

## Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: Nebraska Department of Roads Agreement  
▪ Mopac Trail (Hwy. 50 to Chalco)

Date: May 21, 2010

From: Gerry Bowen

In May, 2009, the District approved a resolution to accept federal transportation funding on the Mopac Trail (50 to Chalco Hills). Due to the changes in procedures at the Department of Roads and the Federal Highway Administration, the actual agreement was delayed as well. With the adoption of the new Local Projects Manual by the Nebraska Department of Roads (NDOR) new requirements have been passed down to the District on the project. The major change in the agreement is the appointment of a "responsible charge" (RC) for the project, and the listing of the duties this person is expected to perform.

The RC in effect, is the NDOR's local representative who has been trained and certified for these duties. The RC also must be an employee of the sponsoring agency. With these two projects, the District is the sponsor. NRD employee Gerry Bowen has been trained and certified as an RC, and will be assigned those duties on these projects.

The attached resolution is needed for the agreement.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Agreement with NDOR on the Mopac Trail (Hwy. 50 to Chalco Hills) Project.**

## RESOLUTION

### Papio-Missouri River Natural Resources District

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

**Whereas:** The 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:** The Papio-Missouri River NRD and the Nebraska Department of Roads (NDOR) 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 Directors of the Papio-Missouri River NRD that John Winkler, General Manager is hereby authorized to execute the attached Program Agreement between the Papio-Missouri River NRD and the NDOR.

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

NDOR Project Number: ENH-28(98)

NDOR Control Number: CN 22413

Adopted this 10<sup>th</sup> day of June, 2010 at Omaha, Nebraska.

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Chairperson

Attest: \_\_\_\_\_  
Secretary



Papio-Missouri River  
Natural Resources District

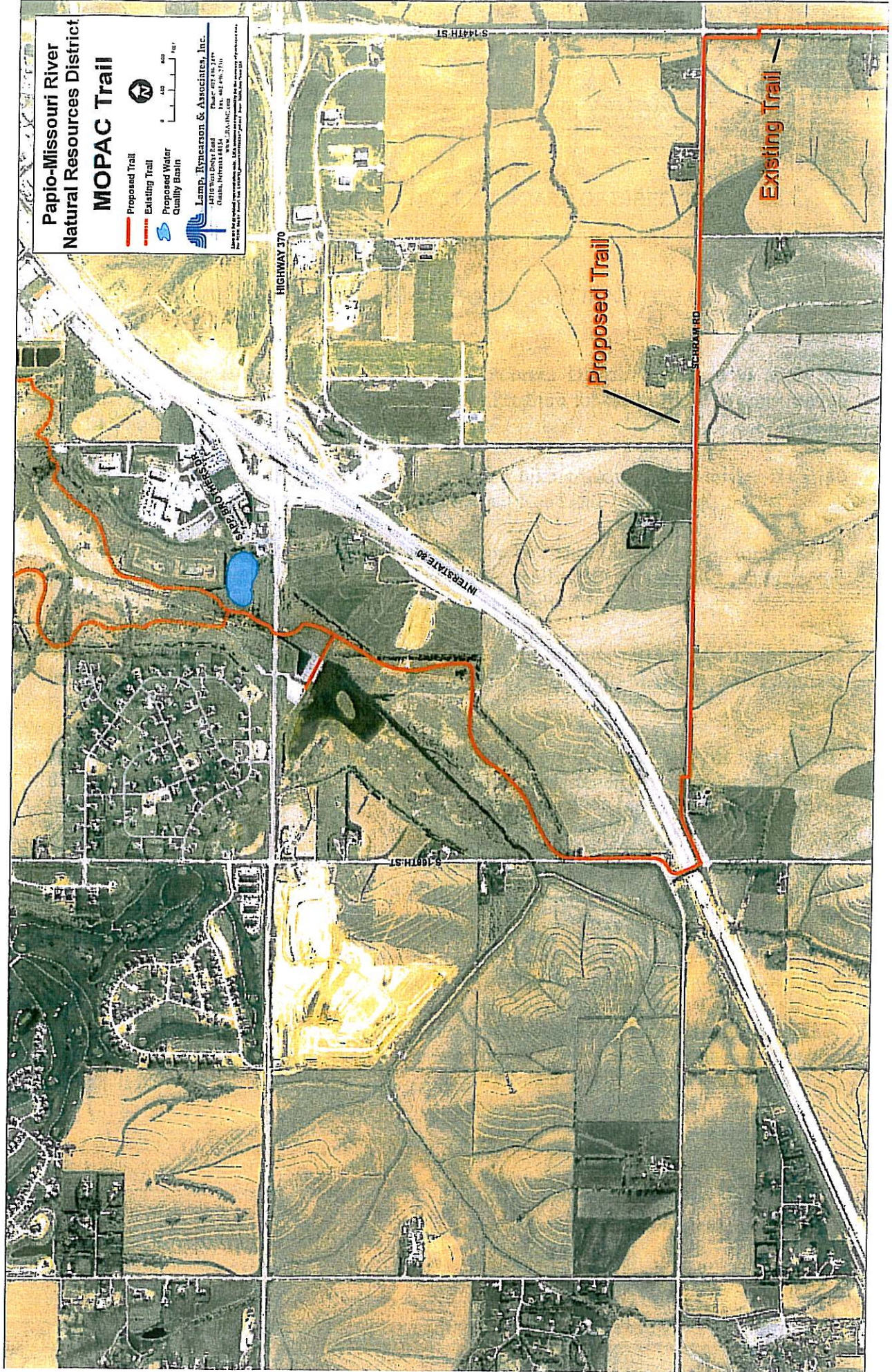
MOPAC Trail

- Proposed Trail
- Existing Trail
- Proposed Water Quality Basin



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This map was prepared by Lamp, Rynearson & Associates, Inc. for the Papio-Missouri River Natural Resources District. It is not to be used for any other purpose without the written consent of Lamp, Rynearson & Associates, Inc.





AGREEMENT  
(Program)

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
PROJECT NO. ENH-28(98) STATE CONTROL NO. 22413  
MOPAC TRAIL - HIGHWAY 50 TO CHALCO HILLS

THIS AGREEMENT, made and entered into by and between the Papio-Missouri River NRD, hereinafter referred to as the "LPA" (Local Public Agency), and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and hereinafter collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, certain bicycle/pedestrian trails, in the NRD have been designated as being eligible for the Enhancement Program portion of the Surface Transportation Program (STP) funds by the Department of Transportation, Federal Highway Administration, hereinafter called FHWA, in compliance with Federal laws pertaining thereto, and

WHEREAS, Surface Transportation Program (STP) funds have been made available by Title 23 of the United States Code, providing for improvements on eligible trails, and

WHEREAS, the Federal share payable of the eligible costs thereof will be a maximum of 47 percent of the eligible costs thereof, up to a maximum payment from Federal funds of \$500,000, and

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

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

WHEREAS, the State is willing to cooperate 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 no State Funds are to be expended on this project, and

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

WHEREAS, the State will advertise, conduct a letting and receive bids for the project and will pay all eligible project costs directly to the Consultants and Contractors, and

WHEREAS, Federal regulations provide that the State shall have the responsibility for all Local Federal-aid projects and will be responsible for ensuring that such projects receive the same degree of supervision as State projects and the projects are completed in conformity with the approved plans and specifications, and

WHEREAS, the State's responsibility is to provide quality assurance and project oversight to ensure that the project is designed, constructed and managed according to federal rules and regulations. The State will notify the LPA when federal funding will be withheld or lost where such construction of the project was not prosecuted in accordance with the approved plans, and

WHEREAS, the LPA will employ a fully-qualified public employee to act as "Responsible Charge" (RC) for the subject Federal-aid Transportation project, and

WHEREAS, the RC has successfully completed training required by the State to serve as an RC for the 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, the LPA will support the RC and is ultimately responsible to ensure that, at a minimum, (a) the project receives independent and careful development, supervision and inspection, (b) the project is constructed in compliance with the plans and specifications, (c) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (d) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

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

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

WHEREAS, funding for the project under this agreement, includes pass-through monies from the Federal Highway Administration (FHWA). If a non-federal entity expends \$500,000 or more in total federal awards in a fiscal year, then the A-133 Audit is required, and

WHEREAS, the State retains the services of Sinclair Hille Architects whose business address is 700 Q Street, Lincoln, NE 68508 hereinafter referred to as the "Enhancement Program Consultant" to assist the State with administration of the Enhancement Program. The Enhancement Program Consultant reports directly to the State's **Local Projects Division (LPD)** Enhancement Program Administrator, and

WHEREAS, the total cost estimate for this project is estimated to be \$1,062,913, and the LPA will place in its fiscal budget \$562,913, which is currently estimated to be the LPA share of the cost of the Project; and

WHEREAS, the LPA agrees to follow the procedures as set forth in the LPA Guidelines Manual for Federal Aid Projects, and

WHEREAS, all costs of this project will be the sole responsibility of the LPA if the proposed project improvements are not under construction contract prior to September 30, 2011. This includes repayment to the State of Federal funds reimbursed for preliminary engineering costs and payment of all other expenses incurred as specified in this agreement, and

WHEREAS, this project has been designated as a full Federal oversight project, and

WHEREAS, the project is described as follows:

Construction of a 10-foot-wide, 3.3-mile-long concrete and granular surface trail between Chalco Hills Recreation Area and Nebraska Highway 50. The concrete portion of the trail starts at an existing trail in Chalco Hills Recreation Area. The trail proceeds south through the recreational area and will then turn southwest and proceed to South 168th Street. Upon exiting the recreational area, the trail surface will change to granular limestone. The trail then proceeds south along 168th to the Interstate 80 overpass. From the overpass the trail turns east and follows Schram Road to South 144th Street where it will terminate, just west of HWY50, in to a trail cul-de-sac for trail users to return to Chalco Hills.

WHEREAS, it is the desire of the LPA that the project shown on attached EXHIBIT "A" be constructed under the designation of Project No. ENH-28(98), as evidenced by the Resolution of the NRD Board of Directors dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010, attached as EXHIBIT "B" and made a part of this agreement.

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

SECTION 1. DEFINITIONS. For purposes of this agreement, the following definitions will apply:

**Fully Qualified** means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified Local Public Agency "Responsible Charge" (RC's).

**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 the 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** 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 the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

**Responsible Charge** means the public employee who is fully empowered by the 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 through construction project activities, including all environmental commitments. The RC is the day-to-day project manager, and the 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 the owner's interests in the delegated technical tasks.

## SECTION 2. RESPONSIBLE CHARGE (RC)

- A. The LPA hereby designates Gerry Bowen as the RC for this project.
- B. Duties and Assurances of the LPA for this project.
  - 1. The 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.
  - 2. The RC is a full-time employee of the LPA.
  - 3. The RC is fully qualified and has successfully completed required training to serve as an RC.
  - 4. The LPA shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.
  - 5. The LPA shall not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this agreement.
  - 6. The LPA shall provide necessary office space, materials and administrative support for the RC.
  - 7. The LPA shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.

8. The LPA shall take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.
  9. The 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 the State must meet under 23 CFR 635.105.
  10. The LPA shall comply with the conflict-of-interest requirements of 23 CFR 1.33.
  11. If the designated RC becomes no longer assigned to the project during the design phase, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Enhancement Project Coordinator; after such notification the LPA shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC becomes no longer assigned to the project in the letting or construction phases, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Enhancement Project Coordinator, and the State District Representative; after such notification, the LPA shall replace the RC no later than ten calendar days or sooner if possible. During any of the project phases, the State will require the LPA to sign a supplemental agreement designating the replacement RC.
  12. The 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 meeting all post-construction environmental commitments. The LPA understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the LPA or its agents or representatives result in a finding that a project is ineligible for Federal funding, the LPA will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.
- C. The LPA understands that the following are the duties of the RC:
1. Serve as the LPA's contact for issues or inquiries for Federal-aid projects assigned by the LPA.
  2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
  3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.



4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a professional engineer licensed in the State of Nebraska (reference Neb. Rev. Stat. §81-3445).
6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the LPA, which includes the LPA's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.
9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
10. Keep the State informed of all project issues.
11. Arrange preconstruction conference.
12. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the LPA's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.
15. Ensure that proper construction management processes have been developed and implemented for the project.
16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.
18. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.

### SECTION 3. FEDERAL APPROVAL

The State agrees to present the project to the FHWA for its approval, if necessary.

### SECTION 4. OVERSIGHT

This project has been designated as a full Federal oversight.

#### SECTION 5. DOCUMENTATION AND RECORDS SECTION

The LPA shall maintain all correspondence files, books, documents, papers, field notes, accounting records, quantity tickets, and other evidence pertaining to costs incurred and shall make such material available at its office at all reasonable times during the contract period and for three years from the date of final payment under this agreement; such records to be available for inspection by the State and the Federal Highway Administration or any authorized representatives of the Federal and State government, and copies thereof shall be furnished by the LPA if requested.

#### SECTION 6. DRUG FREE WORKPLACE

The LPA shall have on file with the State an acceptable drug-free workplace policy.

#### SECTION 7. FEDERAL AID

The LPA understands that the sole duty of proper prosecution of the project in accordance with the approved plans, belongs with the LPA, its RC and Contractors, and that failure to properly prosecute and construct the project in accordance with the approved plans may result in a loss of Federal funding.

Because the LPA is to receive Federal Funds for any part of this project, the LPA shall perform the services for all phases of work, including, but not limited to preliminary engineering, environmental studies, acquisition of Right-of-Way, construction and includes construction engineering, according to Federal procedures and requirements. Although Federal Funds may be allocated to the project, all phases or certain phases of work will become ineligible for Federal Funds if Federal procedures and requirements are not met.

Prior to beginning any phase of work on the proposed project, the LPA shall contact the State's LPD Enhancement Project Coordinator for direction and assistance to ensure that all project work will be accomplished according to Federal procedures and requirements. It is the responsibility of the LPA to verify with documented evidence that Federal funding authorization was obtained.

#### SECTION 8. FAIR EMPLOYMENT PRACTICES

If the LPA performs any part of the work on this project itself, the LPA agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb. Rev. Stat. §48-1101, through §48-1126 (Reissue 1988), 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 Discrimination Clauses Section of this agreement. The reference to "Contractor" in this section means the "LPA."

#### SECTION 9. A-133 AUDIT

The funding for the project under this agreement includes pass-through federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 and the implementing regulations

contained in OMB Circular A-133, the A-133 Audit is required if the non-federal entity expends \$500,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.

The LPA shall have its finance officer or auditor review the situation to determine what the LPA must do to comply with this federal mandate. If applicable, the expenditures related to the FHWA should be shown in the Supplementary Schedule of Expenditures of the Federal Awards under U.S. Department of Transportation as a pass through Nebraska Department of Roads, Federal CFDA Number 20.205. If an A-133 Audit is performed, the LPA shall send the audit report to the Nebraska Department of Roads, Highway Audits Manager, P.O. Box 94759, Lincoln, NE 68509-4759.

#### SECTION 10. LPA GUIDELINES

The LPA agrees to follow the **LPA Guidelines Manual** throughout all phases of this project. In the event that the LPA Guidelines Manual doesn't address clearly any part of the project work, the LPA shall seek clarification from the State's LPD Enhancement Project Coordinator.

#### SECTION 11. SURVEY, PLANS, SPECIFICATIONS, ESTIMATES

The LPA, with such assistance as may be required from the State, agrees to perform or cause to be performed a preliminary survey and all necessary plans, specifications and estimates for the proposed work. The LPA agrees to acquire any or all permits necessary to accomplish the project.

#### SECTION 12. SELECTION PROCESS

Any preliminary engineering services to be performed by the LPA, State or by a Consultant will be funded solely with LPA funds and will not be eligible for Federal participation.

It is understood by the parties that the State will rely on the professional performance and ability of the LPA or their consultant. Any examination by the State, or any acceptance or use of the work product of the LPA or their consultant will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of the LPA or their consultant which would relieve the LPA from any liability or expense that would be connected with the LPA's sole responsibility for the propriety and integrity of the professional work to be accomplished by the LPA.

#### SECTION 13. COSTS

The total cost of the project which includes: preliminary engineering, final design, Right-of-Way, nonbetterment utility relocation, construction and construction engineering is currently estimated at \$1,062,913. The LPA's share is to be 53 percent of all costs which is estimated to be \$562,913. The State agrees to use Enhancement funds for the project up to a maximum amount of \$500,000, as prioritized by the State's Enhancement Committee and approved by the Director - State Engineer. The Parties recognize this is a preliminary estimate, and the final costs may be higher or lower. The final settlement between the State and the LPA will be made after final review and approval by the State's



LPD Secondary Roads Engineer and after an audit if deemed necessary, has been performed to verify costs. The LPA shall reimburse the State for any overpayments discovered by the State or its authorized representative.

The LPA agrees, that if reimbursement to the State is required on this project, the LPA shall reimburse the State within thirty calendar days, after the State notifies the LPA of such required reimbursement.

It is understood by the LPA 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 the LPA where Federal participation is not allowable or available. Therefore, where the Federal government refuses to participate in the project or any portion thereof, the LPA is responsible for full project payment with no cost or expense to the State in such project or portion thereof. Should the project be abandoned before completion, the LPA will pay all costs incurred by the State prior to such abandonment.

Costs incurred by the State with respect to the entire project will be part of the cost of the project to be paid out of LPA and Federal funds. Costs incurred by the State attributable to this project will not include any administrative costs or expenses of administrative officials. The State may, at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the LPA agrees to pay such invoices within thirty days of their receipt. The LPA's share of the total project cost shall be all costs not paid for by Federal funds.

The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR 31) shall be applied to determine the allowability of costs incurred by the LPA under this agreement.

#### SECTION 14. PAYMENT

The State will pay the contractor and consultant directly as follows.

- A. All project contractor construction costs will be paid directly to the contractor by the State. Progress invoices and final invoices shall be prepared by the LPA using **Site Manager software** and must be approved by the LPA Responsible Charge before payment to the Contractor can be made by the State.
- B. The LPA Responsible Charge shall submit the LPA approved **construction engineering** invoice and progress report to the State District Construction Representative for approval of payment, with a copy to the State's LPD Enhancement Project Coordinator. The State District Construction Representative will forward the invoice and progress report to the State's Planning and Project Development Division for payment processing with a copy to the State's LPD Enhancement Project Coordinator. The State will make payment directly to the consultant for the construction engineering.

- C. The LPA Responsible Charge shall submit the LPA approved **preliminary engineering** invoice and progress report to the State's LPD Enhancement Project Coordinator. The LPD Enhancement Project Coordinator will forward the approved preliminary engineering invoice and progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the consultant for the preliminary engineering.

#### SECTION 15. PUBLICATIONS

The project must be designed according to the following current publications: State of Nebraska Standard Specifications for Highway Construction; The American Association of State Highway and Transportation Officials Guide for the Development of Bicycle Facilities; Designing Sidewalks and Trails for Access Part II of II: Best Practices Design Guide; The Federal Manual on Uniform Traffic Control Devices (MUTCD); and the State of Nebraska MUTCD Supplement. The project must be designed to conform to Americans with Disabilities Act (ADA) Accessibility Guidelines. Any deviations from the above must be approved by the State prior to preparation of plans.

#### SECTION 16. ENVIRONMENTAL

The LPA shall be responsible to complete any federally required environmental actions, commitments, and documents for this project, and receive approved by the State and the FHWA prior to proceeding with appraising property, acquiring any Right-of-Way, or final design for the project.

#### SECTION 17. UTILITIES

Any utility rehabilitations or installations made within the Right-of-Way of this project after execution of this agreement must be in accordance with the provisions of Federal-Aid Highway Policy Guide, 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, or a State approved Utility Accommodation Policy. In order to receive Federal-Aid Funds for this improvement, the LPA agrees to adopt the current "Policy for Accommodating Utilities on State Highway Right-of-Way."

All nonbetterment municipally owned and operated utility rehabilitation costs within the corporate limits of the LPA will become a project cost, but that outside the corporate limits, only the nonbetterment portion of the rehabilitation costs of facilities currently occupying private Right-of-Way will be reimbursed. Further, there will be no Federal reimbursement for private or nonmunicipally owned and operated utilities if they are located on public Right-of-Way, however, nonbetterment costs of privately owned and operated utilities will be reimbursed if they exist on privately owned Right-of-Way and it is necessary to rehabilitate the utilities due to this project. All such reimbursements must be based on items and estimates submitted by the utility and approved by the LPA and State.

Should this project necessitate the nonbetterment rehabilitation of any municipally or privately owned and operated utilities, the parties agree to enter into a Supplemental Agreement to provide for the nonbetterment utility rehabilitation and the reimbursement to the LPA for the Federal share of the costs of the nonbetterment utility rehabilitation. The parties agree that should any nonbetterment utility rehabilitation be accomplished before State execution of a Supplement to this Agreement, the rehabilitation work will be at the sole expense of the LPA.

Should any utilities include work which is eligible for reimbursement, the LPA shall pay the utility and bill the State for the Federal share. The State, subject to a final audit of the utility costs, will reimburse the LPA for the approved eligible Federal share of the costs.

#### SECTION 18. RIGHT-OF-WAY

If Federal participation is requested in Right-of-Way appraisal or acquisition, the State on behalf of the LPA, will review appraisals and negotiations for any additional Right-of-Way. The LPA shall be responsible for any eminent domain proceedings required for acquisition of the necessary property. The appropriate procedures as outlined in the current Nebraska Right-of-Way Manual approved by the FHWA shall be followed. Regardless of whether or not Federal funds are requested for the Right-of-Way, the LPA agrees to contact the State prior to beginning any Right-of-Way activity in order that the State may advise the LPA of the required Right-of-Way functions and procedures. It is understood that any Right-of-Way services furnished by the State shall be considered as a part of the cost of the project and the State's expenses therein shall be included as costs of the project as specified in this agreement.

#### SECTION 19. DONATED RIGHT-OF-WAY

The LPA shall certify that any Right-of-Way for this improvement not donated in compliance with FHWA guidelines will be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, 49 CFR 24, and the NDOR Right-of-Way Manual as approved by FHWA.

#### SECTION 20. CLEAR RIGHT-OF-WAY

The LPA agrees, at no cost to the project, to clear the present Right-of-Way on this project of all advertising signs. The LPA also agrees, at no cost to the project, to clear any other privately owned facility or thing that may interfere with the construction, maintenance and operation of the improvement planned in this project, and to keep the old and new Right-of-Way free of future encroachments, except those authorized by permit.



## SECTION 21. CORNERS

The LPA agrees to locate and reference or have located and referenced all section corners, quarter section corners and sub-division lot corners required for construction of the proposed project in accordance with Neb.Rev.Stat. §39-1708 et. seq., R.R.S. 1943 as amended.

## SECTION 22. ACQUISITION AND RELOCATION

The Federal law governing acquisition and relocation on federally assisted projects is Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, commonly called the Uniform Act. The LPA agrees to comply with the Uniform Act, the State's Right-of-Way Acquisition Guide for LPA's and the State's Right-of-Way Manual.

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

The LPA agrees to contact the State prior to beginning any Right-of-Way activity in order that the State may advise the LPA of the required Right-of-Way functions and procedures. The LPA agrees to present a Right-of-Way Certificate to the State that certifies the LPA has complied with the Uniform Act requirements and that the project is ready for construction. The State cannot grant the LPA authorization to proceed with the construction phase of the project if the documentation submitted by the LPA does not support the Right-of-Way Certificate.

## SECTION 23. LETTING

The State agrees to receive and review all plans, specifications, estimates, surveys, etc. of the LPA to ensure they conform to Federal Standards. The State also agrees to advertise, conduct a letting and receive bids for the project. Prior to advertising the project for bids, the LPA shall submit a Right-of-Way Certificate and final plans package which must include 100 percent plans, specifications, summary of quantity sheets, engineer estimate, status of utilities, environmental permits, contract bidding documents, etc. to the State's LPA Enhancement Project Coordinator. The State will review the submitted items and proceed with advertising the project for bids. The State will advertise, conduct a letting and receive bids for the project. The selection of low bidders, and awarding of a contract must be concurred in and signed by the LPA prior to State awarding the project to a Contractor or Contractors.

## SECTION 24. CONSTRUCTION ENGINEERING

The parties agree that the construction engineering, an expense eligible for matching Federal funds, which includes construction staking, inspection and field testing, will be accomplished by LPA forces or a consultant selected by the LPA with State assistance and review.

The LPA agrees, if a Consultant is to be selected, that the method of selection and the resulting

agreement between the Consultant and the LPA shall conform to the State's standard practices and will be subject to State review and concurrence prior to agreement execution between the LPA and the Consultant. **Any CE work performed prior to Federal authorization and receipt of a NTP will not be eligible for Federal funding.**

The inspection, sampling and testing of all materials must be done in accordance with the current State of Nebraska Standard Specifications for Highway Construction, the State Materials Sampling Guide, Quality Assurance Program for Construction, and the State Standard Methods of Tests ([www.transportation.nebraska.gov](http://www.transportation.nebraska.gov)) or applicable AASHTO or ASTM procedures. The LPA shall provide adequate quality control, construction administration on the project and will be responsible for the sampling and delivery of project materials for testing to a qualified laboratory. In all cases, the State will provide a State District Construction Representative on a part-time basis, who will inspect the project, perform quality assurance, and ensure that the LPA is in compliance with the contract, plans, specifications, scope of work, regulations, statutes, etc., in order that Federal Funds may be expended on the project. Upon project completion, the LPA shall complete and sign a State DR Form 299, "Notification of Project Completion and Materials Certification" and provide it to the State District Construction Representative for further action.

The LPA by signing DR Form 299 certifies that all sampling and test results of materials used on the project, manufacturer's certificates of compliance and manufacturer's certified test reports meet contract requirements and are on file with the LPA and the LPA shall make them available for inspection to the State and the FHWA or their authorized representatives when requested in writing to do so.

The State District Construction Representative assigned to the project will conduct a final review of the project and will determine if the project is acceptable. If the State District Construction Representative determines the project is acceptable, the State District Construction Representative will sign the DR Form 299 and send it to the State District Engineer for signature. The State District Engineer will forward the form to the State's Local Projects Engineer for signing and final closeout and payment, with a copy to the LPD Enhancement Project Coordinator. If the State District Construction Representative determines the project is not acceptable, the State District Construction Representative will notify the City's RC and the LPD Enhancement Project Coordinator in writing of what needs to be done to bring the project into compliance for acceptability before the State District Construction Representative will sign the DR Form 299 and recommend the project for closeout. The LPA shall contact the State's District Engineer for State District Construction Representative assignment. It is understood that any construction engineering services furnished by the State will be part of the cost of

the project and the State's expenses will be included as costs of the project, as specified in this agreement.

#### SECTION 25. ASSESSMENTS

The LPA may not levy a special assessment against only adjacent properties; 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. Any misuse of assessments could jeopardize the federal reimbursement for the entire project.

#### SECTION 26. PROJECT CHANGES TO LPA ROUTES

Changes to the project made by the LPA which affect the function or operation of the trail made either during construction or after the project is completed, will require prior approval of the State. Requests for changes during project construction must be made to the State Representative through the State LPD Enhancement Project Coordinator.

Upon project completion and final inspection, the LPA shall send one set of "As-Built" plans to the State's LPD Enhancement Project Coordinator.

#### SECTION 27. TRAFFIC CONTROL

Traffic control during project construction shall conform with the Manual on Uniform Traffic Control Devices.

Before final acceptance of the project by the State, all signing and marking will be in conformance with the Manual on Uniform Traffic Control Devices. The edition of the manual which is current at the time of final acceptance shall be used.

#### SECTION 28. PROJECT COMPLETION

Upon project completion, the LPA shall maintain the project at its own expense, and agrees to make provisions each year for the maintenance costs involved in properly maintaining this facility. The LPA shall also be responsible for any environmental commitments and monitoring after the construction of the project. The LPA will release and hold harmless the State and FHWA from any suits brought against the State arising out of the LPA's construction and maintenance.

#### SECTION 29. FINAL APPROVAL

It is mutually agreed that final approval of the project will be made by the State and that final settlement cannot be made between the LPA and the State until the project has been approved by the State.

#### SECTION 30. RECOGNITION

The LPA agrees to acknowledge federal and state funding with proper signage such as recognition plaques on buildings or markers on trails. The funding acknowledgement shall state, "This project made possible through funds provided by the Nebraska Department of Roads Enhancement



Program and the Federal Highway Administration." The LPA shall incorporate this statement into all press releases, web sites and printed information about the project.

#### SECTION 31. DISADVANTAGED BUSINESS ENTERPRISES

##### A. Policy.

The LPA agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR Part 23 are hereby made a part of and incorporated by this reference into this agreement.

##### B. Disadvantaged Business Enterprises Obligation

The LPA and State agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 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, the LPA shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

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

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

#### SECTION 32. NONDISCRIMINATION CLAUSES.

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

- (A) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (B) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the basis of disability, race, color,

sex, religion, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A", "B", and "C" of Part 21 of the Regulations.

- (C) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion, or national origin.
- (D) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (E) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
  - 1. Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - 2. Cancellation, termination, or suspension of the contract, in whole or in part.
- (F) Incorporation of Provisions: The contractor will include the provisions of paragraph A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier

as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 33. ENTIRE AGREEMENT

This agreement contains the entire agreement of the LPA and State. No representations were made or relied upon by the LPA and State other than those expressly set forth herein. No agent, employee or other representative of the LPA and State is empowered to alter any of the terms in this agreement unless done in writing and signed by an authorized officer of the LPA and State.



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the NRD this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

WITNESS:

PAPIO-MISSOURI RIVER NRD

\_\_\_\_\_

General Manager

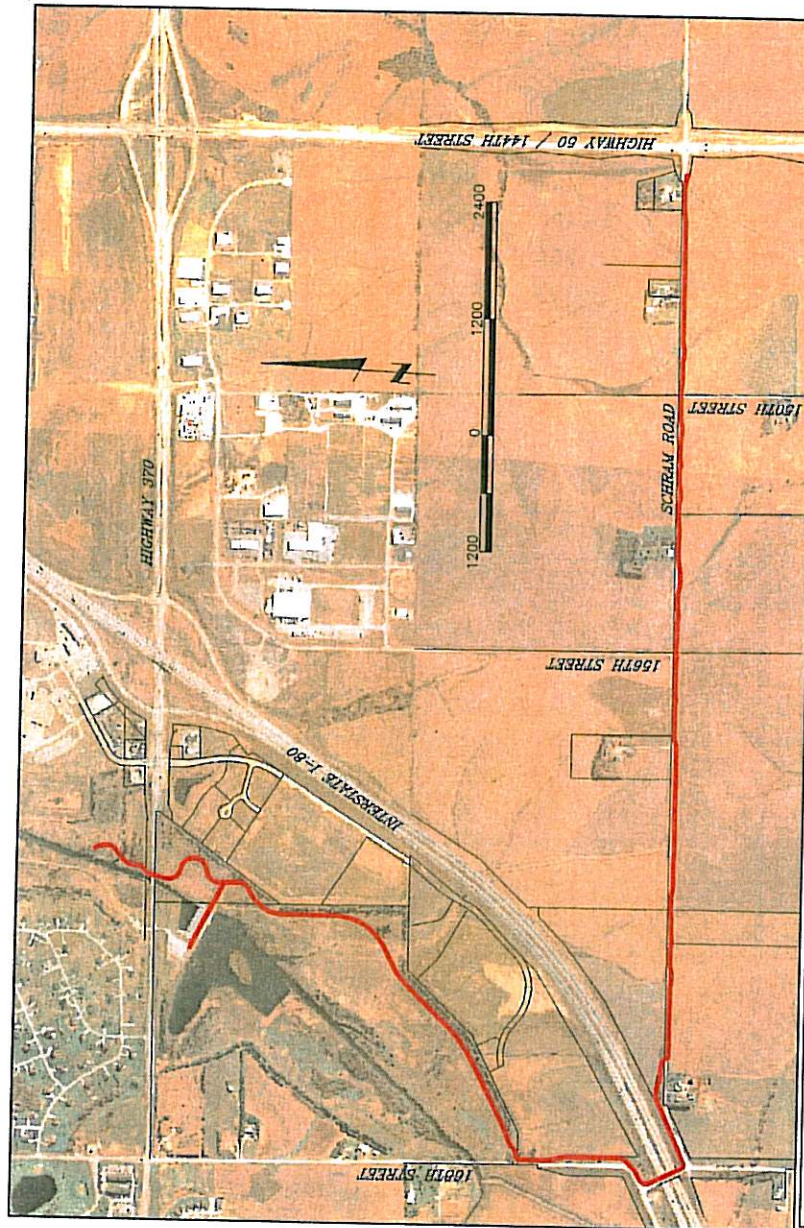
EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Jim Wilkinson, P.E.

Local Projects Division Engineer

RECOMMENDED:  
Tim Weander, P.E.

  
District 2 Engineer



drawn by ARJ  
 designer: SWA  
 job number: 06100.01-110  
 date: 06-30-2009  
 book: MOP (page) 10  
 file name: EXHIBIT.dwg

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 14710 West Dodge Road, Suite 100  
 Omaha, Nebraska 68154-2027

Exhibit "A"