TRANSPORTATION PLANNING AGREEMENT

City of Lexington
JEO Consulting Group, Inc.
PROJECT NO. SPR-PL-1(49)
CONTROL NO. 00855
Lexington, Nebraska

Consulting Services: City of Lexington Comprehensive Plan Assistance Program

THIS AGREEMENT, made and entered into by and between the City of Lexington, hereinafter referred to as the Local Public Agency or "LPA," and JEO Consulting Group, Inc., hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the LPA used a qualification based selection process to select the Consultant to render professional services for the above named project, and

WHEREAS, the Consultant is qualified to do business in Nebraska, and

WHEREAS, Consultant is willing to perform the services in accordance with the terms hereinafter provided, is presently in compliance with Nebraska law, and hereby agrees to comply with all federal, state, and local laws and ordinances applicable to this agreement, and

WHEREAS, the Consultant and LPA intend that the services provided by Consultant comply with all applicable federal-aid transportation related program requirements, so that LPA's project will be fully eligible for federal reimbursement, and

WHEREAS, the LPA and Consultant intend that the services under this agreement be completed in accordance with the applicable terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual; the LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address:

http://www.transportation.nebraska.gov/gov-aff/lpa/lpa-guidelines.pdf, and

WHEREAS, the Consultants primary contact person for LPA will be Dennis Burnside, who has been designated as being in responsible charge of the project, and who is referred to herein as RC or Responsible Charge.

WHEREAS, the parties understand that the State of Nebraska, Department of Roads, is involved in this federal-aid project on behalf of the FHWA only for issues related to the eligibility of the project for reimbursement of project costs with federal-aid funds and for the review of study products, reports, or deliverables that identify impacts to state highway facilities.

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

SECTION 1. DEFINITIONS

Wherever in this agreement the following terms are used, they will have the meaning here given:

"CONSULTANT" means JEO Consulting Group, Inc., and any employees thereof, whose business and mailing address is 11717 Burt Street, Ste. 210, Omaha, NE 68154, and "SUBCONSULTANT/SUBCONTRACTOR" means the firm of HDR Inc., whose business and mailing address is 8404 Indian Hills Drive, Omaha, NE 68114; and the firm of Socialmentum, LLC, dba MindMixer, 1111 N. 13th Street, Suite 116, Omaha, NE 68102.

"LPA" means a Local Public Agency. Local Public Agencies include, but are not necessarily limited to; Nebraska Cities, Villages, Counties, Political Subdivisions, Native American Tribes, and other entities or organizations found to be eligible sub recipients of federal funds for transportation projects, and

"LPA MANUAL" shall mean the Nebraska Department of Roads' LPA Guidelines Manual for Federal-Aid Projects. The LPA Manual can be found in its entirety at the following web address: http://www.transportation.nebraska.gov/gov-aff/lpa/lpa-quidelines.pdf, and

"RESPONSIBLE CHARGE" or "RC" shall mean LPA's representative for the project whose duties and responsibilities are identified in federal law and in the LPA Manual, and

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. The State represents the United States Department of Transportation on federally funded transportation projects sponsored by a sub recipient of federal funds and any reference to the "State" in this agreement shall mean the State on behalf of the United States Department of Transportation.

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

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

To "ABANDON" the work means that the LPA has determined that conditions or intentions as originally existed have changed and that the work as contemplated herein is to be renounced and deserted for as long in the future as can be foreseen.

To "SUSPEND" the work means that the LPA has determined that progress is not sufficient, or that the conditions or intentions as originally existed have changed, or the work completed or submitted is unsatisfactory, and that the work as contemplated herein should be

stopped on a temporary basis. This cessation will prevail until the LPA determines to abandon or terminate the work or to reinstate it under the conditions as defined in this agreement.

To "TERMINATE" or the "TERMINATION" of this agreement is the cessation or quitting of this agreement based upon action or failure of action on the part of the Consultant as defined herein and as determined by the LPA.

SECTION 2. SCOPE OF SERVICES

The Consultant shall provide Consulting Services for project SPR-PL-1(49)), CN 00855, in Dawson County, Nebraska. The scope shall be developed in accordance with the LPA manual and attached hereto as Exhibit "A," Scope of Services which are attached and hereby made a part of this agreement. Any services performed by the Consultant prior to written approval of the LPA will be solely at the expense of the Consultant.

The LPA has the absolute right to add or subtract from the scope of services at any time and such action on its part will in no event be deemed a breach of this agreement. The LPA will give the Consultant seven days written notice of such addition or subtraction. Any necessary addition or subtraction in the "General Scope of Services" shall follow the Consultant Work Order Process outlined in the <u>FEES AND PAYMENTS</u> section below.

SECTION 3. CHANGES TO PERSONNEL

The Consultant has furnished a document entitled Staffing Plan in Exhibit "B."

Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended work. The Consultant shall notify the LPA of any personnel changes. The LPA reserves the right to accept or reject the personnel change. Failure on the part of the Consultant to provide acceptable replacement personnel or qualified new personnel as determined by the LPA will be cause for termination of this agreement, with settlement to be made as provided in the <u>SUSPENSION</u>, <u>ABANDONMENT</u>, <u>OR TERMINATION</u> section of this agreement.

SECTION 4. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. The Consultant hereby agrees to contractually require any subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the

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Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States

Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The undersigned duly authorized representative of the Consultant, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

Neb.Rev.Stat. § 4-114. I certify compliance with the provisions of Section 4-114 and, hereby certify that this Consultant shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all subconsultants, by contractual agreement, to require the same registration and verification process.

If the Consultant is an individual or sole proprietorship, the following applies:

- The Consultant must complete the United States Citizenship Attestation form, available on the Department of Roads website at www.transportation.nebraska.gov/projdev/#save.
- 2. If the Consultant indicates on such Attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- The Consultant understands and agrees that lawful presence in the
 United States is required and the Consultant may be disqualified or the
 contract terminated if such lawful presence cannot be verified as required
 by Neb. Rev. Stat. §4-108.

SECTION 5. STANDARD PRACTICES AND REQUIREMENTS

It is mutually agreed that at the request of the LPA, the Consultant shall provide the LPA a detailed report of the product and progress of the work and allow inspection of the existing work product. From time to time, additions, deletions, changes, elaborations, or modifications of the services performed under the terms of this agreement may be determined by the LPA to be desirable or preferable. These changes will be made by supplement agreement.

SECTION 6. NOTICE TO PROCEED AND COMPLETION

The LPA will issue the Consultant a written Notice-to-Proceed when LPA determines that federal funding approval has been obtained for the project, upon full execution of the

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agreement, and upon State concurrence that the form of this agreement is acceptable for

federal funding eligibility. Any work or services performed by Consultant on the project prior to

the date specified in the written Notice-to-Proceed is not eligible for reimbursement.

The Consultant shall do all the work according to the schedule in attached Exhibit "A"

and shall complete all work required under this agreement in a satisfactory manner by April 1,

2013.

Any costs incurred by Consultant after the completion deadline are not eligible for

federal funding reimbursement unless the Consultant has received an extension of time in

writing from LPA and the LPA has federal funding approval for the extension of time.

The completion time will not be extended because of any avoidable delay attributed to

the Consultant, but delays attributable to the LPA may constitute a basis for an extension of

time.

LPA authorized changes in the scope of work, which increase or decrease work-hours or

services required of the Consultant, will provide the basis for a change of time and/or changes

to the Consultant's fee.

SECTION 7. FEES AND PAYMENTS

The general provisions concerning payment under this agreement are set out on the

attached Exhibit "C." The following provisions also apply:

A. For performance of the services as described in this agreement, the Consultant

will be compensated a Lump Sum fee of \$134,058.82. This lump sum fee will

constitute full payment for services necessary to complete the project as outlined.

The Consultant's compensation shall not exceed the maximum without prior

written approval of the State.

B. Occasionally, the conditions of this agreement may change. This may be due to

a change in scope which may require an adjustment of costs. In order to justify

the need to modify this contract, the LPA must first determine that the situation

meets the following criteria:

That the additional work is beyond the scope of services initially

negotiated with Consultant; and

That the proposed Services are within the scope of the Request for

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Proposal under which Consultant was selected and contract entered into;

and

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That it is in the best interest of the LPA that the services be performed

under this agreement.

Once the need for a modification has been established, a supplemental

agreement will be prepared.

If the additional work requires the Consultant to incur costs prior to execution of a

supplemental agreement, the LPA shall use the Consultant Work Order Form

(DR Form 250) to describe and provide necessary justification for the

modification of the scope of services, the deliverables, the schedule, and to

document the estimated total additional fee. DR Form 250 is available on the

State's webpage at: <a href="https://www.transportation.nebraska.gov/gov-aff/lpa-guide-gui

man.html#forms4. The Consultant Work Order must be executed to provide

authorization for the additional work and to specify when that work may begin.

This agreement will be supplemented after one or more Consultant Work Orders

have been authorized and approved for federal funding.

C. The LPA is not responsible for costs incurred prior to the Notice-to-Proceed date

or after the completion deadline date stated in the NOTICE TO PROCEED AND

<u>COMPLETION</u> Section of this agreement or as provided in a written time

extension notification.

D. The Consultant shall submit invoices to the LPA at a minimum of monthly

intervals and in accordance with the "LPA Reimbursement Procedure" located on

the State's webpage at: www.transportation.nebraska.gov/gov-aff/lpa-guide-

man.html#policies.

The invoices must present actual direct labor, actual overhead, actual direct

non-labor costs, as well as the fixed-fee based upon the actual direct labor and

overhead costs 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

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2. A description of the work anticipated for the next pay period

3. Information needed from LPA

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- 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/gov-aff/lpa-quide-man.html#forms4.

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

- G. The State, on behalf of LPA, will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payments are dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the LPA and State determines that the work submitted is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs and fixed fee upon acceptance by the LPA and State, a final audit of all invoiced amounts will be completed by the State or its authorized representative. The Consultant agrees to reimburse the State for any overpayments discovered by the State or its authorized representative. The acceptance by the Consultant of the final payment will constitute and operate as a release to the LPA and State for all claims and liability to the Consultant, 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.
- H. The Consultant shall maintain, and also require that its Subconsultants/Subcontractors 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 under this agreement. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the Consultant shall furnish copies.

SECTION 8. PROFESSIONAL PERFORMANCE

The Consultant understands that the LPA will rely on the professional performance and ability of the Consultant. Any examination by the LPA, State or the FHWA, or any acceptance or use of the work product of the Consultant, will not be considered to be a full and

comprehensive examination and will not be considered an approval of the work product of the Consultant which would relieve the Consultant from any liability or expense that would be connected with the Consultant's sole responsibility for the propriety and integrity of the professional work to be accomplished by the Consultant pursuant to this agreement. That further, acceptance or approval of any of the work of the Consultant by the LPA or of payment, partial or final, will not constitute a waiver of any rights of the LPA to recover from the Consultant, damages that are caused by the Consultant due to error, omission, or negligence of the Consultant in its work. That further, if due to error, omission, or negligence of the Consultant, the plans, specifications, and estimates are found to be in error or there are omissions therein revealed during the construction of the project and revision or reworking of the plans is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the LPA's or State's notice of any errors or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the construction contractor. This may involve visits by the Consultant to the project site, if directed by the LPA. If the Consultant discovers errors in its work, it shall notify the LPA and State of the errors within seven days. Failure of the Consultant to notify the LPA will constitute a breach of this agreement. The Consultant's legal liability for all damages incurred by the LPA caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the LPA.

SECTION 9. CHANGE OF PLAN, ABANDONMENT, SUSPENSION, AND TERMINATION

Additions to the schedule of services, if approved in writing, will require negotiation of a supplemental agreement. For any work beyond the schedule of services, the Consultant shall document the additional work, estimate the cost to complete the work, and receive written approval from the LPA before the Consultant begins the work. Any such work performed by the Consultant prior to written approval of the LPA will be done at the expense of the Consultant.

The LPA has the absolute right to abandon the project or to change the general scope of work at any time and such action on its part will in no event be deemed a breach of agreement.

The LPA can suspend or terminate this agreement at any time. Such suspension or termination may be affected by the LPA giving the Consultant seven days written notice.

If the LPA abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the Consultant will be compensated in accordance with the provisions of 48 CFR 31, provided however, that in case of suspension, abandonment, or termination for breach of this agreement or for tender of improper work, the LPA can suspend

payments, pending the Consultant's compliance with the provisions of this agreement. In determining the percentage of work completed, the LPA will consider the work performed by the Consultant prior to abandonment or termination to the total amount of work contemplated by this agreement. The ownership of all project plans and supporting documents completed or partially completed at the time of such termination or abandonment will be retained by the LPA and the Consultant shall immediately deliver all project plans and supporting documents to the LPA.

SECTION 10. OWNERSHIP OF DOCUMENTS

All project data prepared or obtained under the terms of this agreement are the property of the LPA and the Consultant shall deliver them to the LPA without restriction or limitation as to further use.

LPA acknowledges that such data may not be appropriate for use on an extension of the work covered by this agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at the LPA's sole risk and without legal exposure or liability to Consultant.

SECTION 11. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

Certain information provided by the LPA or State to the Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by the LPA or State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an LPA or State employee and Legal Counsel. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately complete the work under this agreement on behalf of the LPA or State.

The Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for the LPA or State. The Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. The

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LPA agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information:

"CONFIDENTIAL INFORMATION: Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The LPA has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient."

The Consultant agrees to obtain the written approval by the State prior to the dissemination of any privileged or confidential information or documentation if it is unclear to the Consultant whether such information or documentation is in fact privileged or confidential.

The Consultant and the LPA agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant will create liability on the part of the Consultant to the LPA for any damages that may occur as a result of the unauthorized dissemination. The Consultant agrees to hold harmless, indemnify, and release the LPA for any liability that may ensue on the part of the LPA for any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant.

SECTION 12. FORBIDDING USE OF OUTSIDE AGENTS

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

SECTION 13. NON-RAIDING CLAUSE

The Consultant shall not engage the services of any person or persons presently in the employ of the LPA or the State for work covered by this agreement without the prior written consent of the employer of the persons.

SECTION 14. GENERAL COMPLIANCE WITH LAWS

The Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

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SECTION 15. DISPUTES

Any dispute concerning a question of fact in connection with the work covered under this

agreement will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE

RESOLUTION.

SECTION 16. RESPONSIBILITY FOR CLAIMS AND LIABILITY

The Consultant agrees to save harmless the LPA from all claims and liability due to the

activities of the Consultant or those of the Consultant's agents or employees in the performance

of work under this agreement. In this connection, the Consultant shall for the life of this

agreement, carry insurance as outlined in Exhibit "D" and attached hereto, and hereby made a

part of this agreement.

SECTION 17. PROFESSIONAL REGISTRATION

This section has intentionally been left blank.

SECTION 18. SUCCESSORS AND ASSIGNS

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

SECTION 19. DRUG-FREE WORKPLACE POLICY

The Consultant shall have an acceptable and current drug-free workplace policy on file

with the State.

SECTION 20. FAIR EMPLOYMENT PRACTICES ACT

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as

provided by Neb.Rev.Stat. 48-1101 through 48-1126, which is hereby made a part of and

included in this agreement by reference.

SECTION 21. DISABILITIES ACT

The Consultant 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 22. DISADVANTAGED BUSINESS ENTERPRISES

The Consultant shall ensure that disadvantaged business enterprises, as defined in

49 CFR 26, have the maximum opportunity to compete for and participate in the performance of

subagreements financed in whole or in part with federal funds under this agreement.

Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part

of and included in this agreement by reference.

The Consultant 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 Consultant to carry out

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the requirements set forth above will constitute a breach of this agreement and, after the notification of the FHWA, may result in termination of this agreement by the LPA or such remedy as the LPA deems appropriate.

SECTION 23. NONDISCRIMINATION

- A. <u>Compliance with Regulations</u>: During the performance of this agreement, the Consultant, for itself and 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 (49 CFR 21 and 27, hereinafter referred to as the Regulations), which are hereby made a part of and included in this agreement by reference.
- B. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurements of materials and leases of equipment.

 The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.
- C. Solicitations for Subagreements, Including Procurements of Materials

 and Equipment: In all solicitations either by competitive bidding or negotiation
 made by the Consultant for work to be performed under a subagreement,
 including procurements of materials or equipment, each potential Subconsultant
 or supplier shall be notified by the Consultant of the Consultant's obligations
 under this agreement and the Regulations relative to nondiscrimination on the
 basis of race, color, sex, or national origin.
- D. <u>Information and Reports</u>: The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA, State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the

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

- E. <u>Sanctions for Noncompliance</u>: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the LPA will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.
- F. Incorporation of Provisions: The Consultant shall include the provisions of paragraphs A through E of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subagreement or procurement as the LPA, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/ Subcontractor as a result of such direction, the Consultant may request that the LPA enter into such litigation to protect the interests of the LPA and, in addition, the Consultant may request that the State and United States enter into such litigation to protect the interests of the State and United States.

SECTION 24. SUBLETTING, ASSIGNMENT, OR TRANSFER

The Subconsultant/Subcontractor (HDR, Inc.) will provide assistance in gathering information, conducting public meetings and design charettes, developing the printed and online products, and will take the lead in most of the transportation components of the plan.

Any other subletting, assignment, or transfer of any professional services to be performed by the Consultant is hereby prohibited unless prior written consent of the LPA is obtained.

As outlined in the DISABILITIES ACT Section of this agreement, the Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other work must include documentation of efforts to employ a disadvantaged business enterprise.

SECTION 25. 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. LPA should review, understand and follow the instructions provided in the MDOR CONFLICT OF INTEREST GUIDANCE
MPLOYEES & 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.

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 sub-consultants providing services for 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 sub-consultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

SECTION 26. CONSULTANT CERTIFICATIONS

The undersigned duly authorized representatives of the Consultant, by signing this agreement, hereby swears, under the penalty of law, the truth of the following certifications, and agrees as follows:

A. Neb.Rev.Stat. § 81-1715(1). I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum or actual cost-plus-a-fixed fee professional service contract, I hereby certify that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, and current as of the date of this agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the LPA determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. Neb.Rev.Stat. §§ 81-1701 through 81-1721.

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- B. Neb. Rev. Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:
 - Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
 - Has agreed, as an express or implied condition for obtaining this
 agreement, to employ or retain the services of any firm or person in
 connection with carrying out this agreement, or
 - 3. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).
- C. Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions. Section C1 below contains 10 instructions that consultant agrees to follow in making the certifications contained in C2.

1. Instructions for Certification

- a. By signing this agreement, the Consultant is providing the certification set out below.
- b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the LPA's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the State determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the LPA may terminate this agreement for cause or default.
- d. The Consultant shall provide immediate written notice to the LPA if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended,"

 "ineligible," "lower tier covered transaction," "participant," "person,"

 "primary covered transaction," "principal," "proposal," and

 "voluntarily excluded," as used in this clause, have the meanings

 set out in the Definitions and Coverage sections of the rules

 implementing Executive Order 12549.
- f. The Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the LPA before entering into this agreement.
- g. The Consultant further agrees to include the clause titled

 "Certification Regarding Debarment, Suspension, Ineligibility and
 Voluntary Exclusion Lower Tier Covered Transaction," provided
 by the State without modification, in all lower tier covered
 transactions and in all solicitations for lower tier covered
 transactions.
- h. The Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the

- method and frequency by which it determines the eligibility of its principals.
- i. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if the Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the LPA may terminate this agreement for cause or default.

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

- a. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
 - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - ii. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or

local) with commission of any of the offenses enumerated

in paragraph A.(ii) of this certification; and

iv. Have not within a three-year period preceding this

agreement had one or more public transactions (federal,

state, or local) terminated for cause or default.

b. Where the Consultant is unable to certify to any of the statements

in this certification, such Consultant shall attach an explanation to

this agreement. I acknowledge that this certification is to be

furnished to the State and the FHWA in connection with this

agreement involving participation of federal-aid highway funds and

is subject to applicable, state and federal laws, both criminal and

civil.

SECTION 27. LPA CERTIFICATION

By signing this agreement, I, do hereby certify that, to the best of my knowledge, the Consultant or its representative has not been required, directly or indirectly as an express or

implied condition in connection with obtaining or carrying out this agreement to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay or agree to pay to any firm, person, or organization, any fee, contribution,

donation, or consideration of any kind.

I acknowledge that this certification is to be furnished to the FHWA, upon their request,

in connection with this agreement involving participation of Federal-Aid highway funds and is

subject to applicable state and federal laws, both criminal and civil.

SECTION 28. ALL ENCOMPASSED

This instrument embodies the whole agreement of the parties. There are no promises,

terms, conditions, or obligations other than contained herein, and this agreement supersedes all

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previous communications, representations, or other agreements or contracts, either oral or

written hereto.

Project No. SPR-PL-1(49)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

After being duly sworn on oath, I do hereby acknowledge the foregoing certification and state that I am authorized to sign this agreement.

EXECUTED by the Consultant this day of March, 2012.	
	JEO Consulting Group, Inc. Jeffrey B. Ray
	Planning Department Manager
STATE OF NEBRASKA))ss. DOUGLAS COUNTY)	
Subscribed and sworn to before me the	his day of March, 2012.
	Notary Public
EXECUTED by the LPA this 27th day	of March, 2012.
	City of Lexington Joe Pepplitsch
	City Manager
Subscribed and sworn to before me this 27th day of March, 2012.	
	Clerk
	STATE OF NEBRASKA DEPARTMENT OF ROADS Form of Agreement Approved for Federal Funding Eligibility:
	Date

AGR