

**AN AGREEMENT BETWEEN
THE CENTRAL IOWA REGIONAL TRANSPORTATION PLANNING ALLIANCE
AND
THE DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION
FOR
TRANSPORTATION-REGIONAL PLANNING SERVICES**

RECITALS

WHEREAS the Central Iowa Regional Transportation Planning Alliance (CIRTPA) is the regional transportation planning agency-organization for the Iowa Department of Transportation's Region 11, pursuant to Subpart A, Metropolitan Planning Requirements, and to Subpart B, Statewide Planning Requirements, of the Intermodal Surface Transportation Efficiency Act of 1991, Title 23 of the Code of Federal Regulations, Part 450.210; is a public agency created pursuant to the authority of Chapter 28E of the Iowa Code; and desires to contract with the Des Moines Area Metropolitan Planning Organization for the purpose of accomplishing certain governmental services, activities, and undertakings which CIRTPA is authorized by law to perform; and

WHEREAS the Des Moines Area Metropolitan Planning Organization (MPO) is a designated metropolitan planning organization, pursuant to Part 450, Subpart C, of Title 23 of the Code of Federal Regulations; is a public agency created pursuant to the provisions of Chapter 28E of Iowa Code; and desires to enter into a contract with CIRTPA to perform certain governmental services, activities, and undertakings as hereinafter enumerated and defined; and

WHEREAS Iowa Code Section 28E.12 specifically authorizes such a contract, as does Article 5 of the 28E Agreements creating the respective contracting parties;

AGREEMENT

NOW THEREFORE in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties signatory hereto agree, effective ~~June 1, 1994~~ July 1, 2019, as follows:

SECTION I

ACCEPTANCE OF EMPLOYMENT

CIRTPA agrees to employ the MPO and the MPO accepts such employment in accordance with the terms hereof.

SECTION II

SCOPE OF SERVICES

CIRTPA employs the MPO to provide ~~transportation regional~~ planning services for ~~transportation regional~~ planning activities contemplated and funded pursuant to the ~~Intermodal Surface Transportation Efficiency Act of 1991~~ ~~Fixing America's Surface Transportation (FAST) Act of 2015~~ for the regional transportation planning area set forth in the 28E Agreement establishing CIRTPA including, but not limited to, the following:

Commented [DM1]: Changed to regional in light of some recent non-transportation efforts such as housing trust fund administration and comprehensive planning in the CIRTPA area

1. Development of CIRTPA's ~~Transportation-Unified~~ Planning Work Program and Cost Allocation Plan and annual budget;
2. Development of CIRTPA's Transportation Improvement Program;
3. Development of a long-range transportation plan for CIRTPA;
4. Participation in the public participation process of CIRTPA, as requested; periodic meetings and consultations with CIRTPA's representative(s) to review and evaluate reports and other work product generated by the MPO pursuant to this Agreement;
5. Performance of other such planning activities as are required by the ~~Intermodal Surface Transportation Efficiency Act of 1991~~ ~~FAST Act~~, as amended, and federal regulations promulgated pursuant thereto;
6. Performance of all other transportation planning services as may be requested by CIRTPA, acting by and through its authorized officers or representatives from time-to-time throughout the term of this Agreement.
7. Generate and provide to CIRTPA periodic reports and memoranda describing the status of services and work in process generally pursuant to this Agreement, and specifically with respect to particular tasks assigned and undertaken in accordance with this Agreement.

The foregoing enumeration of services shall not be deemed to be a delegation of final decision-making authority of CIRTPA, which authority is expressly reserved.

SECTION III

COMPENSATION

CIRTPA shall pay to the MPO fees for services performed based on hourly rates for time actually spent at the applicable hourly rate of the personnel involved in the performance of such services. Applicable hourly rates are agreed to as set forth ~~in Attachment A, Hourly Rates of MPO Personnel in CIRTPA's annual Unified Planning Work Program and budget, attached hereto and by this reference made a part hereof.~~ Applicable hourly rates will be periodically reviewed and will not be changed without at least sixty (60) days written notice from the MPO to CIRTPA. CIRTPA will also reimburse the MPO for directly billable items and cash advanced periodically for the convenience of the parties such as printing, postage, long distance telephone charges, mileage, fax transmissions, and similar out-of-pocket expenses. No separate charge will be made for general office overhead expenses. The MPO will submit an itemized statement of services and reimbursable expenditures on a ~~monthly~~ ~~quarterly~~ basis, or other such billing period as may be agreed by the parties. Absent extenuating circumstances, payment will be made within thirty (30) days of such statement.

SECTION IV

RECORDS

The MPO shall maintain an accurate cost-keeping system as to all costs and services incurred in connection with this Agreement; shall produce for examination books of accounts, bills, invoices, and other vouchers or certified copies thereof at reasonable times during regular office hours, and shall permit extracts and copies thereof to be made during the term of this Agreement and so long thereafter as amounts remain owing under this Agreement.

SECTION V

TERM AND TERMINATION

This Agreement will be reviewed at least annually before the completion of each fiscal year, and upon expiration of the ~~Intermodal Surface Transportation Efficiency Act of 1991~~ FAST Act. This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party. During any such notice period, CIRTPA and the MPO will cooperate to conclude any pending matters and settle any outstanding payments. CIRTPA will be responsible for fees and reimbursable expenses incurred up to the effective date of termination.

SECTION VI

IDEMNIFICATION

CIRTPA releases, indemnifies, and holds the MPO and all of its agents, employees, and subcontractors, harmless from any and all claims, demands, actions, or causes of action of whatever nature or character arising out of, or by reason of, the work to be performed hereunder by the MPO. CIRTPA agrees to defend, at its own sole cost and expense, any action or proceeding commenced for the purpose of asserting any such claim of whatever character arising as a result of work performed pursuant to or in furtherance of this Agreement. The foregoing to the contrary notwithstanding, any and all claims that may arise under the Worker's Compensation Act or otherwise existing in favor of MPO employees against the MPO shall in no way be the obligation or responsibility of CIRTPA, and the MPO releases, indemnifies, and holds CIRTPA harmless from any and all such claims or causes of action.

SECTION VII

NONASSIGNABILITY

This Agreement cannot be assigned or hypothecated by either party.

SECTION VIII

CONTRACTING

The MPO is expressly authorized to subcontract all or any portion of the services to be performed pursuant to this Agreement provided, however, that the MPO will remain responsible for the quality and timeliness of the work product thus generated, and the MPO must obtain the prior written approval of CIRTPA regarding the rates to be charged for subcontracted services.

SECTION IX

PERSONNEL STAFFING

Staffing decisions for work to be performed pursuant to this Agreement shall remain exclusively within the province of the MPO. CIRTPA acknowledges that it will not have any right to designate the number of employees engaged to perform work under this Agreement, nor the right to determine the employment category or the specific individual(s) assigned to perform services under this Agreement.

SECTION X

NONDISCRIMINATION

The MPO shall not discriminate against any employee or applicant for employment with regard to work to be performed under this Agreement because of factors prohibited by law or otherwise unrelated to job performance. The MPO shall take action to ensure that such employees and applicants are treated without regard to such factors and are aware of this nondiscrimination provision.

SECTION XI

GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Iowa and of the United States of America, and regulations promulgated pursuant thereto. All services and work to be performed by the MPO under this Agreement shall be performed in accordance with all such laws and regulations.

SECTION XII

DESIGNATED REPRESENTATIVE

CIRTPA will, from time-to-time during the term of this Agreement, identify a Designated Representative of CIRTPA in matters relating to the interpretation, supervision, management, and performance of this Agreement, and for the purpose of receiving notices contemplated by this Agreement or otherwise required by law. Unless otherwise identified, CIRTPA's Designated Representatives will be CIRTPA's chairperson.

SECTION XIII

WORK PRODUCT

CIRTPA shall have and retain ownership of all data, studies, surveys, drawings, maps, models, photographs, reports, computer tapes, tracings, drawings, estimates, specifications, field notes, investigations, studies, and other documents which are, or are used in generating, instruments of service under this Agreement, as well as all other material collected or developed in conjunction with the MPO's performance of any functions, activities, or responsibilities in regard to projects undertaken as a part of this Agreement. The MPO shall be entitled to unencumbered use of all such material, shall be entitled to retain copies thereof, and reserves the right to provide the material to others, with or without compensation.

~~CIRTPA acknowledges that certain work product has been generated by the MPO prior to the effective date of this Agreement. In order to acquire its ownership interest and rights in and to such work product, CIRTPA agrees to pay the MPO for such work product and rights therein as herein contemplated, an amount to be established by calculations using hourly rates for FYI 1994 as set forth in Attachment B applied to time expended in generating such work product, together with payment for all reimbursable expenses incurred by the MPO in generating such work product. Payment for ownership and rights in and to such prior work product shall be made within thirty days after billing by the MPO.~~

It is acknowledged that all work product under this Agreement constitutes public records and none of such work product will be copyrighted by either party without the prior written approval of the other party. Copies of all work product generated pursuant to this Agreement shall be made available to either party upon request for the cost of reproduction.

SECTION XIV

AGREEMENT COVERAGE

This Agreement, along with the Attachment, constitutes the entire agreement between the parties and all other statements, representations, inducements, or promises not contained herein shall have no binding effect.

SECTION XV

SUCCESSORS IN OFFICE

This Agreement shall inure to the benefit of and be binding upon the successors in office of the respective parties.

SECTION XVI

PARTIAL INVALIDITY

If any of the provisions herein conflict with the laws of the State of Iowa or of the United States of America and are declared invalid or unenforceable by any court or agency of competent jurisdiction, such conflict shall be construed to effect only such provisions as are declared invalid or unenforceable and the remaining provisions of the Agreement shall continue in effect and shall be construed as if the invalid or unenforceable provisions were not contained herein. To the extent that any provision of this Agreement is declared invalid or unenforceable due to its scope or breadth, the same shall be deemed reformed and enforceable in accordance with a lawful scope and breadth.

SECTION XVII

AMENDMENTS

This Agreement may be modified by amendments upon the mutual agreement of the parties. Any such amendment shall be made in writing and signed on behalf of the parties to be effective. Each such amendment shall be effective upon execution unless otherwise specified in the amendment.

SECTION XVIII

NOTICE

Any notice contemplated or required by this Agreement or by law, shall be given in writing and shall be deemed given when mailed, postage prepaid, to the party being noticed, or when receipt of notice is acknowledged in writing. Notice to the MPO shall be given to the MPO Executive Director or its chairperson. Notice to CIRTPA shall be given to its ~~Designated Representative or to the mayor or any supervisor of any city or county, as the case may be, that is a member of CIRTPA chairperson.~~ Either party may, from time-to-time, designate another recipient of notices by giving written notice as provided herein or by obtaining acknowledgment from the other party of such change.

SECTION XIX

TIME OF THE ESSENCE

In performance of all obligations and undertakings contemplated by this Agreement, time shall be deemed of the essence.

The Des Moines Area Metropolitan Planning Organization

by _____
Steve Gaer, Chairperson

The Central Iowa Regional Transportation Planning Alliance

by _____
John Haldeman, Chairperson