

## AGREEMENT

PROJECT NO. ITS03-ITSN(106)  
CITY OF LINCOLN  
NEBRASKA DEPARTMENT OF ROADS  
REGIONAL ITS ARCHITECTURE DEVELOPMENT

THIS AGREEMENT, entered into by and between the City of Lincoln, 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 for the development of a regional architecture within the field of Intelligent Transportation Systems (ITS), and,

WHEREAS, the City agrees to perform a comprehensive and cooperative regional ITS architecture within the District 1 boundary of the Nebraska Department of Roads, which includes the City of Lincoln and Lancaster County, and,

WHEREAS, the region is defined as the District 1 area of the Nebraska Department of Roads, which includes the City of Lincoln and Lancaster County, 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 work items for which the funding will be provided not to exceed \$100,000 in federal funds and \$50,000 in state funds, and,

WHEREAS, the State, as part of its operations function, intends to contribute support to the continuing ITS planning process in the Lincoln/Lancaster region, and,

WHEREAS, it is the desire of the City that the work covered by this agreement be undertaken, as evidenced by the Resolution of the City Council dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached hereto, identified as Exhibit "B", and hereby made a part of this agreement.

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

I. DEFINITIONS

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

"CITY" means the City of Lincoln,

"STATE" means the Nebraska Department of Roads of the State of Nebraska, Lincoln, Nebraska, the Director of the Department, 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.

"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, acting through its authorized representatives.

## II. SCOPE OF AGREEMENT

- A. The work to be performed under the terms of this agreement for the development of a regional ITS architecture must be conducted in accordance with the Consultant's Scope of Services. The Consultant's scope of services will be developed in mutual cooperation between the City and State. The City will supply a copy of the Scope of Services to the State when the City/Consultant contract is finalized.
- B. CITY shall:
1. Provide the necessary administration of committees and staff, and consult, collaborate and coordinate with the State to accomplish the objectives of the Scope of Services contained in the City/Consultant agreement.
  2. Develop regional ITS architecture in accordance with the federal regulations contained in 23 CFR 940 and 23 CFR 655.
  3. The City shall select a Consultant according to the City's Consultant selection procedures. 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 factor for selecting a consultant.
- C. STATE shall:
1. Provide 2 individuals to serve as voting members as the Consultant Selection Committee.
  2. Assign qualified personnel as needed to accomplish tasks assigned to or agreed to by the State, and to provide guidance and oversight regarding consistence with the State's regional architecture and federal guidelines and requirements.
  3. Work with FHWA for approval of the City's regional architecture.

## III. DURATION OF AGREEMENT

The development of the regional ITS architecture must be completed by April 8, 2005.

## IV. 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 federal/state share will not exceed, in any event, \$150,000 for costs incurred during the referenced time period.

- B. Payments will be made to the City not more often than once each thirty days, and will be only for services performed under this agreement. The City shall submit invoices within twenty days following the end of each monthly period when a payment is required. The invoices will be the basis for payment, and must contain a statement of the City's 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. Payment will be made subject to audit by duly authorized representatives of the State. 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 federal and state portion of the invoices will be determined by multiplying the total amount of the billing by seventy-five percent. In no event may the total interim payments exceed seventy-five percent of the value of the total work completed and may not exceed a maximum of \$150,000 for the whole project. In other words, the City pays 25% of the cost, unless it goes over \$200,000, at which point the City pays 100% of the costs in excess of \$200,000.
- 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.

V. 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.
- 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.

VI. REPORTS

The City shall prepare progress reports at strategic intervals during the course of the work. The reports shall be distributed by the City to key agencies and partners within the region. Final reports and executive summary shall be submitted to the State and local FHWA Division office in both hard copy and electronic format. Electronic submission must be compliant with section 508 of the Americans with Disabilities Act (The document must be accessible via keyboard). Acceptable formats are HTML and Word.

VII. 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.

VIII. 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.

IX. 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 development of the regional ITS architecture. Copies of the documents will be made available to participants by the City upon request.

X. 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 development of the regional ITS architecture, small technical groups or lectures to employees or students. Lectures to other groups which describe the plans are permissible.

XI. CONTRACTUAL SERVICES

Any agreement for sub-contractual service pertinent to this work outlined in the Scope of Activities and subject to reimbursement under this agreement must be submitted to the State for review and written approval prior to final execution of the subcontract.

XII. CANCELLATION

The State can cancel this agreement at any time upon giving thirty calendar days written notice of such cancellation to the City. If the contract is cancelled under this provision, the State shall reimburse the City for all eligible expenses incurred and work completed to the date of cancellation.

XIII. 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.

XIV. NONDISCRIMINATION

- 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 (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 by it after award and prior to completion of the contract work, shall not discriminate on the basis of

handicap, race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 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 either by competitive bidding or negotiation made by the City for work to be performed under a subcontract, 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 Contractor becomes involved in, or is threatened with litigation with a subcontractor 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.

#### XV. 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.

XVI. The City shall abide by the requirements of 49 CFR 20, titled "New Restrictions on Lobbying."

On any work performed or caused to be performed by the City, failure of the City to carry out the requirements of the federal regulation set for the above will constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contact by the State or such remedy as the State deems appropriate.

XVII. 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 and in Exhibit "A," attached hereto and made a part of 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 \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

WITNESS:

CITY OF LINCOLN  
MAYOR

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

WITNESS:

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Jim L. Schmailzl

Operations and Maintenance Manager

AGR6-NZ

## NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- (1) **Compliance with Regulations:** The Contractor will 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 contract.
- (2) **Nondiscrimination:** The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will 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 contractor will 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 Appendixes "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 contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- (4) **Information and Reports:** The contractor will 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 Highway Department or the Federal Highway Administration 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 contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
  - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration 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 contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.