

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
DATE: September 30, 2019
SUBJECT: North Omaha Trail
Interlocal Agreement with City of Omaha

The purpose of this Interlocal Agreement is to specify the terms and conditions upon which the City of Omaha and the NRD will collaborate to design, develop, construct, operate and maintain the North Omaha Trail. This project is generally located from 26th and Lake Street, to 31st and Taylor Street.

The District approved a cost share application in April 2019 with the City of Omaha thru the Trails Assistance Program. This trail uses publicly owned land on both the east, and west side of Hwy 75, and provides greatly improved access to recreation, active transportation, and natural resources which are being planned along the route. Additional planning for facilities is currently in process, with a view to a wider regional network connecting locations of civic importance including 24th and Lake Street, existing Paxton Boulevard Trail, the developing north downtown district, and The RiverFront. NRD funding is specifically allocated to the off-road, recreational trail portion of the overall project.

This agreement specifies funding of \$146,209 in FY 2020, and FY 2021, for total cost share of \$292,418 over the expected two 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 the City of Omaha for North Omaha Trail, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

INTERLOCAL COOPERATION AGREEMENT

Between

THE CITY OF OMAHA, NEBRASKA

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

NORTH OMAHA TRAIL SEGMENT- TRAILS ASSISTANCE PROGRAM

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

WHEREAS, the NRD administers its Trails Assistance Program (the “**PROGRAM**”), which provides cost sharing with local governmental entities for the development and construction of recreational trails; and,

WHEREAS, the CITY desires to develop and construct the North Omaha Trail Segment within the CITY’s jurisdiction (“the **PROJECT**”); and,

WHEREAS, the CITY 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 CITY 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 CITY 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 CITY'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 CITY 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 CITY 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 CITY regarding the PROJECT within the limits of its expertise, as may be requested by the CITY.

6. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way, which the CITY 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 CITY, 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 CITY 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 CITY, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

8. **UTILITY RELOCATIONS.** The CITY 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. **DESIGN CONTRACT FOR PROJECT.** The CITY shall retain an engineering firm to design the PROJECT. The cost of retaining an engineering firm for the PROJECT shall be deemed to be a cost of the PROJECT.

10. **CONSTRUCTION CONTRACT FOR PROJECT.** The CITY 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 CITY by the CONTRACTOR.

11. **COMPETITIVE BIDS.** Within a reasonable time after CITY'S receipt and opening of sealed bids for construction of the PROJECT, the CITY shall deliver a summary thereof to the NRD, together with the identification by the CITY of the bidder whom the CITY determines is the lowest responsible bidder. The CITY 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 CITY selects a bidder who did not submit the lowest bid, the CITY shall provide a written explanation of its decision to select a higher bid to the NRD. The CITY, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the CITY submitted to the NRD.

12. **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 CITY for up to a total of \$292,418 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 \$146,209. The second installment shall be paid in the NRD'S 2021 fiscal year and shall not exceed \$146,209.

The CITY 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 CITY within 45 days of the CITY'S submission to the NRD of the invoice(s) referenced above. Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$292,418, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$292,418.

The CITY 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 CITY shall publicly acknowledge the NRD'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 CITY for the life of the PROJECT.

13. ABANDONMENT OF THE PROJECT. In the event the CITY 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 CITY an installment of the NRD CONTRIBUTION or any other monies related to the PROJECT, the CITY shall return and refund any and all installment(s) or monies related to the PROJECT paid by the NRD to the NRD.

14. OPERATION AND MAINTENANCE OF THE PROJECT. After completion of PROJECT and CITY acceptance of the PROJECT from the CONTRACTOR, the CITY, 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 CITY

determines necessary, and in accordance with applicable and generally-accepted engineering practices, state and federal statutes and regulations.

15. RISK OF LOSS. The CITY 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.

16. INDEMNIFICATION. The CITY shall indemnify and hold the NRD harmless from and against all liability and damages resulting from 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 or willful misconduct of the NRD.

17. 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 CITY to perform work on the PROJECT shall comply with the requirements set forth in the attached EXHIBIT B which is incorporated into THIS AGREEMENT.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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 CITY has executed THIS AGREEMENT on _____, 2019.

The CITY of OMAHA

By _____

Jean Stothert, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2019.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____

JOHN WINKLER, General Manager



Trails Assistance Program – Application Form

Project name North Omaha Trail Project

Project location (attach location map) Parallel to Hwy 75, crossing at Pratt Street

Sponsor organization City of Omaha, Planning Department

Sponsor address 1819 Farnam Street, Suite 1111

City Omaha State NE ZIP 68183

Contact person Manuel Cook

Title Neighborhood Planner

Email address manuel.cook@cityofomaha.org Daytime phone 402-444-5150 ex 2012

Description of project (attach additional sheets as needed)

See attached narrative.

Total estimated cost \$ 1,022,500 Cost share request \$ 292,418

Manuel C. Cook
Signature

2/22/2019
Date

Neighborhood Planner
Title

The City of Omaha Planning Department requests matching funds in the amount of \$292,418 to assist in the design and construction of the North Omaha Trail Project. This project will result in the construction of a multi-modal trail, creating a local amenity for North Omaha neighborhoods and communities while providing recreational opportunities and increased access to existing parks, green spaces, and natural areas. Additionally, this multimodal trail will act as a spine in the construction of a larger network of multi-modal routes which will link *historically redlined*, economically distressed communities to the City's redeveloping downtown core and riverfront projects, creating opportunities for both community and economic development. Moreover, the North Omaha Trail Project would fulfill components of several existing plans while meeting the community's desire for improved multimodal infrastructure and a safer pedestrian and cyclist experience.

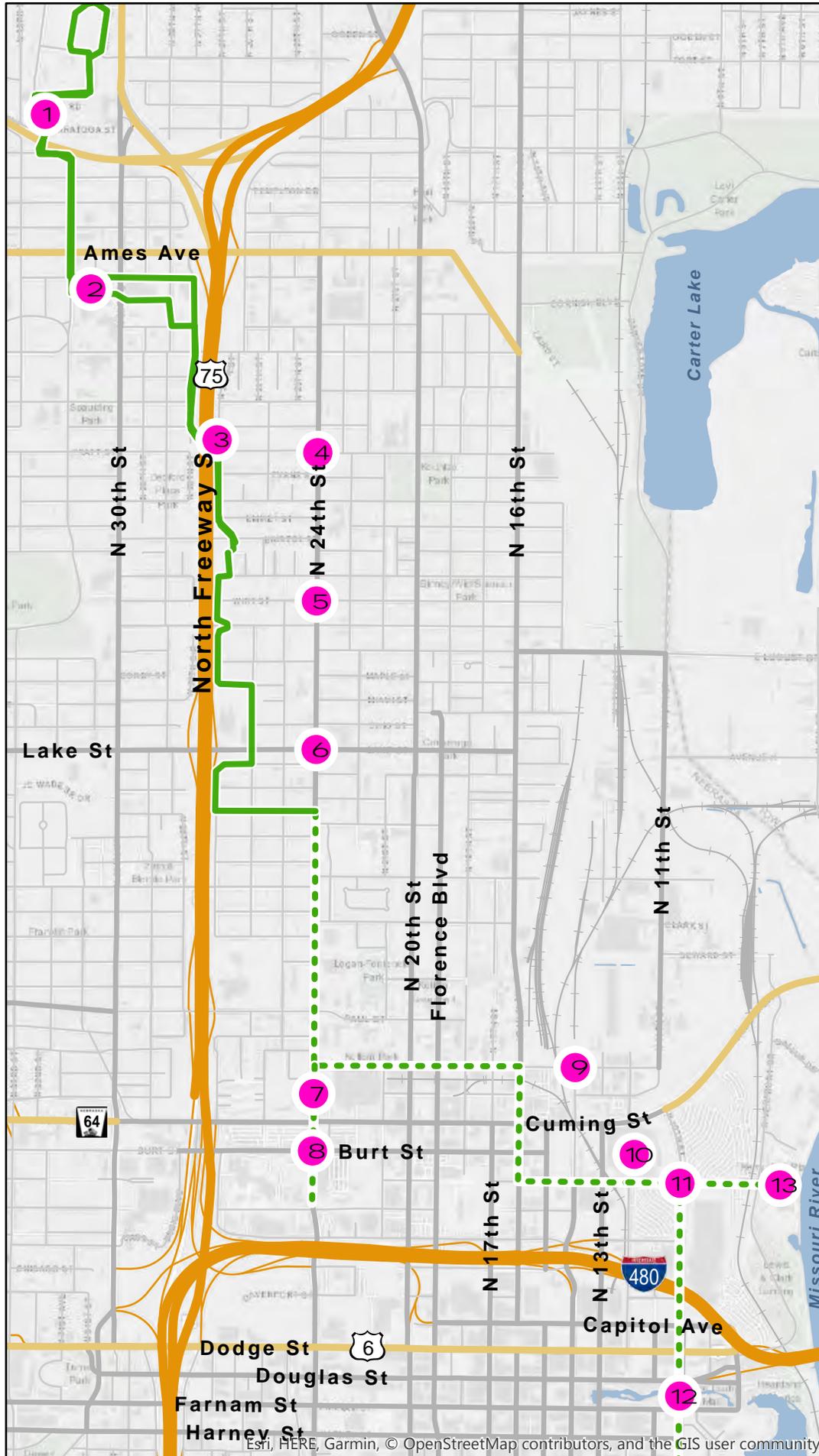
The basis and momentum for the development of this multi-modal trail stems from both recent and historical community engagement. References to a Multi-modal trail can be found on page 45 and 48 of the The City of Omaha Master Plan, page 128 of the North Omaha Redevelopment Project, and page 47 of the Village Revitalization Plan. All of these plans were composed based on extensive community engagement. More recent work in the City's target revitalization area, Neighborhood Action and Fact, has revealed strong local support for safer and more accommodating bicycle and pedestrian infrastructure while observations and counts have revealed significant pedestrian and cyclist activity.

With this community demand for improved multimodal infrastructure in mind, the planning Department entered into initial talks with NRD representatives about the potential for such a trail and the potential use of their Trails Assistance Program. After these conversations the Planning Department used available Community Development Block Grant (CDBG) funds for the removal of overgrowth along Highway 75 making necessary landscaping improvements for future trail construction and immediately improving the areas perceived safety. Additionally in preparation of future trail construction, Planning Department applied for and received technical assistance from National Parks Service to develop conceptual renderings, cross sections, and route of a multimodal system with a recreational trail along Highway 75 at its heart.

With a conceptual route and preliminary landscaping completed, The City of Omaha Neighborhood Planning division received cost estimates for trail construction from Olsson Associates. These estimates placed the design and construction of the full 3.75 mile multimodal system at approximately \$1,916,700, and the design and construction of shorter 2 mile segment including off road facilities along Highway 75 and a connection to both the North Omaha transit station and Paxton Boulevard at approximately \$1,022,500.

Funds provided by the NRD in the amount of \$292,418 will match the amount spent by the the City of Omaha on preliminary landscaping and only be used to support construction of a recreational trail along Highway 75. The Sherwood Foundation has agreed to fund the additional costs for the construction of the recreational trail along Highway 75, the design and construction costs of the remaining 3.75 mile multimodal network, and the establishment of a maintenance endowment. This project would be a collaboration between the NRD, City of Omaha, National Parks Service, and the Sherwood Foundation and would leverage the areas unique bicycle friendly terrain, resulting in the most significant multimodal infrastructure project in North Omaha and a substantial investment into a area in great need of access to recreation and natural resources.

North Omaha Trail/ Bicycle Highway



 Trail Segment Explored with National Parks

 Potential Downtown / Riverfront extension

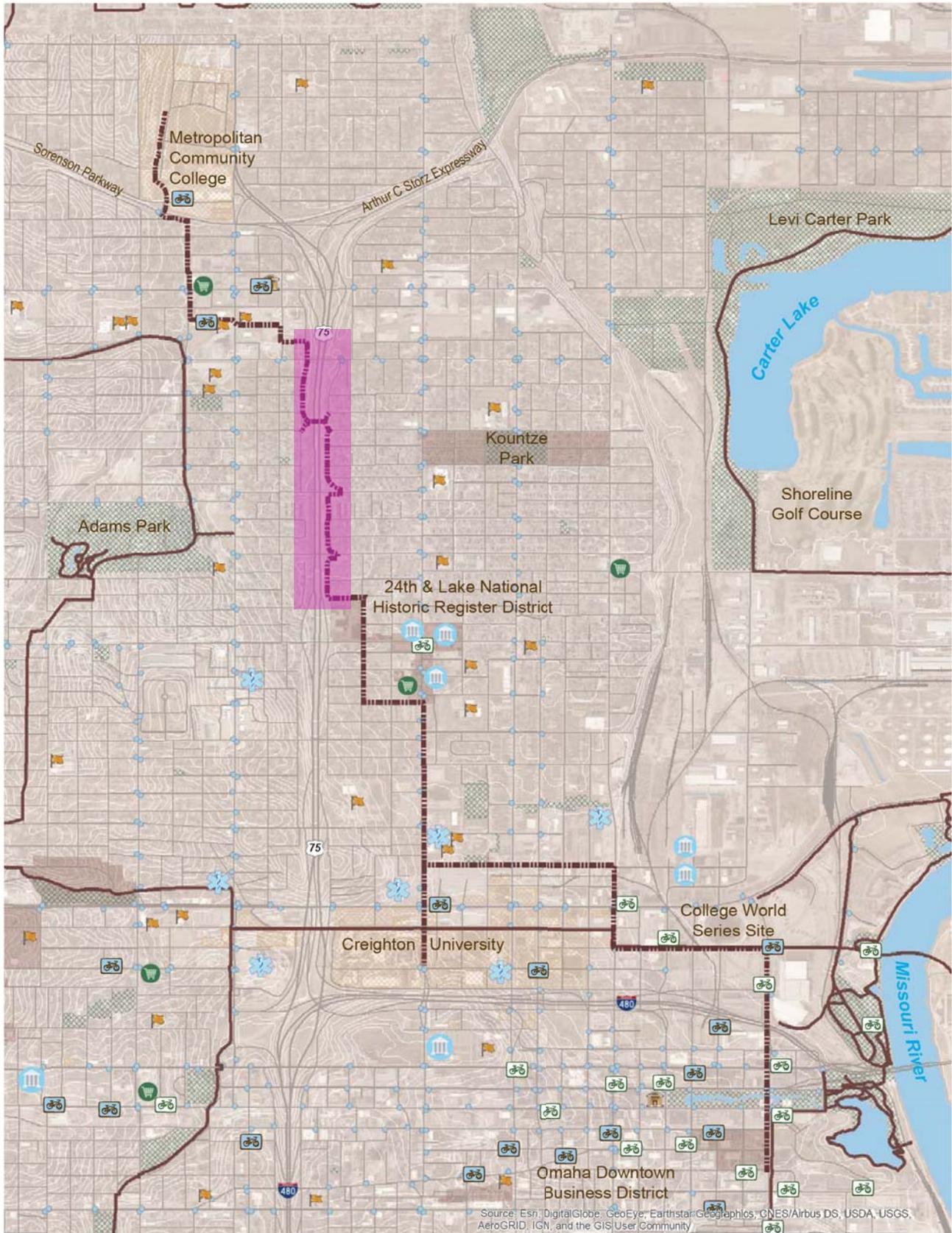
 Local Anchors

- 1 - Metropolitan Community College
- 2 - North Omaha Transit Station
- 3 - Existing Pratt Street Bike/ Ped Bridge
- 4 - Neighborhood Action and Fact, neighborhood revitalization area
- Salvation Army Community Center
- King Science Middle School
- 5 - Goodwins Barbershop, and planned development
- Church of God (Local Landark)
- 6 - 24th & Lake Creative Hub
- Union for Contemporary Art
- Omaha Small Business Network
- Omaha Economic Development Corporation
- Empowerment Network
7. CH Health Creighton University Medical Center
- 8 Creighton University
- 9 Makers District
- 10 TD Ameritrade Stadium
11. Planned landing of Bob Kerrey Pedestrian Bridge extension
- 12 Bob Kerrey Pedestrian Bridge (Link to Council Bluffs)
- 13 Gene Leahy Mall & Old Market

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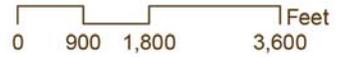


North Omaha Trail Context Map



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

-  Future Heartland B-Cycle Stations
-  Current Heartland B-cycle Stations
-  Library
-  Grocery
-  Gallery/Museum
-  Clinic/Hospital
-  Schools
-  Proposed Trail North
-  Trails
-  Bus Stops
-  Parks
-  Historic Districts
-  Colleges & Universities



AFFIDAVIT FOR EMPLOYEE CLASSIFICATION ACT

STATE OF _____)
) §
COUNTY OF _____)

I, _____, being first duly sworn under oath, state and
depose as follows:

1. I am competent to testify to, and have personal knowledge of, the matters stated in this affidavit.
2. I am (a contractor) (the authorized agent of the contractor _____).

I attest to the following: (a) each individual performing services for such contractor is properly classified under the Nebraska Employee Classification Act, 2010 LB 563 (“the Act”), (b) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (c) such contractor has complied with Neb. Rev. Stat. section 4-114 (federal immigration verification system), (d) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (e) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to the Act.

FURTHER AFFIANT SAYETH NAUGHT.

Affiant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Notary Public

UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

OR

I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number as follows:

_____, and I agree to provide a copy of my USCIS (United States Citizenship and Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: _____
By:

SIGNATURE: _____

DATE: _____

Attestation of Citizenship. To comply with Neb. Rev. Stat. 4-108 through 4-114, the Developer/Owner/Subrecipient agrees to comply with the requirements of 5.06.7.1 and 5.06.7.2.

The Developer/Owner/Subrecipient shall include the following language in all contracts and subcontracts for the physical performance of services: “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:

- a) The Contractor must complete the United States Citizenship Attestation form available on the Department of Administrative Services website at www.das.state.ne.us.
- b) If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. 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.
- c) 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.”

The Developer/Owner/Subrecipient shall have each person signing the application for a benefit under this agreement execute a United States Citizenship Attestation Form for Public Benefit (Exhibit “A”) verifying eligibility status for the purposes of receiving a public benefit.

Employee Classification Act. To comply with the Nebraska Employee Classification Act, all general contractors and subcontractors who perform construction or delivery service pursuant to this contract shall submit to the City an Affidavit for Employee Classification Act (Exhibit “B”) attesting that (1) each individual performing services for such contractor is properly classified under the Nebraska Employee Classification Act, 2010 LB 563 (“the Act:”), (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat Section 4-114 (federal immigration verification system), (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to the Act. The contractor shall follow the provisions of the Act. A violation of the Act by a contractor is grounds for rescission of the contract by the City.

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, national origin, disability or familial status. As used herein, the work “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 and its subcontractors 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, sexual orientation, gender identity, sex, national origin, age, disability or familial status.
- (3) The Contractor and its subcontractors 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 and its subcontractors shall furnish to the City’s Human Rights and Relations Contract Compliance Officer 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 Omaha Municipal Code Sections 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the Human Rights and Relations Contract Compliance Officer shall be those which are related to Paragraphs (1) through (7) of this Exhibit and only after reasonable notice is given to the Contractor. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.
- (5) The Contractor and its subcontractors 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 the 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 Contract Compliance Officer. 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 Omaha Municipal Code Section 10-193 in every contract, subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor. (Code 1980, Section 10-192; Ordinance No. 35344, Sections 1, 9-26-00)