



City of Grand Island

Tuesday, December 18, 2012

Council Session

Item I2

#2012-366 - Consideration of Agreement with NDOR for Fiscal Year 2013 Statewide Planning Research (SPR) Agreement (Metropolitan Planning Organization Startup)

Staff Contact: Terry Brown, Interim Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: December 18, 2012

Subject: Approving Agreement with NDOR for Fiscal Year 2013
Statewide Planning Research (SPR) Agreement
(Metropolitan Planning Organization Startup)

Item #'s: I-2

Presenter(s): Terry Brown, Interim Public Works Director

Background

All agreements must be approved by the City Council. The Nebraska Department of Roads has reserved planning dollars that are available to the City of Grand Island for the formation of the Metropolitan Planning Organization (MPO).

Discussion

The Nebraska Department of Roads has drawn up a Planning Agreement with the City of Grand Island for the purpose of providing financial assistance to the Local Public Agency (LPA) to help defer the City's startup expenses as a new MPO for Fiscal Year 2013. The schedule for commencement of the agreement is January 2, 2013.

The maximum amount of cash support from the State under this agreement is \$50,000.00 in Statewide Planning and Research (SPR) Funds for Fiscal Year 2013, which ends June 30, 2013. The Federal share on any portion of this project will be a maximum of 80% of the eligible costs. The local 20% (\$12,500.00) funds would be the City's obligation and can be part of in-kind services (staff time & expenses). Total cost is expected to be \$62,500.00.

The City of Grand Island will be designated an MPO no later than March 26, 2012.

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.

PLANNING AGREEMENT

PROJECT NO. SPR-PL-1(50)
STATE CONTROL NO. 00880
CITY OF GRAND ISLAND
STATE OF NEBRASKA, DEPARTMENT OF ROADS
FY-2013 STATEWIDE PLANNING RESEARCH (SPR) AGREEMENT

THIS AGREEMENT, entered into by the State of Nebraska, Department of Roads (hereinafter referred to as the State) and the City of Grand Island, Nebraska (hereinafter referred to as LPA) for the purpose to provide financial assistance to the LPA to help defer their startup expenses as a new Metropolitan Planning Organizations (MPO) for FY2013 scheduled to be performed commencing January 2, 2013, as outlined in the LPA's Basic Scope of Services and Budget (hereinafter referred to as SOS).

WITNESSETH:

WHEREAS, funding for the LPA's portion of the transportation planning activities is shown in the SOS. The maximum amount of cash support from the State under this Agreement is \$50,000 in Statewide Planning and Research (SPR) Funds for Fiscal Year 2013, ending June 30, 2013; and

WHEREAS, the Federal share on any portion of this project will be a maximum of eighty (80) percent of the eligible costs; and

WHEREAS, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 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, the LPA has agreed to establish and maintain a continuing, comprehensive, and cooperative transportation planning process in the Grand Island Metropolitan Area; and

WHEREAS, Grand Island will be designated an Metropolitan Planning Organization no later than March 26, 2012; and

WHEREAS, the LPA understands that federal funds are involved in the project or activity contemplated under this agreement and understands that in order to qualify for federal aid funds, it must appoint a person to be in Responsible Charge (RC) of the project or activity, as required by the terms of this agreement. RC means the public employee 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 this study; and

WHEREAS, the State, as part of its planning functions, intends to contribute support to the continuing transportation planning process in urban areas;

Agreement number VL1205

NOW, THEREFORE, in consideration of these facts the parties agree as follows:

SECTION 1. SCOPE OF AGREEMENT

A. The work to be performed under the terms of this Agreement will be conducted in accordance with the SOS included herewith as Exhibit "A" and made a part of this Agreement.

B. LPA's Responsibility

LPA shall:

1. Provide the necessary administration of committees and staff, and consult, collaborate and coordinate with the State to accomplish the objectives of the SOS.
2. Assign qualified LPA staff personnel as needed to execute the LPA's portion of the SOS and oversee the contractual service portion of the SOS.
3. 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 SOS. Manuals, questionnaires, reports, forms and other technical documents prepared for use in accomplishing the SOS shall be submitted to the State and the Federal Highway Administration for review and approval prior to use.
4. Understand the duties and responsibilities of the Local Public Agency and RC as outlined in the LPA Guidelines Manual for Federal-Aid Projects.
5. Authorize and fully empower 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.
6. Agree 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.

7. Designate Terry Brown as the RC for projects under this SOS. If, for whatever reason, the designated RC is no longer assigned to the project, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State; after such notification LPA shall replace the RC no later than thirty calendar days or sooner if possible.
8. 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. The 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

1. The State is authorized to assign qualified personnel as needed to accomplish tasks assigned to or agreed to by the State.
2. The State shall review the Consultant's Scope of Services and provide comments to the LPA.

SECTION 2. DURATION OF AGREEMENT

The LPA agrees to use their best efforts to perform their responsibilities as outlined in the SOS, within the time of this Agreement. The Agreement shall cover all work performed commencing with the fiscal year commencing January 2, 2013 and ending June 30, 2013.

SECTION 3. REIMBURSEMENT AND INVOICING

For performance of the services described in this agreement, the LPA will be reimbursed for direct costs and indirect costs as defined below in this section, that are allowable subject to the terms of this agreement and to all requirements and limitations of the State policies and the federal cost principles contained in 2 CFR 225 – Cost Principles for State, Local and Tribal Governments and the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$62,500 of which 80% is the Federal share and 20% is the LPA share.

- A. **Direct costs** must be incurred specifically for the services performed under this agreement, and include:

1. Direct Labor Costs –

(a) Hourly Rates: For time devoted and identified specifically for work under this agreement and based upon actual hours as documented by time reports that account for all hours compensated during the pay period and billed at actual labor rates.

(b) Time Reports: The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects: such as project description, project number, pertinent work phase, dates of service, and the individual's name and position (*as required by LPA Manual Chapter 13, paragraph. 13.4.7*). There must be an adequate system of internal controls in place to ensure that time charges are correct and have the appropriate supervisory approval.

2. Labor Fringe Benefits – provided they are:

- a) reasonable,
- b) required either by law, labor agreements or an established policy of the LPA,
- c) are equitably allocated to all activities,
- d) the accounting basis (cash or accrual) is consistently followed by the LPA,
- e) are eligible in accordance with 2 CFR part 225 (OMB Circular A-87), and
- f) the allocation rate has been reviewed and approved by NDOR and/or FHWA for the work under this agreement. Fringe benefit costs include:

(a) Paid Leaves (holiday, vacation, sick, court, military, etc.)

(b) Employer contributions or expenses for:

- (i) Social Security and Medicare
- (ii) Employee life and life insurance
- (iii) Unemployment insurance
- (iv) Worker's compensation insurance
- (v) Retirement/Pension plan costs
- (vi) Other similar benefits

3. Direct Non-labor costs – These costs include all necessary, actual, and allowable costs related to completing the work under the agreement, subject to limitations and restrictions described below and in the Program Agreement, including but not limited to: meals, lodging, mileage, subject to the limitations outlined below; communication costs; reproduction and printing costs; special equipment and materials required for the project; approved equipment

purchases or other capital expenditures necessary for the project: and such other allowable items. The State will reimburse the LPA for all necessary, allowable, eligible and properly documented direct non-labor costs related to the work under this agreement provided that costs of this nature are not also included in an indirect cost rate.

The following expenses will be reimbursed as outlined in this agreement based on actual costs, not to exceed the rates as shown below.

(a) The reimbursement for mileage associated with the use of LPA owned vehicles shall be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:

- 1) The mileage rate which the consultant reimbursed to the person who submitted the claim for POV use, or
- 2) The prevailing standard rate as established by the IRS.

(b) Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable the Consultant shall give the State the benefit of all discounts.

(c) 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>

1) For the LPA employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast: (a) Employee is required to depart at or before 6:30 a.m., or
(b) Employee is on overnight travel.

Lunch: (a) Employee must be on overnight travel. No reimbursement for same day travel.
(b) Employee is required to leave for overnight travel at or before 11:00 a.m., or
(c) Employee returns from overnight travel at or after 2:00 p.m.

Dinner: (a) Employee returns from overnight travel or work location at or after 7:00 p.m., or
(b) Employee is on overnight travel.

Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.

The LPA shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town. The total daily meal costs must not exceed the GSA rates set out above.

B. **Indirect Cost Rates** are incurred for common purposes and provide a benefit to the entire organizational entity. These costs are recovered through an indirect cost rate applied as a percentage to direct labor. LPA's indirect costs will only be allowed under the following conditions:

- 1) The LPA has an indirect cost rate that is supported by an Indirect Cost Allocation Plan (ICAP) which has been developed in accordance with 2 CFR 225 – Cost Principles for State, Local and Tribal Governments [OMB Circular A-87], and
- 2) The indirect cost allocation rate has been approved in advance by NDOR. *(If the LPA has already in place an ICAP which has been reviewed and approved by the LPA's cognizant Federal agency, the ICAP will be considered for acceptance by FHWA and NDOR.)*

C. **Invoices and Progress Reports.** The LPA shall submit invoices to the State no more frequently than at monthly intervals. The invoices must present actual direct and indirect costs, as described above, billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed.

Each monthly invoice must be substantiated by a progress report which is to include/address, as a minimum:

1. A description of the work completed for that period
2. A description of the work anticipated for the next pay period
3. Information needed from the State
4. Percent of work completed to date
5. A completed "Cost Breakdown Form" which is located on the State's webpage at www.transportation.nebraska.gov/rfp.

If the LPA does not submit a monthly invoice, it shall submit its progress report monthly.

D. **Progress Payments.** Payments will not be made unless the monthly progress reports provide adequate substantiation for the work and whether the State determines that

the work has been properly completed. The State will make a reasonable effort to pay the LPA within 30 days of receipt of the LPA invoices

- E. **Final Invoice.** Upon completion of the work under this agreement, the LPA shall submit their final invoice identifying it as the final invoice.
- F. **Final Payment.** Upon determination that the work was adequately substantiated and satisfactory, reimbursement will be made in the amount of eighty (80) percent of the billed eligible actual costs. The acceptance by the LPA of the final payment will constitute and operate as a release to the State for all claims and liability to the LPA, its representatives, and assigns, for any and all things done, furnished, or relating to the services rendered by or in connection with this agreement or any part thereof.
- G. **Audit and Final Cost Adjustment.** When the work is completed the State will complete an audit review of the payments made under this agreement. The LPA agrees to reimburse the State for any overpayments identified in the audit review, and the State agrees to reimburse the LPA for any identified underpayments. The LPA agrees to pay the State within thirty days after receipt of a billing from the State.
- H. **LPA Cost Record Retention.** The LPA shall maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final cost settlement by FHWA under this agreement and project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the LPA shall furnish copies.
- I. Payment for partial billings will be determined by multiplying the value of the percentage of work completed by 0.80. In no event may the total interim payments for new funds exceed eighty percent of the value of the total work completed and may not exceed a total amount of \$50,000 for fiscal year 2013.
- J. The 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 Mayor of Grand Island, Hall County Board of Supervisors, and the (soon to be formed) Grand Island MPO Officials Committee will not be reimbursable as direct costs to the SOS. It is agreed that

employees of the LPA whose time is directly assignable to the SOS shall keep and sign a time record showing element of SOS, date and hours worked.

- K. It is understood that when utilizing Nebraska SPR Funds for travel expenses related to planning activities outside the MPO area, the MPO will submit detailed travel information to the State either prior to the travel, or submitted with the SPR billing statement. The rate of reimbursement will be that allowed by the State for travel by its own employees.

SECTION 4. CHANGES IN THE SOS

- A. If, after consultation with the State, it is determined that changes to the SOS are necessary, written approval by the State and the Federal Highway Administration shall be obtained.
- B. 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 SOS.
- C. If, as the work progresses, major changes in the schedules, funding, scope, character 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 to the State for review and approval by the State and the Federal Highway Administration.

SECTION 5. REPORTS

The LPA shall prepare, in cooperation with the State, reports suitable for publication as indicated in the SOS. One (1) hard copy and an electronic copy of a draft and final of each report shall be submitted to the State for review and approval, if appropriate. The State will send an electronic copy of the draft and final reports to FHWA/FTA for their review and approval, if appropriate.

SECTION 6. INSPECTION OF WORK

The State and authorized personnel of the Federal Highway Administration or any authorized representative of the Federal government shall at all times be accorded proper facilities for review and inspection of the work hereunder and shall at all times have access to the premises of all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to the work hereunder.

SECTION 7. RECORDS

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The LPA shall maintain an accurate cost-keeping system as to all costs incurred in connection with the subject of this Agreement and shall produce for examination books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the State, Federal Highway Administration or any authorized representative of the Federal government, and shall permit extracts and copies thereof to be made, during the contract period and for three (3) thereafter.

SECTION 8. AUDITS

The LPA shall at all times afford a representative of the State, Federal Highway Administration, or any authorized representative of the Federal government, reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require, shall produce and exhibit such books, accounts, documents and property as he may desire to inspect, and shall in all things aid him in the performance of his duties. The LPA shall be responsible for meeting the audit requirements of OMB Circular A-133, or any revision or supplement thereof. OMB Circular A-133 states that when the pass-through monies from the Federal Highway Administration (FHWA) equal or exceed \$500,000 in total federal awards in a fiscal year, an A-133 Audit is required.

SECTION 9. OWNERSHIP OF DATA

Originals of all documents including computer tapes, tracings, drawings, estimates, specifications, field notes, investigations, studies, etc., as instruments of service under terms of this Agreement are to be the joint property of the political jurisdictions and governmental agencies participating in the transportation planning process. Copies of said documents will be made available to such participants upon request at costs of such reproduction.

SECTION 10. PUBLICATION OR RELEASE OF INFORMATION

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

- D. 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.
- E. 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.
- F. 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.
- G. 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 11. CLAIMS

Both parties indemnify, save and hold harmless the other party, and all its agents and employees, of and from any and all claims, demands, actions or causes of action of whatever nature or character arising out of, or by reason of, the work to be performed by either party. Each party further agrees to defend, at its own sole cost and expense, any action or proceeding commenced for the purpose of asserting any such claim of whatever character arising as a result of their actions. It is further agreed that any and all employees of either party and all other employees while engaged in the performance of any work or services required or provided for herein to be performed by that party, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Workers' Compensation Act of the State of Nebraska on behalf of said employees, while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees, while so engaged on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

SECTION 12. CONTRACTUAL SERVICES

- A. All agreements for contractual services pertinent to the SOS and subject to partial reimbursement under this Agreement shall be submitted to the State for review and prior to final execution shall have been approved in writing by the State. The LPA intends to provide the services pertinent to the SOS with its own personnel and through subcontracts with the Hall County and others for work activities identified in the SOS. It is understood, however, that not less than fifty (50) percent of such work will be performed with LPA personnel and/or by subcontract with other public agencies.
- B. In connection with the performance of this contract, the LPA will cooperate with the State in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to complete for subcontract work under this contract.
- C. Contracts executed in connection with the performance of this contract in excess of \$2,500 must comply with the applicable regulations and standards of the Cost of Living Council in establishing wages and prices.

SECTION 13. PROHIBITED INTEREST

- A. No member of or delegate to the Congress of the United State shall be admitted to any share or part of this contract or to any benefit arising herefrom.
- B. No member, officer, or employee of the Public Body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

SECTION 14. CANCELLATION

The State reserves the right to cancel this Agreement at any time it deems to be in the best interest of the State upon giving thirty (30) days written notice of such cancellation to LPA. If the contract is cancelled under this provision, the State shall continue to reimburse the LPA as outlined in this agreement for all expenses incurred and work completed to the date of cancellation. The remaining value of all nonexpendable office equipment and capital improvements partially funded under this Agreement shall be appraised by the State and disposed of in a manner that shall be in the best interest of the State, subject to the approval of the Federal Highway Administration.

SECTION 15. LIMITATIONS OF LAW

It is mutually understood between the parties that the final authority in highway matters now vested in the State by Federal and state statutory and case law shall not be affected by this Agreement.

SECTION 16. LOBBYING CERTIFICATION

The LPA agrees to abide by the provisions of the Federal Lobbying Certification since federal funds shown in this Agreement exceed \$100,000. "Certification for Grants, Loans, and Cooperative Agreements" is included herewith as Exhibit "B" and made a part of this Agreement.

SECTION 17. MINORITY BUSINESS ENTERPRISES

A. Policy

The LPA and the State agree to ensure that minority 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 minority business requirements of 49 CFR Part 23 are hereby made a part of and incorporated by this reference into this Agreement.

B. Minority Business Enterprises Obligation

The LPA and the State agree to ensure that minority 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 minority 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.

On any work performed by or caused to be performed by the LPA, 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 18. EQUIPMENT

- A. The State agrees to participate in the cost of specialized items of equipment, not of a nature normally used or required in the regular administrative or engineering operations of the LPA, which items are required for, and will be used primarily on work incident to this Agreement, and the cost of which is considered reasonable.

- B. The LPA agrees to certify that items of equipment included in direct costs have been excluded from the indirect costs.
- C. The LPA agrees to obtain the approval of the State and of the Federal Highway Administration prior to the purchase of an item of equipment prior to the purchase of an item of equipment of the type described above in Paragraph A.

SECTION 19. 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(1)(b) 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 20. 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 paragraph (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 21. DISADVANTAGED BUSINESS ENTERPRISES

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 subrecipient 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 22. CONFLICT OF INTEREST

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. The 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.dor.state.ne.us/gov-aff/lpa/chapter-forms/coi/coi-guidance-doc-lpa.pdf>

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In the event a consultant is used by the LPA on this project, the Consultant must also complete and sign the **Conflict of Interest Disclosure Form for Consultants for Local Federal-aid Transportation Projects**, for each project. This form is located on the State website at the following location: <http://www.dor.state.ne.us/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-consultant.pdf>

Consultants and Subconsultants providing services for the LPA's, or submitting proposals for services, shall have the duty to notify the LPA and the NDOR LPD PC and submit a revised Conflict of Interest Disclosure Form for Consultants 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.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be executed by their proper officers and representatives.

EXECUTED by the City this _____ day of _____, 2012.

ATTEST:

CITY OF Grand Island
Jay Vavricek

City Clerk

Mayor

EXECUTED by the State this _____ day of _____, 2012

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

Planning & Project Development Engineer

Certification for Grants, Loans, and Cooperative Agreements

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

(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 subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such 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.

PLN2-NB

EXHIBIT "B"

Exhibit A
SCOPE OF SERVICES
GRAND ISLAND, NEBRASKA
MPO STARTUP FUNDING

The necessary scope of services for setting up the Grand Island MPO includes, but not limited to the following activities:

Procedural Activities

- General management of the program including scheduling, meetings, coordination, and documentation,
 - Primary employees responsible for this will be Planning and Engineering Staff including Directors and Support Staff until such time as an MPO Staff person can be hired.
- Designing an outreach strategy,
 - Primary employees responsible for this will be Planning and Engineering Staff including Directors and Support Staff until such time as an MPO Staff person can be hired.
- Establishing the Technical Advisory Committee and Citizen Advisory Committee structure,
 - Primarily MPO Policy Board with support from Planning and Engineering Staff including Directors and Support Staff until such time as an MPO Staff person can be hired.
- Determining the Metropolitan Planning Agency boundary,
 - City Council for approval by Governor with support from Planning and Engineering Staff including Directors and Support Staff until such time as an MPO Staff person can be hired.
- Writing the by-laws,
 - Primarily MPO Policy Board with support from Planning and Engineering Staff including Directors and Support Staff until such time as an MPO Staff person can be hired.
- Determining and establishing staffing and equipment needs,
 - MPO Policy Board with support from Planning, Engineering, Human Resources and IT Staff
- Set up/Design and Implement MPO Website separate from City of Grand Island Web Site,
 - MPO Staff with assistance from the City of Grand Island IT Department and Public Information Office
- Begin work on the Public Participation Plan for MPO Activities,
 - MPO Staff with assistance from the Grand Island Public Information Office
- Establish Scope for the 2014 UPWP, and
 - MPO Staff with Planning and Engineering Staff
- Research the costs and needs for the MTP (LRTP) establish a preliminary budget and scope for the MTP.
 - MPO Staff with Planning, Engineering and Purchasing Staff

Other Possible Transportation Plan Specific

Most likely these activities will not be included, since this grant will not be enough to cover costs of these activities and they are largely part of the MTP. The following services will be performed if funding is still available upon completion of the activities previously listed:

- Mapping of intersection controls across the City,
 - This would occur, at the very least on all eligible roadways, but possibly extending to collector streets and including local streets where known controls exist.

- Conducting a parking inventory especially in the city center,
- Completing traffic counts on all eligible streets during the 2013 year, and
 - This is typically done across the City on a 3 year rotation. The Public Works Engineering Division, or their contractor, would complete the counts during a single year to establish a firm base line.
- Other activities* that may be necessary and eligible for startup funding.

* Additional activities needed for MPO start-up, as determined by the Grand Island MPO technical staff, will be approved by the Nebraska Department of Roads prior to the work being performed by the MPO.

Budget

City Staff is estimating that the costs of these activities will exceed the available cost of the startup funding of \$50,000 available. The City will provide an in kind match of \$12,500 of staff time and provide additional staff time as necessary to complete the scope of services outlined.

RESOLUTION 2012-366

WHEREAS, the Nebraska Department of Roads has prepared a Planning Agreement for the City of Grand Island to provide financial assistance to the Local Public Agency to help defer their startup expenses as a new Metropolitan Planning Organization (MPO) for Fiscal Year 2013; and

WHEREAS, such agreement is scheduled for commencement on January 2, 2013;
and

WHEREAS, the maximum amount of cash support from the State under such agreement is \$50,000.00 in Statewide Planning and Research (SPR) Funds for Fiscal Year 2013; and

WHEREAS, such fiscal year ends on June 30, 2012; and

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

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 startup expenses as a new Metropolitan Planning Organization 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.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 18, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 15, 2012	☐ City Attorney