

RESOLUTION NO. _____

WHEREAS, it is in the best interests of the City of Lexington to enter into an Agreement with the Nebraska Department of Roads for Project No. SPR-PL-1(49), Control No. 00855, Comprehensive Plan Study;

BE IT THEREFORE RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, that the President of the Council is hereby directed and authorized to execute on behalf of the City of Lexington an Agreement with the State of Nebraska Department of Roads for Project No. SPR-PL-1(49), Control No. 00855, Comprehensive Plan Study; and Dennis Burnside is hereby appointed as the Responsible Charge person for the project.

Passed and approved on May 24, 2011.

John Fagot, President of Council

ATTEST:

City Clerk

AGREEMENT

PROJECT NO. SPR-PL-1(49), STATE CONTROL NO. 00855
CITY OF LEXINGTON
STATE OF NEBRASKA, DEPARTMENT OF ROADS
COMPREHENSIVE PLAN STUDY

THIS AGREEMENT, made and entered into by and between the City of Lexington, a municipal corporation of the State of Nebraska, hereinafter referred to as the "City," and the State of Nebraska, Department of Roads, hereinafter referred to as the "State".

WITNESSETH:

WHEREAS, the agreement is for the purpose of providing partial funding of the Lexington Area Comprehensive Plan update, that will include a Long Range Transportation Plan (LRTP) element, and

WHEREAS, the City and State agree that the work contained in this agreement does not cover Project Level Engineering Services, and

WHEREAS, the City intends to contract with a Consultant or Consultants under separate agreement, to accomplish the work to be carried out under this agreement, and

WHEREAS, the project is proposed to start in the fall of 2011, starting after the State gives the Notice to Proceed, and

WHEREAS, the work items for which the funding will be provided are identified in the Consultant's Scope of Services, and

WHEREAS, the State agrees to reimburse the City for 80 percent of the City's actual eligible project costs, up to a maximum reimbursement amount of \$75,000 dollars, and

WHEREAS, the funding for the project under this agreement includes pass through monies from the Federal Highway Administration (FHWA) and is therefore subject to the Single Audit Act of 1996 and the implementing regulations contained in OMB Circular A -133, and

WHEREAS, the City has agreed to establish and maintain a continuing, comprehensive, and cooperative transportation planning process in the Lexington Area, and

WHEREAS, the City Clerk/Treasurer's Office has been designated as the recipient for the City of Lexington for SPR funds pursuant to the State's Comprehensive Plan Assistance Program, and

WHEREAS, the State, as part of its planning function, intends to contribute support to the continuing transportation planning process in the Lexington area,

WHEREAS, the City 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 of the project or activity, as required by the terms of this agreement.

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

SECTION 1. DEFINITIONS

WHEREVER, in this agreement the following terms are used, they will mean:

"CITY" means the City of Lexington.

"CONSULTANT" means the firm, who will be selected by the City according to Chapter 4 of the State's Federal Aid Guidelines manual for LPA's.

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or an authorized representative.

The State is representing the United States Department of Transportation on this project and any reference to the State in this agreement means the State on behalf of the United States Department of Transportation.

"AERONAUTICS" means the Nebraska Department of Aeronautics of the State of Nebraska, Lincoln, Nebraska, the Director of the Department, or its authorized representatives.

"FHWA" means the Federal Highway Administration, Department of Transportation, Washington, DC, acting through its authorized representatives.

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

RESPONSIBLE CHARGE (RC) means the public employee who is fully empowered by the City and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of this study.

SECTION 2. GENERAL DESCRIPTION OF SCOPE OF WORK

- A. The work to be performed under the terms of this agreement for this study must be conducted in accordance with the Consultant's Scope of Services, which will be part of the City/Consultant agreement.
- B. CITY shall:
 - 1. Appoint and fully authorize a person to be in responsible charge of this project or activity. The appointed person must be a Fully Qualified, Full Time Public Employee who is in responsible charge of all aspects of the project or activity of City contemplated by this agreement, as those terms are defined and the duties described on Attachment AA, which definitions and duties are incorporated herein by

this reference. The City's "Responsible Charge" (RC) person needs to review all products and all billing invoices since Federal Funds are involved. The City shall provide the state with a copy of the City/Consultant agreement and Scope of Services prior to the start of the consultant's work activities so the State can review and provide a Notice to Proceed to the City.

2. Develop local current and future land use information in a Geographic Information System (GIS) compatible format. The map should graphically illustrate travel/traffic patterns of major traffic generators and environmentally sensitive areas.
3. In cooperation with the Nebraska Department of Aeronautics, determine if a valid airport plan exists or an update should be undertaken. Include the airport plan in the long range transportation plan update.
4. Coordinate with Aeronautics, local public transportation providers, and rail and truck freight carriers and others as necessary to obtain the information and data to complete the long range transportation plan update.
5. 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 City 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 City shall follow any applicable requirements including, but not limited to, requirements defined in Chapter 4 of the LPA Guidelines Manual.
6. Provide input to the Consultant to develop an electronic traffic assignment network and traffic model that includes the urbanized area of the City as defined by the U.S. Census Bureau.
7. Comply with the Single Audit Act Amendments of 1996 and the implementing regulations contained in OMB Circular A-133. If an A-133 audit report is issued, expenditures related to the project should be shown in the requisite Schedule of Expenditures of Federal Awards under the U.S. Department of Transportation – Federal Highway Administration as a pass-through from the Nebraska Dept. of Roads under Federal CFDA No. 20.205 – "Highway Planning and Construction". A

copy of the audit report should be provided to the Nebraska Dept. of Roads, Controller Division, PO Box 94759, Lincoln, NE 68509-4759.

8. Maintain all correspondence files, invoices, Draft and Final Documents, Accounting Records and other evidence pertaining to costs incurred and shall make such material available at its office at all reasonable times during this contract period and for three years from the date of final payment under this agreement; such records must be available for inspection by the State and the FHWA or any authorized representatives of the Federal Government, and the City shall furnish copies to those mentioned in this section when requested to do so.

C. STATE shall:

1. Assign qualified personnel as needed to accomplish tasks assigned to or agreed to by the State.
2. The State shall review the City/Consultant agreement and Consultant's Scope of Services and provide comments to the City. Notice to proceed will be provided promptly upon resolution of the State's comments.
3. The State shall review the Consultant's traffic modeling networks and offer comments to the Consultant and City.

SECTION 3. TIME OF BEGINNING AND COMPLETION

The State will issue the City a written Notice to Proceed upon full execution of this agreement and after review of the City/Consultant agreement and the Consultant's Scope of Services. Any work or services performed on the project prior to the Notice to Proceed date is not eligible for reimbursement.

The agreement will cover all work to be performed commencing after the State's Notice to Proceed and ending two years after that date.

Any costs incurred after the two-year time period are not eligible for reimbursement unless the City requests, with justification, an extension of the contract completion date and this extension is approved by the State.

SECTION 4. PAYMENT

- A. The State agrees to pay for the services rendered by the City under terms of this agreement, compensation on a cost reimbursement basis for costs incurred and to include only costs in accordance with the applicable provisions of 49 CFR 18 and the contract cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation System (48 CFR 31). When specific Federal Highway Administration reimbursement policy differs

from the Federal Acquisition Regulation System, the Federal Highway Administration policy will apply.

The 80% federal share will not exceed, in any event, \$75,000 for costs incurred during the referenced time period.

- B. The City shall submit invoices on a quarterly basis at a minimum. However, payments will not be made more often than once each thirty days and will be only for services performed under this agreement. The City shall submit invoices to Nebraska Department of Roads, Highway Planning Manager, P.O. Box 94759, Lincoln, Nebraska 68509, within thirty days following each Consultants billing period when the City has made a payment. Invoices may also be emailed to the Nebraska Department of Roads Highway Planning Manager. A cover letter on City letterhead must accompany the invoice. The invoices will be the basis for payment, and must contain a statement of an estimate of the percentage of work completed, and be signed by an authorized representative of City, certifying that all of the items are true and correct for the work performed under the provisions of this agreement. The State upon receipt of the proper invoices will make every reasonable effort to provide payment to the City within thirty calendar days.
- C. Payment of invoices will be determined by multiplying the total amount of the billing by eighty percent. In no event may the total interim payments exceed eighty percent of the value of the total work completed and may not exceed a maximum of \$75,000 for the entire project. The net outcome is that the City pays 20% of the first \$93,750 and 100% of anything in excess of \$93,750.
- D. The City understands that payment for the costs of this project are the sole responsibility of the City where Federal and/or state participation is not allowable or available. Therefore, where the Federal or State Government refuses to participate in this project or any part of this project, the City will be responsible for full payment with no cost or expense to the State in this project or any portion of this project. Should this project be abandoned before completion, the City shall pay all costs incurred prior to the abandonment.
- E. The final settlement between the State and the City will be made after final review and approval by the State and after an audit, if deemed necessary by the State has been performed to verify actual eligible costs. The City agrees to reimburse the State for any overpayments discovered by the State or its authorized representative. The City shall make the reimbursement within sixty calendar days after the State notifies the City of the required reimbursement. If the City is unable to or does not make the reimbursement as required,

the State by this agreement is authorized to withhold any future State and Federal funds the City would be eligible for in an amount equal to the required reimbursement to the State.

- F. The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR31) will be applied to determine the allowable costs incurred by the City under this agreement.

SECTION 5. CHANGES IN THE SCOPE

- A. If the City determines that changes in the Scope need to be made, then the City shall present the recommended changes to the State for approval and get the approval in writing before proceeding with those changes.
- B. The State and City agree to collaborate closely on the decisions affecting the composition, scope and duration of the work and those decisions must receive the written approval of the State prior to proceeding with the Program.
- C. If, as the work progresses, major changes in the schedules, scope, or character of the work to be performed is deemed necessary or desirable, adjustments for payment or modification in the performance of the work must be submitted by the City to the State for review and approval by the State. If approved by the State, the State will prepare a supplemental agreement for execution by both parties.

SECTION 6. REPORTS

The City or Consultant shall prepare, in cooperation with the State, documentation suitable for publication. One full hard copy and an electronic copy of the Draft and the Final Comprehensive Plan and LRTP must be submitted to the State. The State shall be provided with the traffic model assignment networks files created by the consultant under contract to review before the final model product is accepted. The consultant will agree to work with the State to correct any issues that are noted in the State's review prior to this approval. All assignment networks will be provided to the State in a TransCAD or CUBE software format that is accessible in a Windows based environment and will include link formatted Traffic Analysis Zone (TAZ) data that provides information on the number of dwelling units, retail employment and non-retail employment shown in each zone. All trip matrices provided to the State that are created in conjunction with the traffic model will be shown in a spreadsheet format in a Windows based environment (MS Excel or equivalent). A field name index shall be provided to the State along with the assignment network files that provides a brief explanation of what each field name represents in the associated network files. The State shall be provided with final documentation of the completed model products and the processes that were used to create the assignment network and associated files.

SECTION 7. INSPECTION OF WORK

The City shall afford the State and the FHWA or any authorized representative of the Federal government proper facilities for review and inspection of the work under this agreement and shall at all times provide access to the premises of all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to the work under this agreement.

SECTION 8. RECORDS

The City 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 at such reasonable time and place as may be designated by the State, the FHWA, or any authorized representative of the Federal government and shall permit extracts and copies to be made, during the contract period and for three years after the date of final payment.

SECTION 9. OWNERSHIP OF DATA

The ownership of the data collected under this agreement, together with summaries and charts derived therefrom, 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 Comprehensive Plan updates. Copies of the documents will be made available to participants by the City upon request.

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.
- B. Either party to the agreement may initiate a request for publication of the final or interim reports, or any portions of the reports.
- C. Publication by either party must give credit to the other party and to the FHWA. However, if the State or FHWA does not wish to subscribe to the findings or conclusions of the Study, the following statement must 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 the FHWA."
- D. 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.

SECTION 11. 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 must not be affected by this agreement.

SECTION 12. NONDISCRIMINATION

Compliance with Regulations:

- A. During the performance of this contract, the City, for itself, its assignees and successors in interest agrees to comply with the Regulations of the DOT relative to nondiscrimination in federally assisted programs of the DOT Title 49, CFR 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: The City, with regard to the work performed prior to completion of this study, shall not discriminate on the basis of handicap, race, color, sex, or national origin in the selection and retention a Consultant. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 Title 49 CFR 21.5, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of CFR 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the City for work to be performed under a subagreement or the City/Consultant agreement, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the City of the City's obligations under this contract and the Regulations relative to nondiscrimination on the ground of handicap, race, color, sex, or national origin.
- D. Information and Reports: The City shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this contract, the State will impose such contract

sanctions as it or the FHWA may determine to be appropriate, including but not limited to withholding of payments to the City under the contract until the City complies, and/or cancellation, termination or suspension of the contract, in whole or in part.

- F. Incorporation of Provisions: The City shall include the provisions of paragraph A through E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The City 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 City becomes involved in, or is threatened with litigation with a Consultant or supplier as a result of such direction, the City may request the State to enter into such litigation to protect the interests of the State, and in addition, the City may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 13. DISADVANTAGED BUSINESS ENTERPRISES

The City shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.

The City shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of the City to carry out the requirements set forth above will constitute a breach of this agreement and, after the notification of the State and the FHWA, may result in termination of this agreement by the State or such remedy as the State deems appropriate. The subletting, assignment, or transfer section of this agreement further explains the City's responsibility in ensuring that disadvantaged business enterprises have the maximum opportunity to compete for subagreements.

On any work performed by or caused to be performed by the City, failure of the City to carry out the requirements set forth above will 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 14. NEBRASKA FAIR EMPLOYMENT

If the City performs any part of the work on this project itself, the City agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat §48-1101, through 48-1126 (Reissue 1998), and all regulations relative to nondiscrimination in federally assisted programs of the DOT, Title 49 CFR, 21 and 27 as set forth in this agreement.

IN WITNESS WHEREOF, the State and City have hereto caused this agreement to be executed by their proper officers and representatives.

EXECUTED by the City this _____ day of _____ 2011.

WITNESS:

CITY OF Lexington

Mayor John Fagot

EXECUTED by the State this _____ day of _____ 2011.

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

Planning & Project Development Engineer

PLN1-NU

Attachment AA

DEFINITIONS

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

Fully qualified means a person who has satisfactorily completed all applicable NDOR training courses and who has met the other requirements necessary to be included on the NDOR list of LPA RCs.

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

Public employee means a person who is employed solely by a county, a municipality, a political subdivision; a Native American tribe; a school district; another entity that is either designated by statute as public or quasi-public; or an entity included on a list of entities determined by the Nebraska Department of Roads, and approved by FHWA, as fulfilling public or quasi-public functions.

Responsible Charge means the public employee who is fully empowered by LPA and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project from planning through project completion. RC is the day-to-day project manager, and the LPA's point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, making decisions, and actively monitoring project advancement. It is understood that RC may elect to use consultants to provide certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in those technical tasks.

DUTIES OF CITY

City makes the following pledges and promises concerning the person appointed as Responsible Charge (RC) of the project or activity contemplated by this Agreement:

- 1) This person is a **full-time public employee** of City.
- 2) This person is fully qualified and has successfully completed required training to serve as RC.
- 3) It must require the RC to attend and complete the following activities: participation in an annual workshop, which will be based on recommendations of the QA/QC program, and a minimum of 15 hours of professional development training annually.
- 4) It has authorized this person to be in day-to-day **responsible charge** of City's Federal-aid project or activity and to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through project completion, are in compliance with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies in order to remain eligible for Federal-aid project or activity funding.

- 5) It will not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this Agreement.
- 6) It will support the activities of the RC to ensure that City's federal-aid project is in compliance with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies in order to remain eligible for Federal-aid project or activity funding.
- 7) It will take all necessary actions to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid projects and activities, including, but not limited to, all applicable requirements of 23 C.F.R. § 635.105.
- 8) It will take all necessary actions to ensure that the RCs work on the project or activity would be deemed to meet the same standards that the Nebraska Department of Roads must meet under 23 C.F.R. § 635.105.
- 9) It is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid projects and activities. City understands that non-compliance with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies may result in the loss of all Federal funding for the project or activity. In the event that the acts or omissions of RC, or its agents or representatives, result in a finding that a project fails to comply with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies, LPA will be required to repay NDOR some or all previously paid Federal funds and any costs or expenses NDOR has incurred for the project.
- 10) It will require that the RC serve as a steward or trustee of the public funds, i.e. ensure that the public gets a work product commensurate with the money it pays;