 49 U.S.C. 332(b)(3)(4)(5) which authorizes DOT OSDBU to assist Disadvantage Business Enterprises and Small and Disadvantaged Businesses in acquiring access to working capital and to debt financing, in order to obtain transportation related contracts funded by DOT. STLP loans are provided through lenders that serve as STLP Participating Lenders (PL). The PLs enter into a Cooperative Agreement with DOT's OSDBU. The STLP is subject to budgeting and accounting requirements of the Federal Credit Reform Act of 1990 (FCRA). The PL must carry out processes to activate, monitor, service and close out STLP loans. To fulfill the requirements of FCRA, the PL submits reports and the forms to OSDBU. Provisions of the requested information are voluntary; however it is a requirement of the Cooperative Agreement.

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

EXECUTED by the MPO this _____ day of _____, 2015.

WITNESS:

City of Grand Island MPO

WITNESS TITLE _____ Jeremy Jensen, Mayor of Grand Island

EXECUTED by the State this _____ day of _____, 2015.

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

Planning & Project Development Engineer

RESOLUTION 2015-175

WHEREAS, the Nebraska Department of Roads has prepared a Planning Agreement for the City of Grand Island for the purpose of assisting the LPA in obtaining Federal approval and financial assistance to ensure a continued, comprehensive, and cooperative transportation planning process between the state and local governments for the Grand Island Metropolitan Planning Area for Fiscal Year 2015; and

WHEREAS, the maximum Federal participation under this agreement is not to exceed \$214,305 for Fiscal Year 2016, which begins July 1, 2015 and ends June 30, 2016; and

WHEREAS, the Federal share on any portion of this project will be a maximum of 80% of the eligible costs, and

WHEREAS, the local 20% funds would be the City's obligation not to exceed \$53,576 and can be part of in-kind services (staff time & expenses); and

WHEREAS, the total cost is expected to be \$267,881; and

WHEREAS, an agreement with the Nebraska Department of Roads is required to proceed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with the Nebraska Department of Roads for the purpose of assisting the LPA in obtaining Federal approval and financial assistance for the Grand Island Metropolitan Planning Area for Fiscal Year 2016 is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 14, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	by _____
July 10, 2015	City Attorney