

## MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee  
FROM: Eric Williams, Natural Resources Planner  
DATE: October 7, 2019  
SUBJECT: Buffalo Stream Bank Stabilization  
Interlocal Agreement with Sarpy County

The purpose of this Interlocal Agreement is to specify the terms and conditions upon which Sarpy County and the NRD will collaborate to design, develop, construct, operate and maintain a portion of Buffalo Creek.

The District approved a cost share application in April 2019 with Sarpy County thru the Urban Drainageway Program for channel improvements along Buffalo Creek, along Buffalo Road east of 192<sup>nd</sup> Street. The project will provide creek stabilization, protection for existing infrastructure, and safety improvements.

This agreement specifies funding of \$303,115 in FY 2020, FY 2021, and FY 2022, for the total cost share of \$909,345 over the expected three year timeline for the project.

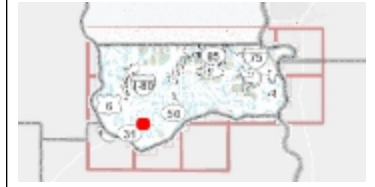
The proposed Interlocal Agreement (attached) lays out the responsibilities of each party and the cost shares arrangement for each.

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement with Sarpy County for Buffalo Stream Bank Stabilization, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

# Buffalo Stream Stabilization

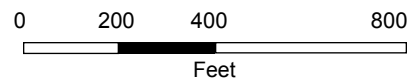
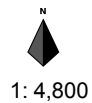


## Location



## Legend

- Guardrails
- Pavement Type
- Street Pavement
- 2018 Aerial Photo
  - Red: Band\_1
  - Green: Band\_2
  - Blue: Band\_3



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.

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

# **INTERLOCAL COOPERATION AGREEMENT**

**Between**

**SARPY COUNTY, NEBRASKA**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**BUFFALO STREAM BANK RESTORATION- URBAN DRAINAGEWAY  
PROJECT**

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THIS AGREEMENT (hereinafter “**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **SARPY COUNTY, NEBRASKA** (“the **COUNTY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, *et seq.*).

**WHEREAS**, the NRD administers its Urban Drainageway Program (the “**PROGRAM**”), which provides cost sharing with local governmental entities for the installation and maintenance of improvements to urban stream channels; and,

**WHEREAS**, the COUNTY desires to rehabilitate and restore the stream bank of Buffalo Stream within the COUNTY’s jurisdiction (“the **PROJECT**”); and,

**WHEREAS**, the COUNTY desires to receive cost-sharing assistance from the NRD for a portion of the costs of the PROJECT through the PROGRAM; and,

**WHEREAS**, the Board of Directors of the NRD has approved the PROJECT for participation in the PROGRAM.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants of parties hereinafter expressed, the parties hereby agree as follows:

**1. PROJECT BENEFITS.** The parties do hereby find and determine that the PROJECT will be of predominantly general benefit to the COUNTY and the NRD, with only an incidental special benefit.

**2. PROJECT PARTICIPANTS.** The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the parties with respect to the PROJECT shall be as defined by THIS AGREEMENT.

**3. PROGRAM REQUIREMENTS.** The COUNTY shall comply with the requirements for the PROGRAM as promulgated by the NRD and set forth in the NRD's Directors Policy Manual. THIS AGREEMENT and the PROGRAM'S requirements shall be construed in a manner giving full effect to both. In the event there is an unavoidable conflict between a specific provision of THIS AGREEMENT and a specific provision of the PROGRAM'S requirements, THIS AGREEMENT shall control.

**4. APPLICATION AND SUBMISSION OF PLANS.** The COUNTY'S application and documents accompanying that application to the PROGRAM are attached hereto as EXHIBIT A, and are incorporated into THIS AGREEMENT.

Prior to commencing performance of the relevant phase of the PROJECT, the COUNTY shall submit to the NRD the PROJECT plans, bid documents, construction contract, and implementation schedules (collectively the "DOCUMENTS"). If during any phase of the PROJECT, there are material changes to the application or the DOCUMENTS, the COUNTY shall timely inform the NRD, in writing, of the material change and submit an updated version of the relevant document or documents that were impacted by the material change.

**5. NRD TECHNICAL ASSISTANCE.** The NRD shall provide technical assistance to the COUNTY regarding the PROJECT within the limits of its expertise, as may be requested by the COUNTY.

**6. RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, which the COUNTY determines is necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT ("the **PROJECT RIGHTS-OF-WAY**"), shall be obtained by the COUNTY, which shall hold title thereto. The costs of the PROJECT RIGHTS-OF-WAY shall be deemed to be a cost of the PROJECT.

7. **PERMITS.** All necessary local, state and federal permits, which the COUNTY determines are necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained by the COUNTY, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

8. **UTILITY RELOCATIONS.** The COUNTY shall be solely responsible for relocation of any utilities that are determined to interfere with construction of the PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the PROJECT. The cost of such utility relocations shall be deemed to be a cost of the PROJECT.

9. **CONSTRUCTION CONTRACT FOR PROJECT.** The COUNTY shall solicit competitive sealed bids for construction of the PROJECT. The provisions of the CONSTRUCTION CONTRACT shall include, but not be limited to, covenants and conditions providing that the NRD shall be named as an additional insured in all insurance provided to the COUNTY by the CONTRACTOR.

10. **COMPETITIVE BIDS.** Within a reasonable time after COUNTY'S receipt and opening of sealed bids for construction of the PROJECT, the COUNTY shall deliver a summary thereof to the NRD, together with the identification by the COUNTY of the bidder whom the COUNTY determines is the lowest responsible bidder. The COUNTY shall accept such bid and shall award to such bidder the contract to construct all or one or more portions of the PROJECT. In the event that the COUNTY selects a bidder who did not submit the lowest bid, the COUNTY shall provide a written explanation of its decision to select a higher bid to the NRD. The COUNTY, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the COUNTY submitted to the NRD.

11. **NRD CONTRIBUTION.** As its contribution(s) towards the aforesaid costs of the original engineering and construction and of the PROJECT ("the **NRD CONTRIBUTION**"), the NRD shall reimburse the COUNTY for up to a total of \$909,345 for the costs of the PROJECT. The NRD CONTRIBUTION shall be paid in yearly installments. The first such installment shall be paid in the NRD'S 2020 fiscal year and shall not exceed \$303,115. The second installment shall be paid in the NRD'S 2021 fiscal

year and shall not exceed \$303,115. The third installment shall be paid in the NRD'S 2022 fiscal year and shall not exceed \$303,115.

The COUNTY shall provide an invoice(s) to the NRD detailing all of the billings and costs for which it seeks reimbursement prior to the NRD paying any of the installments. Each installment shall be paid to the COUNTY within 45 days of the COUNTY'S submission to the NRD of the invoice(s) referenced above. Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$909,345, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$909,345.

The COUNTY shall be solely responsible to pay all other costs and expenses associated with the PROJECT, including but not limited to the operation and maintenance of the PROJECT, without any further NRD reimbursement or contribution. Any State, Federal, foundation or other grants received by either of the parties at any time for purposes of offsetting costs and expenses of the PROJECT shall be credited to both parties in equal shares against their respective obligations hereunder for costs and expenses of the PROJECT.

The COUNTY shall publicly acknowledge the DISTRICT'S contribution to the PROJECT on a permanent sign, plaque, or other fixture (containing at a minimum the DISTRICT'S name and logo), to be maintained by the COUNTY for the life of the PROJECT.

**12. ABANDONMENT OF THE PROJECT.** In the event the COUNTY abandons the PROJECT prior to its completion, the NRD shall not be responsible for any costs, payments, or billings related to the PROJECT. If at the time of abandonment, the NRD has paid the COUNTY an installment of the NRD CONTRIBUTION or any other monies related to the PROJECT, the COUNTY shall return and refund any and all installment(s) or monies related to the PROJECT paid by the NRD to the NRD.

**13. OPERATION AND MAINTENANCE OF THE PROJECT.** After completion of PROJECT and COUNTY acceptance of the PROJECT from the CONTRACTOR, the COUNTY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT during its useful

life, as the COUNTY determines necessary, and in accordance with applicable and generally-accepted engineering practices, state and federal statutes and regulations, including but not limited to FEMA regulations and requirements for continuation of flood insurance, and any applicable USACE requirements necessary to preserve the eligibility of PROJECT for benefits under the Public Law 84-99 maintenance program.

**14. RISK OF LOSS.** The COUNTY shall have the insurable interest in, and shall bear the sole risk of loss of or damage to, the PROJECT and all PROJECT components, whether such loss or damage results from flood or other casualty whatsoever.

**15. MUTUAL INDEMNIFICATION.** The COUNTY and the NRD shall mutually indemnify and hold the each other harmless from and against all liability and damages resulting from their respective role and obligations on the PROJECT, including but not limited to the design, construction, operation, or maintenance of the PROJECT, and against all demands, causes of action, and claims arising therefrom including court costs and attorney fees, except as may be caused by the negligence of the other party.

**16. NON-DISCRIMINATION.** The parties hereto shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any of its contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin. The parties agree that any contractor retained by the COUNTY to perform work on the PROJECT shall comply with the requirements set forth in the attached Exhibit "A-1" and "A-2," which are incorporated into THIS AGREEMENT.

**17. ENTIRE AGREEMENT.** THIS AGREEMENT contains the entire agreement between the parties, and each party hereto agrees that neither the other party, nor any of the officers, agents, employees or contractors of the other party, have made any representations or promises with respect to the PROJECT not expressly contained herein.

**18. NOTICES.** All notices herein required shall be in writing and shall be served on the parties at their principal offices, or at such other address as either party may hereafter designate to the other party in writing for service of notice to itself. The mailing

of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

**19. BINDING EFFECT.** The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

**20. APPLICABLE LAW.** Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance of THIS AGREEMENT. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

**21. SEVERABILITY.** In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT, the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of THIS AGREEMENT so as to render it valid, reasonable and enforceable.

**22. CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

**23. Counterparts.** THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties have executed THIS AGREEMENT, on the respective dates hereinafter indicated, pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.



The COUNTY has executed THIS AGREEMENT on \_\_\_\_\_,  
2019.

SARPY COUNTY, NEBRASKA

By \_\_\_\_\_

**Donald R. Kelly, Board Chairperson**

**Attest:**

\_\_\_\_\_  
**COUNTY Clerk**

Approved as to Form:

\_\_\_\_\_  
Sarpy County Attorney

The NRD has executed THIS AGREEMENT on \_\_\_\_\_, 2019.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_

**JOHN WINKLER, General Manager**

## EXHIBIT A



## Urban Drainageway Program – Application Form

Project name Buffalo Stream Bank Stabilization

Project location (attach location map) East of 192nd Street on Buffalo Road

Sponsor organization Sarpy County

Sponsor address 15100 S. 84th Street

City Papillion State NE ZIP 68046

Contact person Krista K. Wassenaar, PE

Title Senior Engineer

Email address kwassenaar@sarpy.com Daytime phone 402-537-6924

## Description of problem (attach additional sheets as needed)

The stream bank has been stabilized multiple times in the past years, but the stabilization has not worked. The stream is coming closer to Buffalo Road which is impacting the potential safety of people traveling along this road.

## Proposed solution (attach additional sheets as needed)

We are wanting to permanently stabilize the stream bank to reduce future safety issues. See attached plans/report for more information. The project is near final design, but is not currently planned for construction due to project costs. Additional funding would allow us to complete the project. We are requesting funding only for construction activities.

Level of Design      Level 1 ☐      Level 2 ☐      Level 3 ☒

Total estimated cost      \$ 2,273,360      Cost share request      \$ 909,344

  
Signature

3/22/2019  
Date

County Engineer  
Title

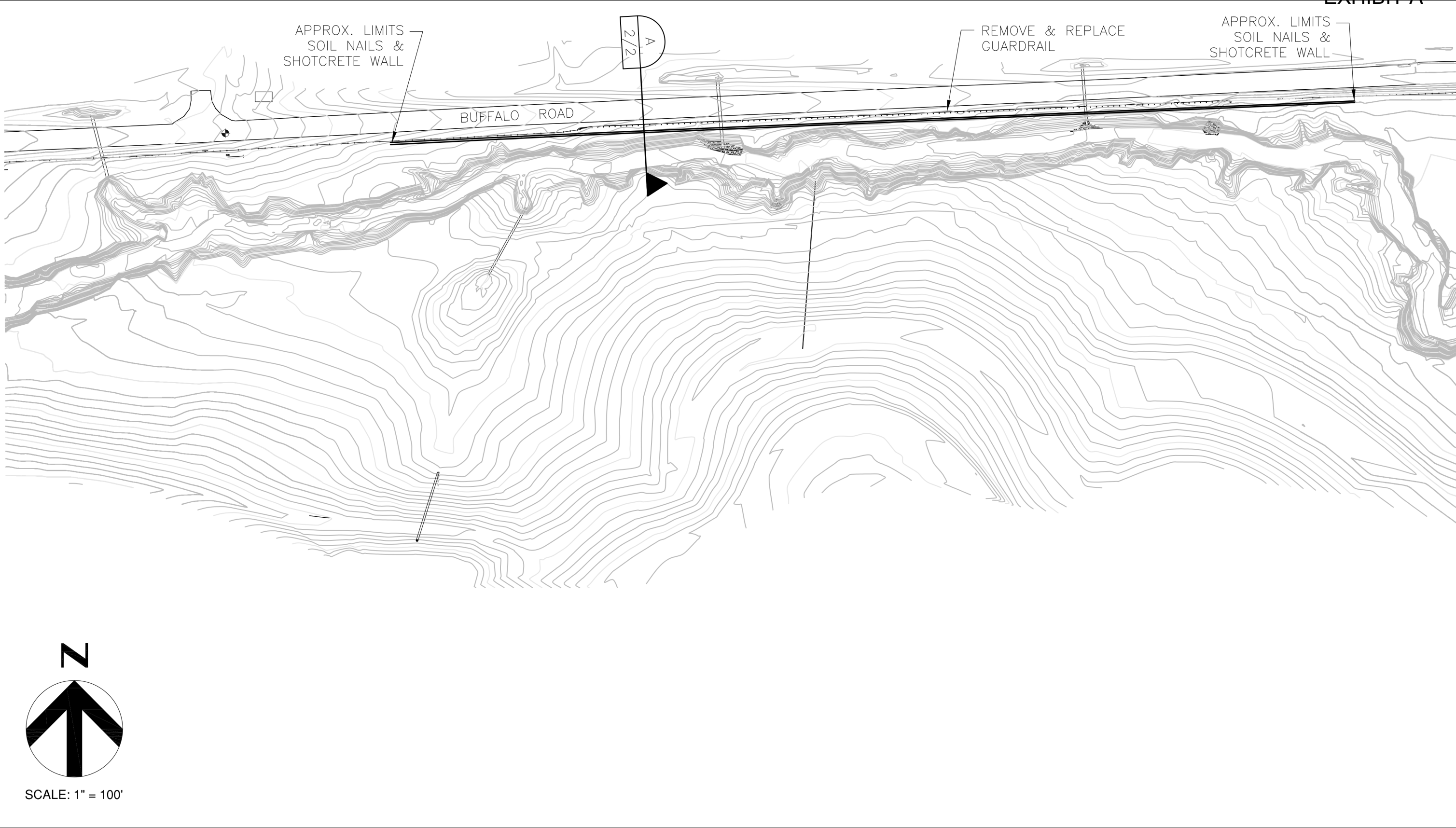
## Engineer's Preliminary Opinion of Approximate Costs

Buffalo Road and 192nd Street

Structure Sarpy County - Meander Channel  
 Date 3/26/2014  
 Quantity by V. Twerdochlib

ITEM DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
Mobilization & Demobilization (7% Subtotal)	LS	1	\$ 90,100	\$ 90,100
BMP Construction and Maintenance (0.2% Subtotal)	LS	1	\$ 3,000	\$ 3,000
Surveying & Staking	LS	1	\$ 2,000	\$ 2,000
Bypass Pumping	LS	1	\$ 10,000	\$ 10,000
Clearing & Grubbing, Channel Clearing	AC	9.0	\$ 6,300	\$ 56,700
Tree Removal	EA	129.0	\$ 200	\$ 25,800
Strip & Stockpile Topsoil	SY	42,300	\$ 0.40	\$ 17,000
New Channel Excavation	CY	46,700	\$ 3.50	\$ 163,450
Disposal of Excess Excavated Material	CY	11,675	\$ 10.00	\$ 116,750
36" CMP	LF	33	\$ 68.00	\$ 2,300
30" CMP	LF	25	\$ 61.00	\$ 1,600
Embankment for Roadway Embankment	CY	31,200	\$ 8.50	\$ 265,200
Coir Mat for Southern Embankment	SY	9,613	\$ 5.00	\$ 48,100
Seeding	AC	9.0	\$ 800.00	\$ 7,200
Construct Rock Riprap, Type C	TN	10,100	\$ 55.00	\$ 555,500
Filter Fabric	SY	4,800	\$ 3.10	\$ 14,900
<i>Sub-Total</i>				\$ 1,379,600
<i>Engineering, Bid-Phase and Permitting (10%)</i>				\$ 138,000
<i>Contingencies (28%)</i>				\$ 386,300
<b>TOTAL</b>				<b>\$ 1,903,900</b>

Estimate escalated to 2020 costs (3% per year)= \$2,273,360



PROJECT TITLE  
192ND & BUFFALO ROAD CHANNEL STABILIZATION

SHEET TITLE  
PROPOSED SOIL NAIL STABILIZATION  
PRELIMINARY PLAN

PROJECT NUMBER  
226244

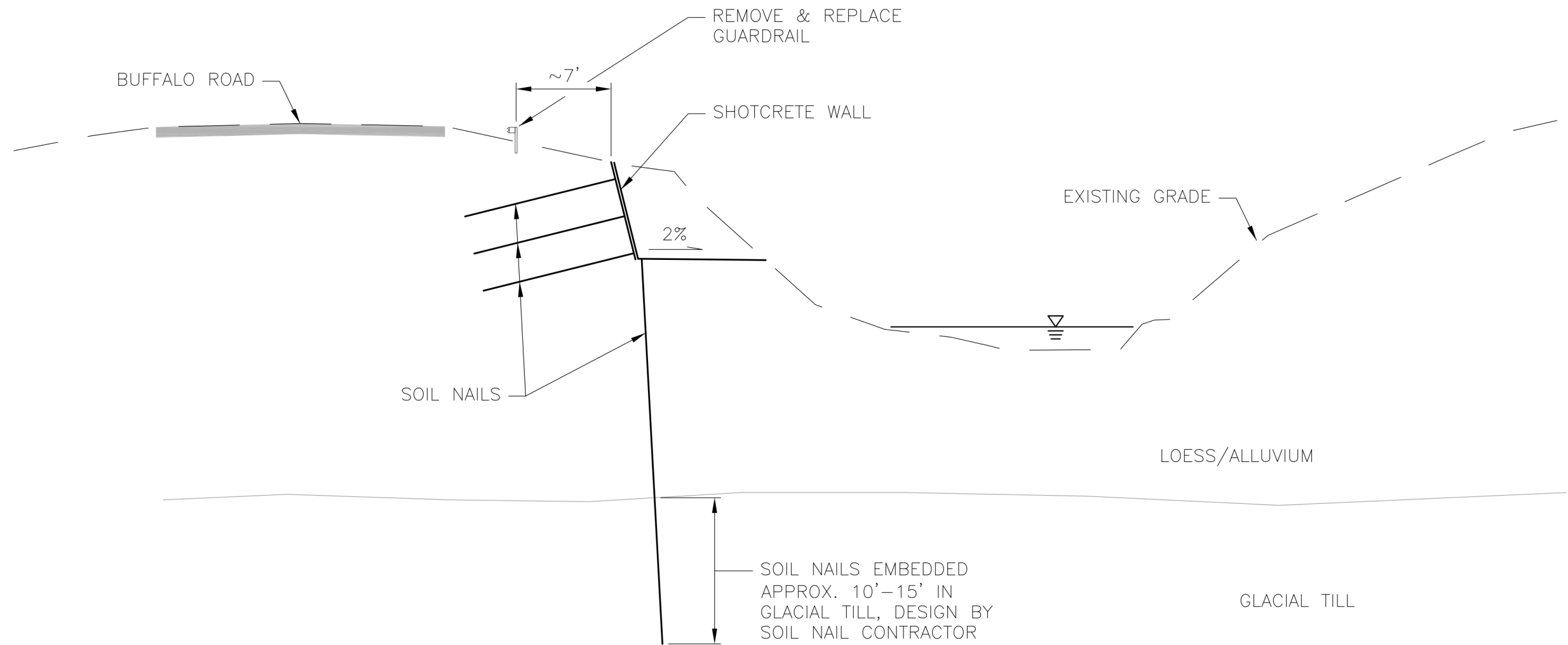
PROJECT MANAGER

DATE  
5/17/2016

REFERENCE SHEET

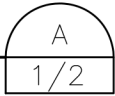
REFERENCE DOCUMENT

EXHIBIT NUMBER  
1/2



TYPICAL SECTION  
SOIL NAIL STABILIZATION

NO SCALE



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PROJECT TITLE  
192ND & BUFFALO ROAD CHANNEL STABILIZATION  
SHEET TITLE  
PROPOSED SOIL NAIL STABILIZATION  
TYPICAL SECTION

PROJECT NUMBER  
226244  
PROJECT MANAGER  
  
DATE  
6/6/2016

REFERENCE SHEET  
  
REFERENCE DOCUMENT  
  
EXHIBIT NUMBER  
2/2

## EXHIBIT A-1

### EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall not discriminate against any employee applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. The contractor shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
2. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity or national origin, age, disability.
3. The contractor shall send to each representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the contractor's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor shall furnish to the human rights and relations director all federal forms containing the information and reports required by the federal government for federal contracts under federal rules and regulations, including the information required by section 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the human rights and relations director shall be those which are related to paragraphs (1) through (7) of this subsection and only after reasonable notice is given the contractor. The purpose of this provision is to provide for investigation to ascertain compliance with the program provided for herein.
5. The contractor shall take such actions with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate these provisions of this division; and in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
6. The contractor shall file and shall cause his subcontractors, if any to file compliance reports with the contractor in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the human rights and relations director. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.
7. The contractor shall include the provisions of paragraphs (1) through (7) of this section, "Equal employment opportunity clause," and section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

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## EXHIBIT A-2

### E-VERIFY

#### LB 403 Contract Provisions

#### NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

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

The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).

If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.