

## MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee  
FROM: Eric Williams, Natural Resources Planner  
DATE: January 3, 2019  
SUBJECT: Platte River Bridge Trail Project  
Program Agreement with NDOT

The District has collaborated with Bellevue, Plattsmouth, Lower Platte South NRD, Sarpy County, Cass County, the Nebraska Department of Transportation (NDOT, formerly Nebraska Department of Roads), and the Metropolitan Area Planning Agency (MAPA) on design and construction of a trail connection parallel to US Highway 34/75 over the Platte River, see the attached map. Bridge piers were originally designed and constructed with additional width to incorporate a separated trail. NDOT has completed the installation of girders along the existing piers, and funding for design and construction of the bridge deck has been allocated in the current MAPA Transportation Improvement Program (TIP) for federal fiscal year 2022.

The District has agreed to serve as the designated LPA (Local Public Agency) for this joint effort. In order to begin work on the project, NDOT has prepared and submitted the attached LPA Program Agreement to be approved and signed by the District.

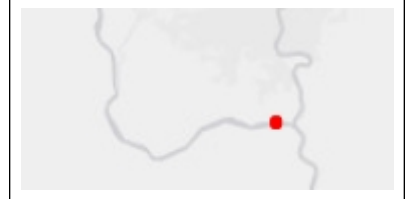
An Interlocal Agreement was approved by all local parties in fall 2017, see attached. Funding allocations for each participating organization were established (pg 4 / 20) to cover the 20% local portion of the project, with the District's portion not to exceed \$200,000.

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed LPA Program Agreement – Federal-Aid Funds with the Nebraska Department of Transportation for the Platte River Bridge Trail Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

# Attachment 1, US Highway 34 Bike and Walking Trail



## Location



## Sarpy County GIS



1210 Golden Gate Dr.  
Suite 1130  
Papillion, NE 68046  
maps.sarpy.com

## Legend

Project location  
shown in green

1: 4,800

0 200 400 800 1200  
Feet



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## LPA PROGRAM AGREEMENT- FEDERAL-AID FUNDS

PAPIO-MISSOURI RIVER NRD  
STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION  
PROJECT NO. MAPA-77(62),  
STATE CONTROL NO. 22770  
PLATTE RIVER BRIDGE TRAIL

**THIS AGREEMENT** is between the Papio-Missouri River NRD, Nebraska, a local public agency ("LPA"), and the State of Nebraska, Department of Transportation ("State"), collectively referred to as the "Parties".

### **WITNESSETH:**

**WHEREAS**, certain routes in LPA 's jurisdiction have been designated as being eligible for Surface Transportation Program (STP) Funds by the Department of Transportation, Federal Highway Administration, hereinafter called the FHWA, in compliance with Federal laws pertaining thereto, and

**WHEREAS**, STP Funds have been made available by Title 23 of the United States Code, providing for improvements on eligible routes, and

**WHEREAS**, the Federal share payable on any portion of a STP project will be a maximum of 80 percent of the eligible and participating costs; LPA's share will be the remaining 20 percent of the eligible and participating costs; and LPA will also be responsible for all other nonparticipating or ineligible costs, and

**WHEREAS**, regulations for implementing the provisions of the above mentioned act provide that the Federal share of the cost of those projects will be paid only to State, and

**WHEREAS**, the regulations further permit the use of funds other than State funds in matching Federal Funds for the improvements of those routes, and

**WHEREAS**, State is willing to assist LPA to the end of obtaining Federal approval of the proposed work and Federal Funds for the construction of the proposed improvement, with the understanding that this project is not a State project and that no State Funds are to be expended on this project, and

**WHEREAS**, LPA has designated an available fully-qualified public employee or elected official to act as "Responsible Charge" (RC) for the subject Federal-aid Transportation project, and

**WHEREAS**, the RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities and maintain the project's eligibility for Federal-aid Transportation project funding, and

**WHEREAS**, LPA understands that it must comply with all terms of 23 C.F.R. 635.105 in order for this Federal-aid transportation project to be eligible for Federal funding, and

**WHEREAS**, if LPA is to receive Federal participation for any portion of the work on the proposed project, it is necessary for all phases of work to comply with Federal requirements and procedures, and

**WHEREAS**, State and LPA agree that State, on behalf of LPA, will advertise the project for bids, conduct a letting, make award recommendations to LPA and prepare a construction contract for LPA's execution and use, and

**WHEREAS**, State will be responsible for paying directly LPA's construction contractor, preliminary and construction engineering providers, and may pay directly other services providers when specified in subsequent agreements, and

**WHEREAS**, State's role is only federal funding eligibility, including providing quality assurance to ensure FHWA on LPAs behalf that the project is designed, constructed and managed according to federal rules and regulations. State will coordinate with LPA on federal funding issues on behalf of LPA, and

**WHEREAS**, Federal Regulations provide that LPA shall not profit or otherwise gain from local property assessments that exceed LPA's share of project costs, and

**WHEREAS**, the funding for the project under this Agreement includes monies from the FHWA, therefore, if a non-federal entity expends \$750,000 or more in total federal awards in a fiscal year then the audit requirements of 2 CFR, Subtitle A, Chapter 2, Part 200, Subpart F, must be addressed as explained further in this Agreement, and

**WHEREAS**, the total cost of the project, is currently estimated to be \$2,00,000.00, but such costs may increase or decrease due to variations between the estimated and actual project costs, and

**WHEREAS**, LPA's share of the total project costs is estimated to be \$400,000.00. LPA has earmarked and has placed in its fiscal budget at least the amount of the local match indicated above. These costs may increase or decrease due to variations between the estimated and actual project costs, and

**WHEREAS**, the project is described as follows:

The proposed project is to provide recreation and active transportation connectivity across the Platte River along the US Hwy 34/75 Bridge.

**WHEREAS**, LPA desires that this project, the location of which is shown on attached Exhibit "A", be developed and constructed under the designation of Project No. MAPA-77(62), as evidenced by the Resolution of LPA dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached as Exhibit "B" and incorporated herein by this reference.

**NOW THEREFORE**, in consideration of these facts, LPA and State agree as follows:

#### **SECTION 1. DEFINITIONS**

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

**"CFDA"** means Catalog of Federal Domestic Assistance.

**"CFR"** means the Code of Federal Regulations.

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



**"LPA"** means Local Public Agency that is sponsoring a Federal-Aid transportation project.

**"NEB. REV. STAT."** means the Nebraska Revised Statutes, which is the official compilation of Nebraska law.

**"OMB"** means the Federal Office of Management and Budget.

**"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 entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to State 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"** for the purpose of selecting an RC for this project 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 entity included on a list of entities determined by State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

**"RESPONSIBLE CHARGE"** or **"RC"** means the public employee or elected official 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 and development through construction project activities, including all environmental commitments before, during and after construction. The RC is the day-to-day project manager, and 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 options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents LPA's interests in the delegated technical tasks.

**"STATE"** means the Nebraska Department of Transportation in Lincoln, Nebraska, its Director, or authorized representative. State is a funding liaison between LPA and the United States Department of Transportation for LPA federally funded transportation projects.

**"STATE REPRESENTATIVE"** means an individual from the Nebraska Department of Transportation District Office assigned to the project, who will perform State's federal funding eligibility duties under this Agreement.

## **SECTION 2. DURATION OF THIS AGREEMENT (2-25-14)**

- 2.1 *Effective Date*** --This Agreement is binding on the date it is fully executed by State.
- 2.2 *Renewal, Extension or Amendment*** --This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.
- 2.3 *Identifying Date*** – For convenience, this Agreement's identifying date will be the date State signed the Agreement.
- 2.4 *Duration***– This Agreement will expire upon completion of LPA's Federal-aid project and final financial settlement, except that any terms of this Agreement that contemplate long term activities of LPA such as environmental, maintenance, and operational

commitments, will remain in effect as long as required by law, NEPA document, permit or agreement.

- 2.5 Termination** -- Further, State reserves the right to terminate this Agreement as provided herein. If LPA determines that for any reason it will not continue with the development of this project as a Federal-aid project, LPA shall notify State and negotiate any necessary project termination conditions consistent with this Agreement.

### **SECTION 3. PURPOSE OF AGREEMENT**

- 3.1 LPA wishes to obtain Federal-aid funding for a transportation project on a street, highway, road, trail or other transportation related facility under LPA's jurisdiction. The Federal Highway Administration (FHWA) will not provide funding directly to LPA for this project but will provide Federal funding for eligible and participating project costs through State. State, pursuant to Neb. Rev. Stat. § 39-1305, will act under this Agreement as a steward of Federal Funds and as a liaison between LPA and FHWA. The purpose of this Agreement is to set forth the understanding of LPA and State concerning their respective duties to enable the project to be eligible for federal-aid funding. Under this Agreement, LPA shall continue to have all duties concerning any aspect of project management, planning, design, construction, operation and maintenance. Nothing in this Agreement shall be construed to create any duty of State to LPA concerning such matters. LPA further agrees that LPA shall have no claim or right of action against State under this Agreement if FHWA determines that the project is not eligible in whole or in part, for federal-aid funding. The following sections of this Agreement include the program requirements and other conditions State believes in good faith that LPA must meet for this project to be eligible for federal funding.
- 3.2 LPA acknowledges that many conditions must be met for the transportation project contemplated by this Agreement to be constructed and for project costs to be reimbursed with federal-aid funds. Those conditions include, but are not limited to, the unknown availability of federal-aid funds, the timely and satisfactory completion of all federal-aid funding requirements and the perceived priority of this project with other projects competing for limited federal-aid funds. Therefore, LPA agrees to develop this project in an effort to meet all federal and state eligibility requirements so the project may be determined eligible for federal-aid funding.

### **SECTION 4. RESPONSIBLE CHARGE (RC) REQUIREMENTS**

- 4.1 LPA hereby designates Eric Williams as the RC for this project.
- 4.2 Duties and Assurances of LPA concerning its designated RC for this project.
- 4.2.1 LPA understands the duties and responsibilities of LPA and RC as outlined in LPA Guidelines Manual for Federal-Aid Projects.
- 4.2.2 LPA has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision making.

- 4.2.3 The RC is a full-time public employee or elected official of LPA, or a full-time employee of another entity as defined in "Public Employee" above.
- 4.2.4 LPA agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that State must meet under 23 CFR 635.105.
- 4.2.5 If, for whatever reason, the designated RC is no longer assigned to the project during the design phase, LPA shall, within one day or sooner if possible, notify verbally and in writing State's LPD Quality Management Engineer and the LPD Project Coordinator; after such notification LPA shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC must be replaced during the letting or construction phases, LPA shall, within one day or sooner if possible, notify verbally and in writing State's LPD Quality Management Engineer, the LPD Project Coordinator, and State District Representative; after such notification, LPA shall replace the RC no later than ten calendar days or sooner if possible. With advance written approval by State, LPA may use a Provisional RC in accordance with State's Provisional RC Policy.
- 4.2.6 LPA agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes, but is not limited to, meeting all post-construction commitments, including but not limited to environmental or maintenance. LPA understands that failure of LPA or State to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that LPAFHWA finds that the project is ineligible for Federal funding, LPA will repay State all previously paid Federal Funds, as determined by State, and any costs or expenses State has incurred for the project, including but not limited to, any costs reimbursed for the time and expenses of the RC.
- 4.2.7 LPA acknowledges that many conditions must be met for the transportation project contemplated by this Agreement to be constructed and for project costs to be reimbursed with federal-aid funds. Those conditions include, but are not limited to, the unknown availability of federal-aid funds, the timely and satisfactory completion of all federal-aid funding requirements, and State's perceived priority of this project with other projects competing for limited federal-aid funds.
- 4.2.8 The Parties further understand that the project plans and specifications shall be sealed, signed and dated by a professional licensed engineer in State of Nebraska, and that estimates will be prepared and the construction will be observed by a professional engineer licensed in State of Nebraska or a person under direct supervision of a professional engineer licensed in State of Nebraska as required by Neb. Rev. Stat. § 81-3445.



## **SECTION 5. FEDERAL AID PROJECT REQUIREMENTS**

For any work to be completed by LPA on this project, LPA agrees to comply with all Federal-aid project procedures and requirements applicable to this project, including federal laws, and when applicable, state and local laws, and the LPA Guidelines Manual for Federal-aid Projects.

### **5.1 The Applicable Legal and Contract Requirements.**

- a. The primary provisions of law applicable to this Agreement are generally found in 23 U.S.C. Section 134; and 23 CFR Part 420, subpart A, and Part 450, subpart C.
- b. **LPA Guidelines Manual** - LPA also agrees to strictly comply with the applicable provisions of Guidelines Manual for Federal Aid Projects (The Manual), which is incorporated herein by this reference. The Manual is a document drafted in part, and formally approved, by the FHWA as a document setting out requirements for LPA projects funded with Federal-aid funds. A current version of The Manual can be found in its entirety at the following internet address:  
<https://dot.nebraska.gov/media/6319/lpa-guidelines.pdf>. In the event LPA believes that The Manual does not clearly address a particular aspect of the project work, LPA shall seek guidance or clarification from State's Local Project Division Section Engineer or Project Coordinator, and shall make its best effort to comply with such guidelines or clarification.

### **5.2 Federal Oversight.**

If the project has been designated as full federal oversight, then additional federal oversight and approvals will be required. It is the responsibility of LPA to understand the additional requirements and ensure that State and FHWA are provided timely notice for additional oversight and approvals.

## **SECTION 6. SCHEDULE**

In order to retain federal funding for this project, LPA shall cause the project to move promptly through all project stages to meet the targeted letting date. LPA shall coordinate with State concerning the progress of the project and notify State of any issues that will affect the project schedule. Failure of LPA to properly advance the project or meet project deadlines may result in suspension or termination and loss of federal funding for this project. See SECTION 19. SUSPENSION OR TERMINATION.

## **SECTION 7. PROCUREMENT OF PROFESSIONAL SERVICES**

### **7.1 Engineering Services**

LPA shall procure engineering services providers using the Qualifications Based Selection process set out in the LPA Guidelines Manual. Engineering services include, but are not limited to; planning studies, preliminary engineering, environmental activities, Right-of-Way design, construction engineering, or architectural services.

### **7.2 Right-of-Way Services**

LPA shall comply with State's "Right-of-Way Acquisition Guide for Local Public Agencies" and State's "Right-of-Way Manual" for the procurement of Right-of-Way services for property acquisition appraisals, appraisal reviews, negotiations, and relocation assistance.



## **SECTION 8. COORDINATING PROFESSIONAL**

If LPA's project involves more than one licensed professional engineer or architect, LPA will designate a Coordinating Professional for this project, as required by Neb.Rev.Stat. § 81-3437.02 of the Nebraska Engineers and Architects Regulation Act (Neb.Rev.Stat § 81-3104 et seq.). LPA will notify State in writing of such designation prior to commencement of professional services. The Coordinating Professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional shall verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. LPA's failure to provide written notice to State under this section may result in the costs of previous professional services being declared ineligible for reimbursement or other sanctions allowed by law or both.

## **SECTION 9. DEVELOPMENT OF THE PROJECT**

LPA shall be responsible for all stages of the development and construction of this Federal-aid project. The stages of LPA's project may include all or any of the following services: environmental, design, right-of-way, utilities, railroad, and construction. This Agreement, in conjunction with the LPA Guidelines Manual, will define the responsibilities and actions required by LPA for each of these applicable services.

## **SECTION 10. ENVIRONMENTAL RESPONSIBILITY**

### **10.1 NEPA**

- 10.1.1 LPA must comply with the National Environmental Policy Act (NEPA) and all applicable federal, state and local environmental requirements because this project is federally funded. Therefore, prior to letting the project, LPA shall be responsible for (1) completing all environmental reviews, (2) obtaining permits and approvals. Additionally, LPA shall be responsible for meeting all environmental commitments during and after the construction of the project.
- 10.1.2 Prior to appraising property, acquiring right-of-way, or final design for the project, LPA shall receive approval by State and the FHWA of one of the following: (1) Categorical Exclusion, (2) Environmental Assessment - Finding of No Significant Impact, (3) Environmental Impact Statement - Record of Decision.
- 10.1.3 Public involvement must be held in accordance with State's "Pursuing Solutions Through Public Involvement" located at:  
<http://www.transportation.nebraska.gov/docs/public-involvement.pdf>. When the NEPA process requires public involvement, LPA shall conduct necessary location or design hearings or combined location and design public hearings. State Local Projects, Project Coordinator is available to assist LPA in determining what public involvement efforts are required based upon NEPA and public sensitivities.

## **10.2 Municipal Separate Storm Sewer System (MS4) Program**

If LPA's project is within an area that is subject to the federal Storm Water Phase II Regulatory Requirements of 40 CFR 122.34 (b), then LPA or the project consultant will design, construct and maintain, as a part of this project, water quality facilities as required by LPA's National Pollutant Discharge Elimination system (NPDES) permitted Municipal Separate Storm Sewer System (MS4) program. If LPA does not have an active construction storm water management and post construction storm water management program, LPA or the project consultant shall follow the State MS4 program.

## **SECTION 11. DESIGN**

### **11.1 Preparation of Plans, Specifications, and Estimates**

LPA will develop project plans, specifications, and estimates sufficient for a bid letting. This work may be accomplished by LPA or a consultant selected by LPA following the process set out in SECTION 7. PROCUREMENT OF PROFESSIONAL SERVICES. The scope of services and associated costs will be set out in a Professional Services Agreement using States' standard template agreement. Any work performed prior to execution of said agreement, Federal authorization of funding, and receipt of a Notice to Proceed will not be eligible for Federal-aid. All plans, specifications, and estimates must be submitted to State for review and comment for federal funding eligibility.

### **11.2 Professional Performance**

It is understood by the Parties that LPA is solely responsible for the professional performance and ability of LPA and the project consultant(s) in the planning, design, construction, operation and maintenance of this project. Any review or examination by State, or acceptance or use of the work product of LPA or the project consultant(s) will not be considered to be a full and comprehensive review or examination and will not be considered an approval, for funding or for any other purpose, of the work product of LPA and the project consultant(s) which would relieve LPA from any expense or liability that would be connected with LPA's sole responsibility for the propriety and integrity of the professional work to be accomplished by LPA for the project.

## **SECTION 12. RIGHT-OF-WAY**

### **12.1 Governing Documents**

The Federal law governing acquisition of additional property rights and relocation on federally assisted projects is found in 23 CFR Part 710, and Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, commonly called the Uniform Act (49 CFR Part 24). The LPA shall comply with 23 CFR part 710, the Uniform Act, State's "Right-of-Way Acquisition Guide for Local Public Agencies" and State's "Right-of-Way Manual".

The Uniform Act applies whenever Federal dollars are used in any phase of a project, such as planning, engineering, environmental studies, or construction. **The Uniform Act must be followed even if there is NO Federal funding in the Right-of-Way phase.** State's Relocation Assistance Act, Neb. Rev. Stat. §§ 76-214 to 76-1238 applies on all projects.



## **12.2 Costs**

Any eligible actual Right-of-Way costs incurred by LPA shall be billed to State for reimbursement in accordance with the SECTION 18. FINANCIAL RESPONSIBILITIES in this Agreement.

## **12.3 Encroachments**

Federal law requires that the right-of-way for a Federal-aid project must be dedicated exclusively to the transportation use for which the project is to be constructed. State will not advertise for, or hold, a bid letting for LPA's project until the existing ROW has been cleared of all encroachments. LPA, at no cost to the project, shall clear the entire existing Right-of-Way of this project of any private or non-LPA uses or occupancy of the area above, below, or on the existing Right-of-Way. LPA agrees to take all necessary actions, including but not limited to (1) bringing appropriate legal proceedings to remove encroachments if the owner has no right to occupy the public ROW, (2) to acquire and pay for the removal of encroachments when the owner's right to occupy public ROW is clear, or (3) to litigate or otherwise resolve all disputed claims to State's satisfaction at LPA's sole cost. LPA understands that after the project is completed, LPA shall keep the project ROW free of future public or private encroachments or uses. LPA shall communicate regularly with State about the status of LPA's efforts to remove all encroachments identified on the project

## **12.4 Land Corners**

LPA shall fully cooperate with State and the project consultants to locate and reference or have located and referenced all section corners, quarter section corners and subdivision lot corners that may be affected by the construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

## **12.5 Special Assessments**

Prior to initiating a special assessment on a Federal-aid project, LPA shall notify State of LPA's proposed assessment. A special assessment levied as part of this Federal-aid project shall be conducted as described in this section.

LPA is required to provide to State documentation for each of the four points noted below. LPA is also required to follow all the terms of the Uniform Act in the acquisition of right-of-way for this Federal-aid project.

"When federal funds participate in a project, an LPA may not levy a *special assessment*, solely against those property owners from whom acquisitions are made for the public improvement, for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act. However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances."

LPA needs to confirm there is no Uniform Act violation by documenting the following:

- The affected property owners will be provided just compensation for their property as required by the Federal and State Constitutions and reiterated in the Uniform Act.
- The acquisition costs will be paid by LPA and property owners made aware they will not be assessed the cost to acquire their property needed for the project.
- The purpose of the special assessment is not to recover the acquisition costs.
- The assessment will not be arbitrarily imposed on selected property owners in the special improvement district in response to their demand for just compensation or that the assessment will be implemented in a way that differs from the way other like assessments have been imposed under similar circumstances.

The project files must contain documentation affirming the above bulleted items.

#### **12.6 Reimbursement of LPA's Right-of-Way**

LPA is not expected to incur any reimbursable ROW costs for this project. However eligible ROW expenses include appraisal fees, title research fees, ROW Consultant fees, tract acquisition costs, reasonable relocation assistance costs, condemnation awards and Board of Appraisers fees. Additional expenses for condemnation proceeding or District Court Trial may be reimbursed to LPA on a case-by-case basis. All required documentation of Chapter 7 of State's Right-of-Way Manual must be submitted to and approved by State Right of Way Division in order for LPA's ROW expenses to be reimbursed. All requests for ROW reimbursement should be submitted to State on ROW Form AP-23, along with supporting documents. One form needs to be completed for each property tract on the project.

### **SECTION 13. RAILROAD**

This section has intentionally been left blank in this contract.

### **SECTION 14. UTILITIES**

- 14.1 Utility facilities installed, relocated, or rehabilitated within the Right-of-Way for this project must be completed in accordance with the provisions of Federal-aid Highway Policy Guide, 23 C.F.R. § 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, and State's "Policy for Accommodating Utilities on State Highway Right-of-Way." Further, LPA utility work shall be performed in conformance with the Buy America provisions found at 23 U.S.C § 313 and applicable regulations in 23 C.F.R § 635.410. LPA's project utility work shall also follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way" and the LPA Guidelines Manual. In order for the utility work to be eligible for Federal-aid, a utility agreement between LPA and the Utility will need to be executed by both parties and approved by State. A Notice to Proceed given by State to LPA must be obtained prior to beginning the utility rehabilitation or utility installation work. State's



standard utility agreement (State Template AGR167) must be used; a copy of this Agreement can be obtained from the LPD Project Coordinator.

- 14.2 All eligible non-betterment municipally owned and operated utility rehabilitation costs within the corporate limits of LPA will become a project cost. Outside the corporate limits, the non-betterment portion of utility rehabilitation costs will become a project cost for facilities occupying private property.

Further, there will be no Federal reimbursement for utility facilities if they are located on existing public Right-of-Way, unless a right to future reimbursement was retained in the prior project; however, non-betterment costs of privately owned and operated utilities that serve a public interest will be reimbursed if they exist on private property and it becomes necessary to rehabilitate the utilities due to this project. All such reimbursements will be based on items and actual costs submitted by the utility and approved by LPA and State up to the amount of federal funding obligation obtained by State.

#### **14.3 LPA Owned Utilities**

##### **14.3.1 Waterlines and Sanitary Sewer Lines – Along and under the project route**

LPA or the project consultant will be responsible for designing the location within the new project of any waterlines or sewer lines that are located along and under the transportation project route. If applicable, LPA shall cooperate with and provide the design consultant with the non-location design items, such as type, size and needed accessories, for any lines of these types.

##### **14.3.2 All other Utility Facilities – Along or crossing the project**

The eligible non-betterment costs of the necessary rehabilitation of all other LPA owned utility facilities shall be a project cost. No LPA owned utility rehabilitation work shall be performed by LPA prior to State obtaining Federal authorization and receipt of a Notice to Proceed; any work performed by LPA prior to receipt of Notice to Proceed will not be eligible for Federal-aid. **LPA shall develop the rehabilitation plan for the other LPA owned facilities affected by the project and submit the plan to State for review and approval.** State may either (1) allow LPA to separately construct the other LPA owned utility rehabilitation plan, or (2) incorporate the other LPA owned utility rehabilitation plan into the plans for the transportation project to be constructed by the project construction contractor. When LPA separately constructs the other LPA owned utility rehabilitation, LPA shall submit to State its final invoice for the utility rehabilitation for State's review and reimbursement of actual eligible costs.

#### **14.4 Non-LPA Owned Utilities**

LPA shall develop a Utility Rehabilitation Agreement for LPA to approve and sign with each non-LPA owned Utility Company that has utility facilities that may be affected by the project construction. **LPA shall formally approve and sign all Utility**

**Rehabilitation Agreements with non-LPA owned utilities.** The agreements will require the owner of the utility facilities to develop a plan and schedule the completion of a project for the necessary rehabilitation of each facility caused by the project. State will reimburse the eligible non-betterment rehabilitation costs incurred by the non-LPA owned utility. LPA shall take all actions State deems necessary to comply with any utility rehabilitation agreement(s) on this project, including enforcing the utility rehabilitation work schedule to avoid to the maximum extent possible any conflict with the project construction contractor's schedule.

#### **14.5 State Highway Right-of-Way**

Any project utility work to be completed within a State Highway ROW will require LPA to obtain approval and a form of a letter of authorization or a permit from State. State shall assist LPA with contacting State's local District Engineer or Permits Officer to determine if a permit or permits are needed for the project and to make application for any needed permits to the District Engineer.

### **SECTION 15. FINAL PLANS, BID LETTING AND CONSTRUCTION**

#### **15.1 Plans, Specifications and Estimates (PS&E)**

LPA is solely responsible for the accuracy and completeness of the PS&E package for LPA's project. Approximately five months prior to the targeted letting date, LPA shall submit a complete final plans package (including, but not limited to the following documents; 100 percent plans, specifications, engineers' estimate, status of utilities, status of environmental commitments, environmental permits, right-of-way certificate) to State's Local Projects Division Project Coordinator for review. The PS&E package will be reviewed by State. LPA shall promptly make, or cause to be made, any necessary or requested changes and provide all required certifications, in order for the PS&E package to be ready for advertisement to meet the targeted date of the bid letting.

#### **15.2 Bid Letting and Award of Construction Contract**

State, on behalf of LPA, will provide State's standard notice to bidders and will conduct a bid letting for LPA's Federal-aid project following State's bid letting and award procedures. State will recommend, for LPA's review and approval, its determination of the apparent low bidder for the project, except when State rejects all bids. LPA must provide a resolution concurring with the selection of the low bidder before State will issue the construction contract for signing. LPA shall sign the construction contract with the selected contractor and will issue all applicable purchasing agent appointments and tax exempt certificates for this project.

#### **15.3 Construction and Construction Engineering**

LPA agrees to cause the project to be constructed in compliance with the approved PS&E package, State approved change orders, and applicable rules, regulations and statutes. The construction of this project will require a) the services of the RC as LPA's representative, b) construction oversight by a licensed professional engineer (see Neb.



Rev. Stat. § 81-3445), and c) a State Representative from the District whose review of the project's construction will relate solely to the eligibility of the project for federal funding.

Trans\*Port SiteManager shall be used as the construction record-keeping system for construction and construction engineering services for this project. The RC and construction Consultants must complete State's training in the use of Trans\*Port SiteManager software.

LPA will be solely responsible for all construction engineering on this project. The construction engineering is an eligible project expense and includes, but is not limited to; construction management, staking, inspection and field testing. This work may be accomplished by LPA, or a Consultant selected by LPA, following the process set out in SECTION 7. PROCUREMENT OF PROFESSIONAL SERVICES. The scope of services and associated costs will be set out in a Professional Services Agreement using State's standard template agreement. Construction engineering services will not be eligible for Federal funding if performed prior to: 1) execution of said agreement, 2) Federal authorization of funding, and 3) receipt of a written Notice to Proceed.

## **SECTION 16. PROJECT COMPLETION, ACCEPTANCE, AUDIT, AND FINAL SETTLEMENT**

### **16.1 Tentative Final Acceptance**

Consultant, or LPA providing the construction engineering, shall notify the RC in writing when all contract work is complete and ready for inspection. RC shall, within one week, inspect the work for conformance with the construction contract. Within one week of acceptance of the work by LPA, LPA shall issue a Tentative Final Acceptance letter to the Contractor, with a copy to State, advising them that all contract work has been tentatively accepted.

### **16.2 NDOT Form 91 - Notification of Contract Completion**

Upon receipt by State of LPA's Tentative Final Acceptance letter to the Contractor, State's District Engineer will prepare and distribute a NDOT Form 91. Consultant or LPA providing construction engineering services may only incur expenses for up to 45 days following the construction completion date sited on the NDOT Form 91 or the Tentative Final Acceptance letter.

### **16.3 NDOT Form 299 – Project Construction Conformity Certification**

When the project final records are ready to be submitted to State for approval, LPA and, when applicable, LPA's Consultant shall certify project construction conformity by signing the NDOT Form 299. LPA shall submit the NDOT Form 299, one set of As-Built Plans (per the Nebraska Department of Transportation Construction Manual) and all final records to State Representative.

State Representative assigned to the project will then conduct a final review of the project and determine whether the project meets federal program requirements. If State Representative determines the project meets federal requirements, State Representative will submit the NDOT Form 299, the final records, and one set of As-Built Plans to State Construction Division – Final Review Section. If State Representative determines the project does not meet federal program requirements, State Representative will notify LPA's RC in writing of what must be done to bring the project into compliance.

State Construction Division – Final Review Section will review and approve the finals package, and when approved, will sign the NDOT Form 299 and distribute it to the NDOR Controller Division, to provide notification of project closeout and to request final payment to the Contractor.

#### **16.4 Audit and Final Settlement with LPA**

- 16.4.1 If deemed necessary, an audit will be performed by State to determine whether the actual costs incurred on the project are eligible for reimbursement with Federal Funds. LPA shall cooperate fully with State and shall provide any relevant information necessary to complete the final audit of the project. LPA shall take any actions necessary to resolve any issues involved with the audit of the project.
- 16.4.4 The amount of the final settlement between State and LPA will be LPA's share of the total eligible project costs, plus all ineligible project costs, less the total local funds previously paid to State by LPA.
- 16.4.5 If LPA's calculated share is more than the amount of local funds previously paid to State, State will bill LPA for the difference. LPA agrees to pay the amount due State within thirty (30) days of receipt of invoice.
- 16.4.6 If LPA's calculated share is less than the amount of local funds previously paid to State, State will reimburse LPA for the difference.

### **SECTION 17. MAINTENANCE AND ENVIRONMENTAL COMMITMENTS**

LPA accepts sole responsibility for maintenance of the project after tentative acceptance of the project. LPA shall provide all future maintenance of the project consistent with the requirements for a Federal-aid project. LPA also accepts responsibility for meeting all project environmental and other commitments and responsibilities required by contract, permit, and environmental document or by federal or state law. LPA will release and hold harmless State and FHWA from any suits brought against State arising out of LPA's operation and maintenance of or related to the project.

### **SECTION 18. FINANCIAL RESPONSIBILITY**

#### **18.1 General**

LPA intends that its project be developed so that the project costs will be eligible for partial reimbursement with Federal-aid funds. The Parties understand that no State funds will be used to finance the costs of LPA's project. LPA understands that payment for the costs of this project, whether they be services, engineering, ROW, utilities, material or otherwise, are the sole responsibility of LPA when Federal participation is not allowable or available or if the project is subsequently determined to be ineligible for Federal-aid funding. Therefore, if the Federal government declines to participate in the project or any portion of the project, LPA is responsible for full project payment with no cost or expense to State in the project or in the ineligible portion of the project. Should the project be abandoned before completion by LPA, LPA shall pay or repay State for all costs incurred by State or reimbursed with Federal-aid funds prior to such abandonment.



## 18.2 Total Project Costs and Funding Commitments

The total cost of the project is currently estimated to be \$2,000,000.00 as set out in the table below:

ESTIMATED PROJECT FUNDING ( <i>Attach supporting documentation for estimates</i> )						
	FFY of TIP/STIP	Federal	Local Match	Nonparticipating	Other	Total
<b>PE Phase</b>	2019					
PE		\$240,000.00	\$60,000.00			\$300,000.00
NEPA		\$80,000.00	\$20,000.00			\$100,000.00
Final Design	2020	\$80,000.00	\$20,000.00			\$100,000.00
RC						
NDOR						
<b>PE Subtotal</b>		<b>\$400,00.00</b>	<b>\$100,000.00</b>			<b>\$500,000.00</b>
<b>ROW</b>						
<b>Utilities</b>						
<b>Construction</b>		\$1,040,000.00	\$260,000.00			\$1,300,000.00
<b>CE Phase</b>	2021					
CE		\$160,000.00	\$40,000.00			\$200,000.00
RC						
NDOR						
<b>CE Total</b>		<b>\$160,000.00</b>	<b>\$40,000.00</b>			<b>\$200,000.00</b>
<b>TOTAL</b>		<b>\$1,600,000.00</b>	<b>\$400,000.00</b>			<b>\$2,000,000.00</b>

Both LPA and State recognize this is a preliminary estimate and the final cost may be higher or lower. In order to exceed the costs obligated for some of the phases set out above, LPA must seek and obtain, from State, additional Federal funding obligation by:

- Submitting a detailed cost estimate, when applicable, and receiving State's approval of such estimate,
- Receiving notification from State that additional Federal Funds have been obligated,
- Receipt of a notice to proceed from State to incur costs, if applicable

## 18.3 LPA Responsibility

LPA understands that payment for the costs of this project, whether they be services, engineering, Right-of-Way, utilities, material or otherwise, are the sole responsibility of LPA when Federal participation is not allowable or available or if the project is subsequently determined to be ineligible for Federal-aid funding. Therefore, when the Federal government refuses to participate in the project or any portion of the project LPA is responsible for full project payment with no cost or expense to State in the project or in the ineligible portion of the project. Should the project be abandoned before completion, LPA shall pay or repay State for all costs incurred by State prior to such abandonment.

## 18.4 Reimbursement of Costs Incurred by LPA

LPA incurred project costs of the five (5) types listed in this section may be eligible for reimbursement from Federal-aid funds for this project if:

- LPA submits a detailed cost estimate, when applicable, and State approves such estimate,
- State has obtained Federal Funds obligation,

- State issues notice to proceed to LPA to incur costs. Work performed on the project prior to receipt of the Notice-to-Proceed is ineligible for Federal-aid reimbursement, and
- LPA submits invoices no more frequently than monthly. LPA is responsible for submitting for reimbursement the total actual costs expended that are eligible for Federal-aid. State, on behalf of FHWA, will review the costs submitted and determine what costs are eligible for reimbursement. State will reimburse LPA for the Federal share of the eligible actual costs. LPA shall retain detailed cost records supporting all invoices, and shall submit those records to State upon request.

The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR 31) will be applied to determine whether the costs incurred by LPA are allowable under this Agreement, including any Professional Services agreements.

#### **18.4.1 LPA Project oversight costs**

Project oversight costs include: direct costs, such as compensation of LPA employees for their time devoted and related directly to the performance of the project phase for which the federal-aid was approved; cost of materials consumed as part of the project; and indirect costs, with an approved Indirect Cost Allocation Plan as outlined in the LPA Guidelines Manual for Federal Aid Projects. If LPA wishes to be reimbursed for these costs, State will request an initial Federal funding obligation of \$5,000 for this purpose, so that LPA may commence work immediately following receipt of a notice to proceed from State prior to performing any work which would result in exceeding the initial \$5,000 Federal funding authorization.

If additional reimbursement is desired by LPA, LPA must submit a detailed cost estimate for approval by State. If approved, State will request an adjustment to the Federal funding obligation.

#### **18.4.2 LPA provided professional services**

Professional services provided by LPA, such as preliminary engineering and construction engineering, require execution of a Professional Services Agreement to identify the services to be provided by LPA and associated costs.

**Any Professional Services performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

#### **18.4.2 Non-betterment Utility Relocation Costs**

Certain utility relocation costs incurred by LPA may be eligible for reimbursement from Federal-aid funds. Reimbursement of these costs require LPA to execute a Utility Agreement with the applicable utility using State's template agreement, which shall identify the services to be provided by the utility and associated costs. **Any utility work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**



#### **18.4.3 Right-of-Way**

Certain right-of-way costs incurred by LPA may be eligible for reimbursement from Federal-aid funds. Eligible ROW expenses include, but are not limited to, appraisal fees, title research fees, ROW Consultant fees, tract acquisition costs, reasonable relocation assistance costs, condemnation awards and Board of Appraisers' fees. Additional expenses for condemnation proceedings or District Court Trials may be reimbursed to LPA on a case-by-case basis.

If LPA uses ROW service providers, LPA shall execute an agreement using State's template agreement, which shall include a detailed scope of services and associated costs. **Any right-of-way costs incurred prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

#### **18.4.4 Railroad**

Certain railroad costs incurred by LPA may be eligible for reimbursement from Federal-aid funds. Reimbursement of these costs require LPA to execute a Railroad Agreement with the applicable railroad using State's template agreement, which shall identify the services to be provided by the railroad and associated costs. **Any railroad work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

#### **18.5 Payment of Consultant Professional Services by State**

When LPA uses consultant professional services for this project, the costs of these services may be eligible for payment from Federal-aid funds. For State to pay for these professional services, LPA must execute an agreement with the service provider using State's template agreement. Such agreement shall include a detailed scope of services and fee proposal. State shall pay the consultant directly, with Federal and local funds, for any eligible costs. Any non-participating costs, or costs determined to be ineligible, shall be the sole responsibility of LPA and LPA shall reimburse State for any such costs paid to the Consultant. **Any professional services performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

#### **18.6 Payment of Construction Costs by State**

All project contractor construction costs will be paid directly to the contractor by State, on behalf of LPA. Progress invoices and final invoices shall be prepared by the RC or Consultant using **Trans\*Port SiteManager Software**. All progress estimates and final estimates must be approved by the RC prior to submittal to State Representative for funding approval and processing of payments.

#### **18.7 State Incurred Costs**

The expense incurred by State employees to perform tasks related to the development and construction of this project may be part of the cost of the project. LPA shall be responsible for such costs as charged by State employees; however, these costs are eligible for Federal-aid participation up to the maximum amounts outlined below. The maximum amount for which Federal Funds will participate in State incurred costs are:

1. PE Phase (including ROW Design activities)  
Upon execution of this Agreement, State may obligate up to a maximum of \$10,000, allocated in accordance with the table above, for State incurred PE Phase services.
2. Construction Phase  
State will request an obligation of Federal Funds equal to 1% of the estimated construction costs or \$5,000, whichever is greater, allocated in accordance with the table above, for Construction Phase services. State will request an additional obligation of Federal Funds of \$2,500 for internal audit costs incurred by State.  
LPA shall be solely responsible for any State incurred costs 1) exceeding the Federal share of the obligated funds, 2) not eligible for reimbursement for any reason, or 3) for which an obligation is not obtained.

#### **18.8 LPA Project Budget and Invoicing by State**

- 18.8.1 LPA will earmark and place in its fiscal budget an amount sufficient to fund LPA's project commitments as shown in subsection A. above.
- 18.8.2 At times determined by State, and after execution of this Agreement, State will invoice LPA for some or LPA's entire share of State incurred preliminary engineering project costs. After execution of a professional consultant services agreement for this project, State will invoice LPA their share of the total agreement amount.
- 18.8.3 Upon award of the construction contract, State will invoice LPA their share of the construction contract plus contingencies and construction engineering (includes \$2,500 audit costs), and any unbilled preliminary engineering expenses, unless other arrangement have been agreed upon by the Parties. LPA shall pay State within 30 calendar days of receipt of invoice from State.

#### **18.9 Audit and Final Cost Settlement**

- 18.9.1 Final reimbursement requests must be made within 60 days after LPA has filed a completed State DR Form 299 with State. Any invoices submitted after the 60 calendar days will be ineligible for reimbursement.
- 18.9.2 The final settlement between State and LPA will be made after final funding review and approval by State and after an audit, if deemed necessary, has been performed to determine eligible actual costs. Refer to the SECTION 16. PROJECT COMPLETION, ACCEPTANCE, AUDIT, AND FINAL SETTLEMENT of this Agreement for additional information.

#### **18.10 Project Withdrawal**

If LPA withdraws the project for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project that have not been reimbursed.

### **SECTION 19. SUSPENSION OR TERMINATION**

#### **19.1 Suspension.**

State, in its sole discretion, reserves the right to suspend LPA's project when State determines that there are issues related to responsiveness, quality, project monitoring, eligibility or compliance with the terms of this Agreement that must be corrected by



LPA. Suspension of the project may include, but is not limited to, State declaring LPA's continued work on the project ineligible for reimbursement and State discontinuing assistance with and review of LPA's work on the project. State shall provide LPA with notice of the suspension including (1) a description of the reason(s) for the suspension, (2) a timeframe for LPA to correct the deficiencies, and (3) a description of the actions that must be taken for State to revoke the suspension.

A suspension may also be imposed by State for any of the reasons listed in the Termination subsection below.

Failure to correct the deficiencies identified in a suspension will be grounds for the loss of eligibility for federal funding for the project and for termination of this Agreement.

## **19.2 Termination.**

This Agreement may be terminated as follows:

- a. State and LPA, by mutual written agreement, may terminate the Agreement at any time for any reason.
- b. State may terminate this Agreement for the following reasons:
  1. A decrease or shift in available federal-aid funding that will, in the sole discretion of State, make it unlikely or impossible for this project to be prioritized to receive federal-aid funding.
  2. When LPA's project has not been properly advanced as evidenced by the occurrence of any of the following events:
    - a) LPA has not sought reimbursement from State for any RC or other eligible project costs for a period of one year.
    - b) LPA has not advanced the project to Right-of-Way acquisition or construction within the time periods set out in 23 USC Section 102(b) and 23 CFR Part 630.112(c)(2) (10 years), and 23 USC Section 108 (a)(2) and 23 CFR Part 630.112(c)(2) (20 years). (See also the FHWA Federal-Aid Policy Order number 5020.1, dated April 26, 2011.)
    - c) LPA's designated RC has not met all RC qualification requirements for the project by the time specified by State.
    - d) LPA has failed to replace the RC with an RC approved by State within 30 days during the design stage or 10 days during the project letting or construction stages, from when the RC leaves, or is removed from the project for any reason.
    - e) LPA either (1) informs State that it is unwilling to use condemnation to acquire any of the property interests needed to construct the project, or (2) does not move promptly to acquire the needed property rights.
    - f) LPA has failed to take any action deemed necessary by State for the project to be ready for the targeted letting date within the year specified in the STIP.
    - g) LPA has not included the project or project phases within LPA's one or six year plans or, when applicable, within LPA's Transportation Improvement Program (TIP), in the correct fiscal year.

3. LPA's failure to meet the requirements for Federal-aid local projects found in federal, state, or local law or policy, or the requirements of the LPA Guidelines Manual.
  4. A notice or declaration of FHWA or State that any part of the project is or has become ineligible for federal funding.
  5. LPA's failure to sign any State requested project documents in a timely manner.
  6. LPA's failure to pay in full the local share specified in any agreement within 30 days after receipt of an invoice from State.
  7. LPA's breach of a provision of this Agreement.
  8. LPA's failure to cause the project to be constructed according to the approved project plans and specifications.
- c. LPA may terminate the Agreement upon sixty (60) days written notice of termination to State, subject to LPA meeting the conditions of paragraph 5 below.
  - d. Prior to State terminating this Agreement, State shall provide written notice to LPA of the basis for termination and, when determined applicable by State, provide LPA sixty (60) days to properly resolve all issues identified by State.
  - e. Whenever the project is terminated for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project that have not been reimbursed under e.(a). Further, LPA will thereafter be solely responsible for all costs associated with LPA's project.

## **SECTION 20. FEDERAL AUDIT REQUIREMENT**

- 20.1 The funding for the project under this Agreement includes federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 and the implementing regulations contained in 2 CFR, Subtitle A, Chapter 2, Part 200, Subpart F (hereinafter Part 200), the Part 200 Audit is required if the non-federal entity expends \$750,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.
- 20.2 LPA shall comply with this Single Audit mandate as described in Section 20.1. Any federal funds for LPA projects paid directly to contractors and consultants by State, on behalf of LPA, will be reported on State's schedule of expenditures of federal awards (SEFA) and need not be reported by LPA (as per FHWA's February 16, 2012 letter and State's February 24, 2012 letter). If a Part 200 audit is necessary, the expenditures related to the federal funds expended under this project should be shown in the report's Schedule of Expenditures of the Federal Awards (SEFA).
- 20.3 If necessary, the Federal award information needed for the SEFA includes:
  - Federal Grantor:** U.S. Department of Transportation – Federal Highway Administration
  - Pass-Through Grantor:** Nebraska Department of Transportation
  - Program Title:** Highway Planning and Construction (Federal-Aid Highway Program)
  - CFDA Number:** 20.205
  - Project Number:** MAPA-77(62)



20.4 If a Part 200 Audit is submitted by LPA, LPA shall notify the Nebraska Department of Roads, Highway Audits Manager, at P.O. Box 94759, Lincoln, NE 68509-4759 when the audit reporting package and the data collection form have been submitted to the Federal Audit Clearinghouse (FAC) website.

#### **SECTION 21. COMMITMENT TO CONTINUED USE OF TRANSPORTATION FACILITY**

LPA has requested Federal-aid funds for this project based on a specific need for the construction or improvement of a street, road, highway, bridge, trail, or other transportation facility. If the project is constructed, LPA commits to use the project facility to meet the specific need that was the basis for the expenditure of Federal-aid funds. LPA shall submit to State, for review and approval, any proposed changes to LPA routes which affect the function or operation of the project facility either during construction or after the project is completed.

#### **SECTION 22. INDEMNITY**

LPA agrees to hold harmless, indemnify, and defend State and FHWA against all liability, loss, damage, or expense, including reasonable attorney's fees and expert fees, that State and/or FHWA may suffer as a result of claims, demands, costs, or judgments arising out of LPA's project and the terms of this Agreement.

#### **SECTION 23. TRAFFIC CONTROL**

LPA shall be responsible for the development, installation, and monitoring of the traffic control plan for the project, and for project related detours, before, during and after construction. Traffic control must conform to the current adopted Manual on Uniform Traffic Control Devices. LPA's RC shall monitor the construction work zone to confirm that the traffic control devices remain in conformance with the traffic control plan. LPA shall certify that all permanent traffic control devices on the completed project have been properly installed. LPA

#### **SECTION 24. CONFLICT OF INTEREST LAWS**

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 **NDOR CONFLICT OF INTEREST GUIDANCE DOCUMENT FOR LPA OFFICIALS, EMPLOYEES & AGENTS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS** located on State website at the following location:

<https://dot.nebraska.gov/media/7349/coi-guidance-doc-lpa.pdf>

LPA must also complete and sign the **NDOR CONFLICT OF INTEREST DISCLOSURE FORM FOR LPAS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS**, for each project. This form is located on State website at the following location:

<https://dot.nebraska.gov/media/7349/coi-guidance-doc-lpa.pdf>

Consultants and subconsultants providing services for LPA's, or submitting proposals for services, shall submit a Conflict of Interest Disclosure Form for Consultants. Consultants and subconsultants shall submit a revised form for any changes in circumstances, or discovery of any additional facts that could result in someone employed by, or who has an ownership, personal, or other interest with Consultant or subconsultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

## **SECTION 25. DRUG FREE WORKPLACE**

LPA shall have an acceptable and current drug-free workplace policy on file with State.

## **SECTION 26. RECORDS RESPONSIBILITY**

LPA shall keep a project file for this project and keep and maintain all correspondence, files, books, documents, papers, field notes, quantity tickets, accounting records and other evidence related to costs incurred. LPA shall make such material available at its office at all reasonable times during the contract period and for at least three years from the date of final cost settlement under this Agreement; such records must be available for inspection by State and the FHWA or any authorized representatives of the Federal government, and LPA shall furnish copies to those mentioned in this section when requested to do so.

## **SECTION 27. FAIR EMPLOYMENT PRACTICES**

If LPA performs any part of the work on this project, LPA shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb. Rev. Stat. §§ 48-1101 to 48-1126, and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 as set forth in the SECTION 31. TITLE VI NONDISCRIMINATION CLAUSES of this Agreement. The reference to "Contractor" in this section also means the "LPA".

## **SECTION 28. DISABILITIES ACT**

LPA 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 29. LAWFUL PRESENCE IN USA AND WORK ELIGIBILITY STATUS PROVISIONS**

LPA agrees to comply with the requirements of Neb. Rev. Stat. §§ 4-108 to 4-114 with its Federal-aid project, including, but not limited to, the requirements of § 4-114(2) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within State of Nebraska.

## **SECTION 30. DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

### **30.1 Policy**

LPA shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds under this Agreement.

### **30.2 Disadvantaged Business Enterprises (DBEs) Obligation**

LPA and State shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal Funds provided under this Agreement. In this regard, LPA shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. LPA shall not



discriminate on the basis of race, color, sex, age, disability, or national origin in the award and performance of FHWA assisted contracts.

LPA, acting as a sub-recipient of Federal-aid funds on this project shall adopt the disadvantaged business enterprise program of State for the Federal-aid contracts LPA enters into on this project.

Failure of LPA to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by State or such remedy as State deems appropriate.

### **SECTION 31. TITLE VI NONDISCRIMINATION CLAUSES**

During LPA's performance of work under this Agreement, LPA, for itself, its assignees and successors in interest agrees as follows:

- 31.1 **Compliance with Regulations:** LPA shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- 31.2 **Nondiscrimination:** LPA, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of disability, race, color, sex, age, disability, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. LPA shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- 31.3 **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by LPA for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by LPA of LPA's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- 31.4 **Information and Reports:** LPA shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, LPA shall so certify to State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- 31.5 **Sanctions for Noncompliance:** In the event of LPA's noncompliance with the nondiscrimination provisions of this Agreement, State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to,
  - (a) Withholding of payments to LPA under this Agreement until LPA complies, and/or
  - (b) Cancellation, termination or suspension of this Agreement, in whole or in part.

31.6 Incorporation of Provisions: LPA shall include the provisions of Sections 31.1 through 31.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. LPA shall take such action with respect to any subcontract or procurement as State or 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, LPA may request State enter into such litigation to protect the interests of State, and in addition, LPA may request the United States to enter into such litigation to protect the interests of the United States.

## **SECTION 32. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this Agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement pursuant to lawful authority as of the date signed by each party.

**EXECUTED** by LPA this \_\_\_\_ day of \_\_\_\_\_, 2018.

WITNESS:

PAPIO-MISSOURI RIVER NRD  
John Winkler

\_\_\_\_\_  
LPA Clerk

\_\_\_\_\_  
General Manager

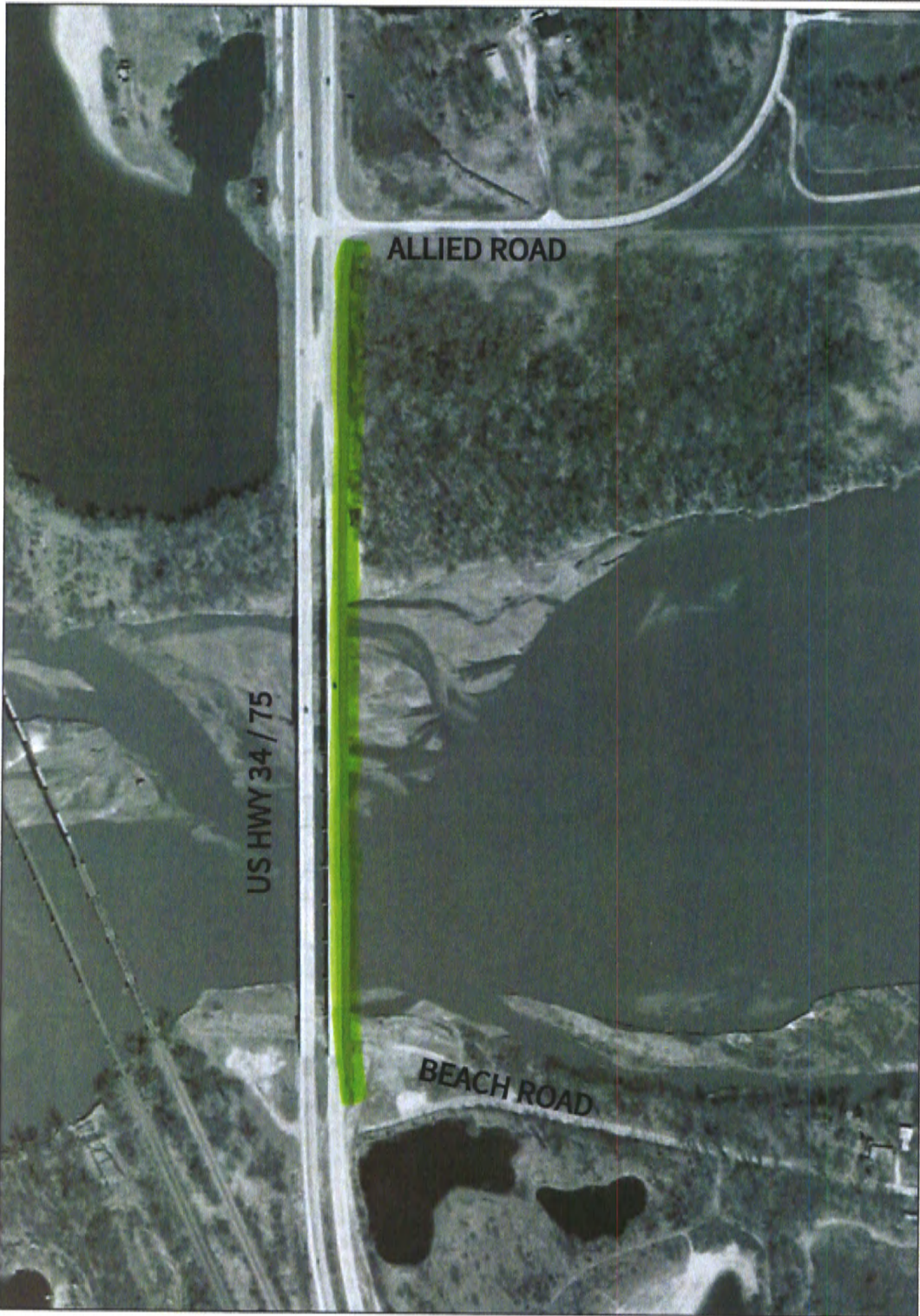
**EXECUTED** by State this \_\_\_\_ day of \_\_\_\_\_, 2018.

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION  
Mick Syslo, P.E.

\_\_\_\_\_  
Materials & Research Engineer



Attachment 1, US Highway 34 Bike and Walking Trail



Location



Sarpy County GIS

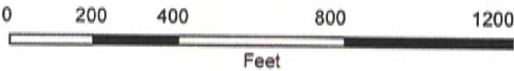


1210 Golden Gate Dr.  
Suite 1130  
Papillion, NE 68046  
maps.sarpy.com

Legend

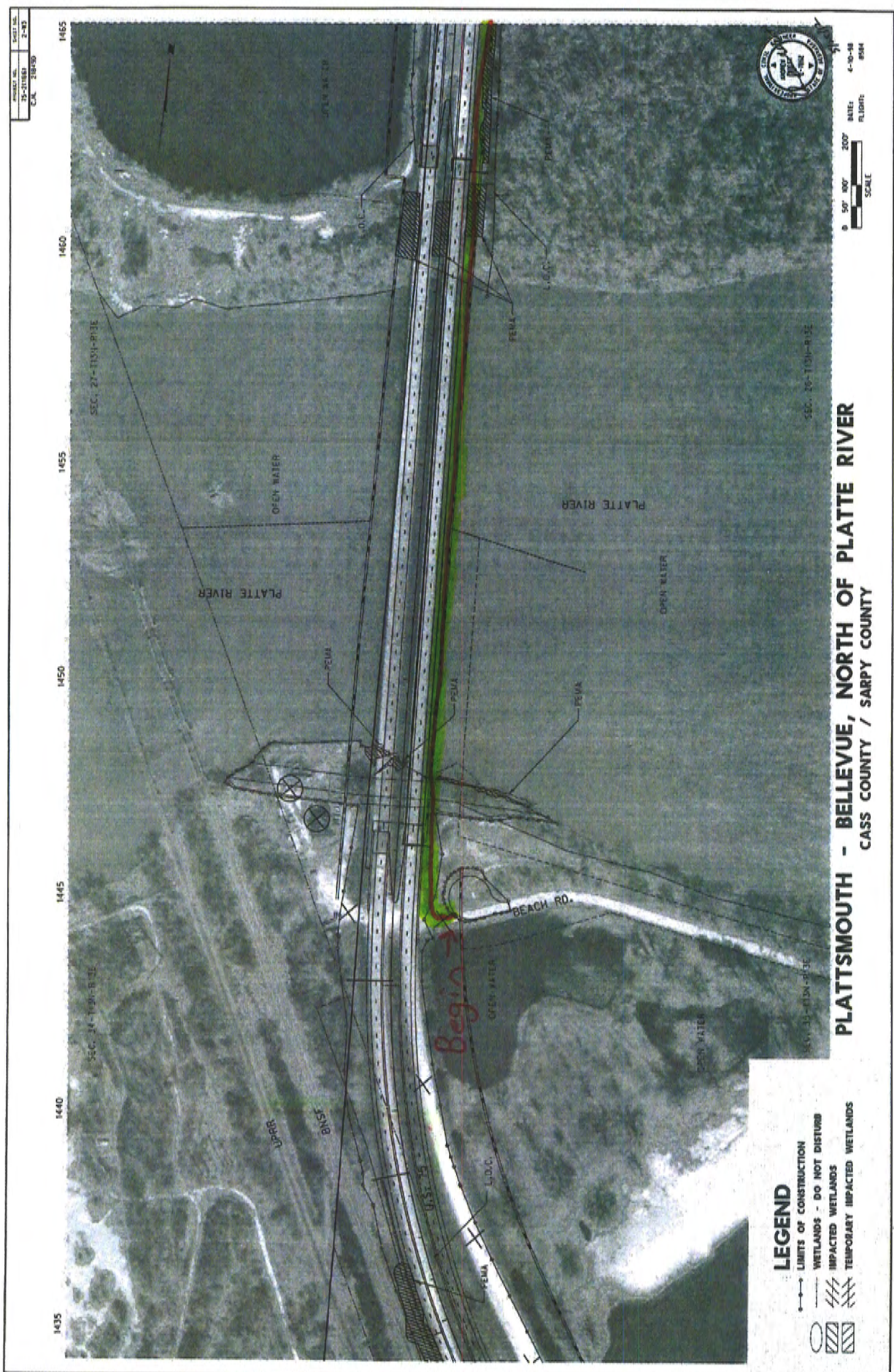
Project location  
shown in green

1:4,800



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.









**RESOLUTION**  
**SIGNING OF THE PROJECT PROGRAM AGREEMENT**

Papio-Missouri River NRD

Resolution No. \_\_\_\_\_

**Whereas:** Papio-Missouri River NRD is proposing a transportation project for which it would like to obtain Federal funds;

**Whereas:** Papio-Missouri River NRD understands that it must strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project; and

**Whereas:** Papio-Missouri River NDR and Nebraska Department of Transportation (NDOT) wish to enter into a Project Program Agreement setting out the various duties and funding responsibilities for the Federal-aid project.

**Be It Resolved:** by the Board of Papio-Missouri River NRD that:

John Winkler, is hereby authorized to sign the attached Project Program Agreement between the Papio-Missouri NRD and the NDOT.

Papio-Missouri River NRD is committed to providing local funds for the project as required by the Project Program Agreement.

NDOT Project Number: MAPA-77(62)

NDOT Control Number: 22770

NDOT Project Name: Platte River Bridge Trail

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018 at \_\_\_\_\_ Nebraska.  
(Month) (Year)

The Board of Papio-Missouri River NRD, Nebraska

_____	_____
_____	_____
_____	_____
	_____

Board/Council Member \_\_\_\_\_  
Moved the adoption of said resolution  
Member \_\_\_\_\_ Seconded the Motion  
Roll Call: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Abstained \_\_\_\_\_ Absent  
Resolution adopted, signed and billed as adopted

Attest:

\_\_\_\_\_  
Signature



**INTERLOCAL COOPERATION AGREEMENT**  
**FOR**  
**U.S. HIGHWAY 34 BIKE AND WALKING TRAIL**

---

This Interlocal Cooperation Agreement (the “Agreement”) is made and entered into, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. 13-801, et seq., (Reissue 1997) as of the dates affixed on the signature pages below, by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“PMRNRD”) and the party or parties that have agreed to be bound by the terms hereof as evidenced on their respective signatures shown on the signature pages below (each such other party, together with PMRNRD, are hereinafter collectively referred to as the “PARTIES”).

WHEREAS, the PARTIES are desirous of installing a bike and walking trail as part of the U.S.-34 improvements currently under construction at the crossing of said highway by the Platte River as shown in Attachment 1; and

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat., Section 13-801, et. seq., (Reissue 1997), each of the PARTIES’ governing bodies have concurred in the proposed bike/walking trail as part of the roadway improvements on that portion of US-34 at the Platte River crossing and have committed to proceed with the development of preliminary design activities to secure appropriate project design plans and to agree to certain cost allocations associated with the design and construction of the bike/walking trail on the terms set forth herein.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS, pursuant to Neb. Rev. Stat. Section 13-801 (1997) et. seq., as follows:

1. **PROJECT DESCRIPTION.** The project is proposed to be constructed in two phases to ensure minimal disruption in traffic flow on northbound US-34. Phase 1 will consist of placing 2 girders spanning between each of the existing fourteen (14) piers on the northbound US-34 Platte River Bridge (S034 38367) for a total of 26 girders to facilitate the placement of the bike/walking trail. The limits of this Phase 1 “bridge” project are generally parallel to the US-34 bridge, between the existing piers. The Nebraska Department of Transportation (“NDOT”) will design, contract for, and oversee construction of Phase 1.

Phase 2 of the project will consist of construction of the bike/walking trail bridge abutments on the north and south banks of the Platte River, and placement of the bridge deck, rails, fencing, and appurtenances as necessary for the bike/walking trail and constructing trail connections to Allied Road and Beach Road. Estimated local design and construction cost of Phase 2 is shown in Section 5 of this Agreement. The cost allocations are approximate at the time of execution of this agreement but will be further defined as additional engineering and bidding of the project phases is completed. All Parties executing this Agreement understand and acknowledge that by approving this Agreement they are committing funds for the cost of Phase 2 in the amounts set forth in Section 5 hereof.

2. **PROJECT SPONSOR.** The parties hereby designate PMRNRD as the project sponsor. As project sponsor, PMRNRD will be responsible for project scope development, completion and submittal of applications for review by applicable regulatory agencies, coordinate the project design review process, solicit and review bids for design engineering services for the design of Phase 2 of the proposed bike/walking trail and award contracts for the same, solicit and review bids for construction services



for the proposed bike/walking trail and award contracts for Phase 2 of the same, and to reasonably allocate among the PARTIES hereto of their respective local share of project costs through the completion of the project. PMRNRD will also be responsible for the collection of federal assistance and for the payment of project costs, a portion of which shall be reimbursed by the other PARTIES according to Section 5 upon written notice from PMRNRD. Reimbursement shall be requested by the PMRNRD from other parties at the time of executing a construction contract for Phase 2. Any change orders or other adjustments to the price of the contract will be requested for reimbursement, or refunded after final payment for construction of Phase 2 has been issued to the contractor.

3. **PROJECT COSTS.** The PARTIES acknowledge and agree that Phase 2 will have an estimated cost of approximately \$2,000,000, and the local share of which is allocated to the parties as set forth in Section 5 below. Actual project costs will be determined following bidding and a contract award for work at which time the project shares will be adjusted based on contract pricing for such work.

4. **FEDERAL PORTION.** PMRNRD will coordinate the receipt of federal assistance to fund a portion of the project through the Omaha-Council Bluffs Metropolitan Area Planning Agency ("MAPA"), contingent on availability of federal funds, which is anticipated to represent the largest share of project costs once bids have been received. MAPA will coordinate with NDOT to program regional STBG funding equal to 50% of the cost of Phase 1 on a mutually agreed upon NDOT project. Details of the funding from MAPA and NDOT will be addressed in a separate agreement by those two parties. If the federal aid portion is expected to cover 80% of eligible local project costs (estimated at \$1,600,000 for Phase 2), the remaining 20% local portion (estimated at \$400,000 for Phase 2) would be paid by the PARTIES. If the federal aid portion is not

expected to cover 80% of the eligible project costs, then PMRNRD may terminate this Agreement on 90 days' prior written notice to the other PARTIES.

5. **LOCAL PORTION ALLOCATIONS.** Each of the PARTIES hereto agree to allocate among themselves the approximate local portions of the project costs as follows:

<u>PARTY</u>	<u>Phase 2 Commitment</u>	<u>Percentage</u>
CITY OF BELLEVUE	\$ 60,000	15 %
CITY OF PLATTSMOUTH	\$ 28,000	7 %
PMRNRD	\$ 200,000	50 %
LPSNRD	\$ 40,000	10 %
SARPY COUNTY	\$ 40,000	10 %
CASS COUNTY	\$ 32,000	8 %

The PARTIES agree that the foregoing cost allocations are preliminary and that the project sponsor reserves the right to adjust allocations in accordance with Section 2 above once final project costs are determined. Any changes to the PARTIES' local contribution will be increased or decreased, as the case may be, based on each PARTY's respective percentage share set forth above.

6. **OTHER LOCAL FUNDING.** The PARTIES are encouraged to seek other local funding opportunities from respective beneficiary groups such as local tourism boards, economic development districts and other private interest organizations supportive of the project to help defray their allocations of the local share of total project costs.

7. **OPERATION AND MAINTENANCE AGREEMENT.** Each PARTY agrees to comply with the terms of the Exhibit A attached hereto and incorporated herein by reference with respect to the operations and maintenance of the trail.

8. **TERM AND TERMINATION.** This AGREEMENT shall have permanent duration, unless or until terminated by any of the PARTIES as provided herein. Upon accomplishment of the aforesaid purposes of the project, this AGREEMENT may be terminated by any of the PARTIES upon 90 days' notice to the other PARTIES. Such termination shall not affect any rights of reimbursement under this AGREEMENT for actions taken or responsibilities assumed by another of the PARTIES prior to the effective date of termination of this AGREEMENT.

9. **INDEMNIFICATIONS.** The PARTIES shall indemnify and hold harmless the other PARTIES, officers, elected officials, employees and assigns harmless from and against any and all claims, judgments, actions, loss, liability, damage or injury of any nature whatsoever, whether under the theory of tort, contract or otherwise, which may arise or result from, out of or in connection with any neglect or other act, error or omission of any PARTY (including any of their respective employees, agents contractors, subcontractors or representatives) in furtherance of this agreement or any other agreement contemplated by this agreement (including any acts and/or omissions in carrying out their respective obligations as set forth in Exhibit A) to be entered into by the PARTIES, including the failure to perform or properly perform as may be so required. Notwithstanding the preceding sentence, the PARTIES shall not be obligated to defend, indemnify or hold harmless an indemnified PARTY to the extent damages arise or result from any negligent or other act, error or omission of the indemnified PARTY.

10. **NO ASSIGNMENT.** Neither this agreement nor any obligations hereunder shall be assigned without the express written consent of the PARTIES which may be withheld in any PARTY's sole discretion.



11. **NON-WAIVER.** A waiver by any PARTY of any default, breach or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach or failure.

12. **GOVERNING LAW.** This agreement shall be governed exclusively by its provisions and by the laws of the State of Nebraska except to the extent such provisions may be superseded by applicable federal law or regulation, in which case the latter shall apply.

13. **ENTIRE AGREEMENT.** This Agreement, and Exhibits and any documents referenced in this Agreement (which are intended to be and hereby are specifically made a part of this agreement whether or not so stated) express the entire understanding and all agreements of the PARTIES with respect to the project design, construction, and cost allocations described herein. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between any of the PARTIES, whether individually or collectively concerning the subject matter hereof.

14. **AMENDMENTS.** This Agreement may be modified only by a written agreement, executed by all PARTIES hereto; provided that the PARTIES agree, without cost to any individual party, to conform this agreement and all performance obligations hereunder to the requirements of any applicable laws, rules, regulations, standards and specifications of any governmental agency with jurisdiction over any such matter, including any amendment or change thereto.

15. **RELATIONSHIP OF THE PARTIES.** This Agreement shall not be construed to be a joint venture or a lease among any of the PARTIES.

16. **SURVIVAL.** If any provision of this Agreement or the applications of this Agreement to any PARTY or circumstance shall, for any reason and to any extent, be held

invalid or unenforceable, neither the remainder of this Agreement nor the application of this Agreement or such provision to any PARTY or circumstance or other instruments referred to in this Agreement or affected provision shall be affected thereby but, rather the same shall be enforced to the fullest extent permitted by law. In the event that any provision of this Agreement, or the application thereof, is held by any court of competent jurisdiction to be illegal or unenforceable, the PARTIES shall attempt in good faith to agree upon an equitable adjustment in order to overcome to the greatest extent possible the effect of such illegality or unenforceability.

17. **NON-DISCRIMINATION.** Under this Interlocal Cooperation Agreement, in performance of the requirements herein, no PARTY shall discriminate against any person(s) on account of national origin, disability, race, sex, age, or political affiliation in violation of applicable laws, rules and regulations of any government agency with jurisdiction over such matter.

18. **MISCELLANEOUS.** This Agreement shall not create any separate legal or administrative entity. It shall be administered jointly by the PARTIES, through one representative to be designated by and on behalf of each PARTY. Each PARTY shall separately finance and budget its own duties and functions under this Agreement. There shall be no jointly held property as a result of this Agreement. Upon termination, each PARTY shall retain ownership of the property it owns at the time of termination. THIS AGREEMENT does not authorize the levying, collecting or accounting of any tax.

19. **NOTICES.** All payments, notices, statements, demands, requests, consents, approval, authorizations or other submissions required to be made by the PARTIES shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States certified mail, return receipt requested,

postage prepaid and addressed to the applicable party at the notice address shown the applicable signature page below.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



EXECUTED BY THE **PAPIO-MISSOURI RIVER NATURAL RESOURCES**  
**DISTRICT** ON THIS 18<sup>th</sup> DAY OF SEPTEMBER, 2017

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By 

**JOHN WINKLER, General Manager**

**Notice Address**

8901 S 154<sup>th</sup> St  
Omaha, NE 68138

Attn: Eric Williams

EXECUTED BY THE LOWER PLATTE SOUTH NATURAL RESOURCES  
DISTRICT ON THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2017

**LOWER PLATTE SOUTH NATURAL  
RESOURCES DISTRICT**

By  \_\_\_\_\_

**PAUL ZILLIG, General Manager**

**Notice Address**

LOWER PLATTE SOUTH NRD

P.O. BOX 83581

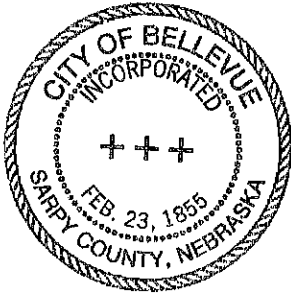
LINCOLN, NE 68501-3581

Attn: PAUL ZILLIG

EXECUTED BY THE CITY OF BELLEVUE, NEBRASKA ON THIS

25<sup>th</sup> DAY OF SEPTEMBER, 2017

**CITY OF BELLEVUE, NEBRASKA**




By   
**RITA SANDERS, Mayor**

Attest:



City Clerk

Approved as to form:



**Notice Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

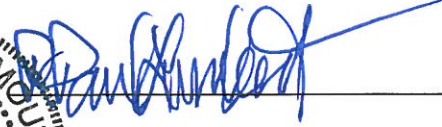
Attn: \_\_\_\_\_



EXECUTED BY THE CITY OF PLATTSMOUTH, NEBRASKA ON THIS  
18<sup>th</sup> DAY OF SEPTEMBER, 2017

CITY OF PLATTSMOUTH, NEBRASKA





PAUL LAMBERT, Mayor

Attest:



City Clerk

Notice Address

City of Plattsmouth

136 N. 5<sup>th</sup> Street

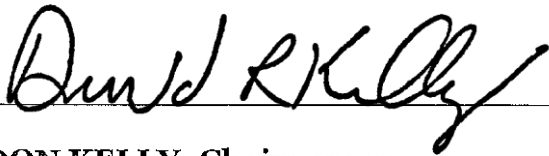
Plattsmouth NE 68048

Attn: Erv Portis

EXECUTED BY **COUNTY OF SARPY, NEBRASKA** ON THIS 19th

DAY OF SEPTEMBER, 2017

**COUNTY OF SARPY, NEBRASKA**

By 

**DON KELLY, Chairperson,**

**Board of County Commissioners**

**Notice Address**

Sarpy County Clerk's Office

1210 Golden Gate Drive #1250

Papillion, NE 68046

Attn: County Board

Approved as to form:

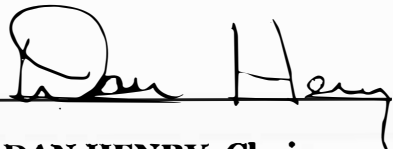


Deputy Sarpy County Attorney

EXECUTED BY **COUNTY OF CASS, NEBRASKA** ON THIS 3rd

DAY OF OCTOBER, 2017

**COUNTY OF CASS, NEBRASKA**

By 

**DAN HENRY, Chairperson,**

**Board of County Commissioners**

**Notice Address**

Cass County

346 Main Street

Plattsmouth, NE 68048

Attn: Gerri Draper , County Clerk



EXECUTED BY METROPOLITAN AREA PLANNING AGENCY ON THIS

28 DAY OF SEPTEMBER, 2017

**METROPOLITAN AREA PLANNING AGENCY**

By   
**RITA SANDERS, Chairperson,**  
**Board of Directors**

**Notice Address**

Metropolitan Area Planning Agency

2222 Cuming Street

Omaha, NE 68102

Attn: Greg Youell, Executive Director

## **EXHIBIT “A”**

### **Operations and Maintenance**

With respect to the parties' obligations for ongoing maintenance and operations of the trail after completion of Phase 2 of the construction there, the parties agree to the followings terms and conditions:

#### **1. Trail Bridge Owner**

PMRNRD will be the sponsor entity in connection with the use of any Nebraska Department of Transportation (“NDOT”) and/or MAPA funds applied to Phase 2 of the project. Nothing contained in this Agreement or this Exhibit A shall in any way limit or restrict PMRNRD's rights, duties, and obligations as a sponsor in connection with any NDOT and/or MAPA financial assistance. Each of the other party's hereto shall cooperate with PMRNRD in PMRNRD's carrying out of such rights, duties and obligations for normal operations and maintenance for the project.

#### **2. Trail Surface Clearing**

Clearing and/or sweeping of debris from the trail (including removal of snow and ice) will be performed by the City of Bellevue, the City of Plattsmouth, Sarpy County, and Cass County, as necessary. Responsibility for clearing and sweeping of the trail will be on a rotating 2-year cycle, beginning with City of Bellevue after completion of Phase 2, rotating to the City of Plattsmouth on October 1<sup>st</sup> of the year following Phase 2 completion, rotating to City of Plattsmouth, Sarpy County, Cass County, and returning to City of Bellevue on a normal two-year cycle beginning on October 1<sup>st</sup> each year.

Such parties are prohibited from moving snow and/or ice from the trail and onto the US-34 bridge thru any snow or ice control and removal operations.

Best practices for all operations and maintenance will be documented and shared between all parties. No salt, brine, or other ice removal treatment will be applied for two (2) years after completion of Phase 2 of the project without PMRNRD's prior consent in order to protect the concrete surface.

### **3. Maintenance and Repair Cost Share**

PMRNRD will oversee design and construction for any needed repair work on the project, and request reimbursement from the other parties after the completion of the repair. Each of the parties shall be responsible for all reasonable repair and replacement costs (beyond ordinary surface clearing) for the trail based on their respective corresponding percentage shares as follows:

<u>PARTY</u>	<u>Percentage</u>
CITY OF BELLEVUE	20 %
CITY OF PLATTSMOUTH	10 %
PMRNRD	25 %
LPSNRD	15 %
SARPY COUNTY	20 %
CASS COUNTY	10 %

### **4. Inspection Duties**

If required inspections are performed by NDOT along with structural inspections of the US-34 bridge, NDOT will submit an invoice to PMRNRD accordingly.

### **5. Repair or Removal by NDOT**



Should US-34 Bike and Walking Trail (hereinafter the “Trail”) fall into disrepair, or become significantly damaged to warrant removal, and work is performed by NDOT to either repair or remove the project, NDOT will bill PMRNRD for any work completed. The cost of any such repair or removal work performed by NDOT that is billed to PMRNRD shall be shared by the parties pursuant to their respective percentage shares as set forth in Section 3 of this Exhibit A.

#### **6. Temporary Closure**

NDOT will allow for temporary closure of the US-34 northbound shoulder/lane for maintenance activities on the bridge (hereinafter the “Trail Bridge”), if required, via NDOT ROW permit.

#### **7. Structural Maintenance**

PMRNRD owns, operates, and maintains this structure including girder seats, girders, bridge deck, rail, fencing, abutments, drainage structures, and appurtenances to the Trail Bridge. NDOT will own, operate and maintain all other segments of the piers where Trail Bridge is attached to the piers under US-34.

#### **8. Trail Bridge Deck**

PMRNRD owns, operates, and maintains the Trail system including bridge deck, rails, fencing, and appurtenances as necessary for the Trail.

#### **9. Freeway and Pier Maintenance**

PMRNRD reserves the right to close or limit access to the Trail and/or Trail Bridge at any time in the event repairs, construction, or maintenance to the US-34 bridge and/or

the related roadway and/or piers require such closure. The Trail Bridge will be closed to trail users if needed to insure their safety and for completion of the US-34 work. The Trail Bridge Owner will be provided advanced notification if this occurs. NDOT shall maintain the piers which support both US 34 and the Bridge, and normal operations and maintenance of the Bridge will be performed according to NDOT standards including, but not limited to, Bridge debris cleaning.

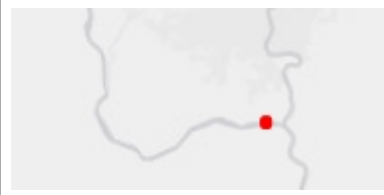
#### **10. Amendments**

The parties may amend the terms of this Exhibit A at any time upon a written amendment or agreement signed by the parties subject to the terms of this Exhibit A.

Attachment 1, US Highway 34 Bike and Walking Trail



Location



Sarpy County GIS



1210 Golden Gate Dr.  
Suite 1130  
Papillion, NE 68046  
maps.sarpy.com

Legend

Project location  
shown in green

1: 4,800



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.