

Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: Nebraska Department of Roads Supplemental Agreements

- Missouri River Trail – Phase 2
- Platte River Trail – Phase 1

Date: January 4, 2010

From: Gerry Bowen and Jim Becic

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 Missouri River Trail – Phase 2 (Ponca Road to the Washington County Line) and the Platte River Trail – Phase 1 (Highway 50 to the Lied Bridge) Projects. 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. It also extends the time allowed to bid the project.

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 resolutions are needed for the Supplemental Agreements. The supplemental agreement for the Platte River Trail is attached. The agreement for the Missouri River Trail is the same.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Supplemental Agreements with NDOR on the Missouri River Trail – Phase 2 and the Platte River Trail – Phase 1 Projects.**

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

Papio-Missouri River Natural Resources District
Resolution No. _____

Whereas: The Papio-Missouri River Natural Resources District is proposing a transportation project for which it would like to obtain Federal funds;

Whereas: The Papio-Missouri River Natural Resources District 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 Natural Resources District and 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 Natural Resources District that:

John Winkler, General Manager is hereby authorized to sign the attached Project Program Agreement between the Papio-Missouri River Natural Resources District and the NDOR.

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

NDOR Project Number: STPB-77(49)

NDOR Control Number: 22191

Platte River Trail – Phase 1.

Adopted this 14th day of January, 2009 at Omaha, Nebraska.

The Board of Directors of the Papio-Missouri River Natural Resources District

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

Attest:

Secretary

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

Papio-Missouri River Natural Resources District
Resolution No. _____

Whereas: The Papio-Missouri River Natural Resources District is proposing a transportation project for which it would like to obtain Federal funds;

Whereas: The Papio-Missouri River Natural Resources District 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 Natural Resources District and 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 Natural Resources District that:

John Winkler, General Manager is hereby authorized to sign the attached Project Program Agreement between the Papio-Missouri River Natural Resources District and the NDOR.

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

NDOR Project Number: ENH-28(89)

NDOR Control Number: 22252

Missouri River Trail – Phase 2.

Adopted this 14th day of January, 2009 at Omaha, Nebraska.

The Board of Directors of the Papio-Missouri River Natural Resources District

Board/Council Member _____

Moved the adoption of said resolution

Member _____ Seconded the Motion

Roll Call: _____ Yes _____ No _____ Abstained _____ Absent

Resolution adopted, signed and billed as adopted

Attest:

Secretary

SUPPLEMENTAL AGREEMENT NO. 3

STATE OF NEBRASKA DEPARTMENT OF ROADS
PAPIO-MISSOURI RIVER NATURAL RESOURCE DISTRICT
PROJECT NO. ENH-28(89)
CONTROL NO. 22252
MISSOURI RIVER TRAIL PHASE 2

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the Papio-Missouri River Natural Resource District hereinafter referred to as the "NRD", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and hereinafter referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, the Parties hereto entered into an Original Agreement (YL0715) executed by the NRD March 15, 2007 and by the State March 28, 2007, and Supplemental Agreement No. 1 executed by the NRD August 12, 2008 and by the State August 20, 2008, and Supplemental Agreement No. 2 executed by the NRD February 10, 2009 and by the State February 20, 2009, providing for the construction of Project No. ENH-28(89), and

WHEREAS, it now becomes necessary that said agreement be supplemented to provide for the State to advertise, conduct a letting, and receive bids for the project and pay all eligible project costs directly to the consultants and contractors, and

WHEREAS, it now becomes necessary to supplement the agreement to extend the deadline for securing a construction contract to construct the project, and

WHEREAS, Federal regulations provide that the State shall have the responsibility for all Federal-Aid projects, and will be responsible for insuring that such projects receive the same degree of supervision and inspection as projects constructed under a contract let and directly supervised by the State and that the project is completed in conformity with approved plans and specifications, and

WHEREAS, the NRD has designated an available 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 NRD 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, the NRD will support the RC and is ultimately responsible to ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

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

WHEREAS, it is the desire of the NRD that the project be constructed under the designation of Project No. ENH-28(89), as evidenced by the Resolution of the NRD Board dated the _____ day of _____, 20____, attached and identified as EXHIBIT "A" and made a part of this agreement, and

WHEREAS, the NRD is responsible for any costs not paid for by Federal funds.

NOW THEREFORE, in consideration of these facts, the Parties hereto 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 NRD 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 NRD'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. This project has been designated as a full-Federal oversight project and the State will present this project to the FHWA for its approval.

SECTION 3. Responsible Charge (RC)

- A. The NRD hereby designates _____ as the NRD's RC for this project.
- B. Duties and Assurances of the NRD for this project.
1. The NRD 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 NRD.
 3. The RC is fully qualified and has successfully completed required training to serve as an RC.
 4. The NRD 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 NRD 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 NRD shall provide necessary office space, materials and administrative support for the RC.
 7. The NRD 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 NRD 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 NRD 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 NRD shall comply with the conflict-of-interest requirements of 23 CFR 1.33.
 11. The NRD shall notify the State immediately in the event the designated RC(s) will no longer be assigned to the project. A supplemental agreement designating a replacement RC will be required by the State.
 12. The NRD 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 NRD 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 NRD or its agents or representatives result in a finding that a project is ineligible for Federal funding, the NRD 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 NRD understands that the following are the duties of the RC:
1. Serve as the NRD's contact for issues or inquiries for Federal-aid projects assigned by the NRD
 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 NRD, which includes the NRD'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 NRD'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 4. The State and the City agree the State will advertise, conduct a letting, and receive bids for the City on the contemplated improvement. The selection of the lowest bidder and the awarding of a contract or contracts must be concurred in and signed by the City prior to award.

SECTION 5. 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 NRD using **Site Manager software** and must be approved by the NRD Responsible Charge before payment to the Contractor can be made by the State.
- B. The NRD Responsible Charge shall submit the NRD 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 Program Manager and to the Enhancement Program Consultant. 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 Program Manager and the Enhancement Program Consultant. The State will make payment directly to the consultant for the construction engineering.

C. The NRD Responsible Charge shall submit the NRD approved preliminary engineering invoice and progress report to the State's LPD Enhancement Program Manager, with a copy to the Enhancement Program Consultant. The LPD Enhancement Program Manager 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 6. The Parties agree that all costs of this project shall be the sole responsibility of the NRD if the proposed project improvements are not awarded for construction by August 15, 2010. This includes repayment to the State of Federal Funds reimbursed for preliminary engineering costs and payment of all other expenses incurred as specified in of the original program agreement.

SECTION 7. Except as specifically amended by this supplemental agreement, all terms and conditions of the agreement executed by the NRD March 15, 2007 and by the State March 28, 2007, and Supplemental Agreement No. 1 executed by the NRD August 12, 2008 and by the State August 20, 2008, and Supplemental Agreement No. 2 executed by the NRD February 10, 2009 and by the State February 20, 2009, shall remain in full force and effect.

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 _____, 20__.

WITNESS:

Papio-Missouri River NRD

General Manager

EXECUTED by the State this _____ day of _____, 20__.

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

Local Projects Engineer

SUPPLEMENTAL AGREEMENT NO. 8

STATE OF NEBRASKA DEPARTMENT OF ROADS
PAPIO-MISSOURI RIVER NRD
PROJECT NO. STPB-77(49)
CONTROL NO. 22191
PLATTE RIVER TRAIL – PHASE 1

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

WITNESSETH:

WHEREAS, the Parties hereto entered into an Original Agreement (YL0516) executed by the NRD March 30, 2005 and by the State April 12, 2005, and Supplemental Agreement No. 1 executed by the NRD February 15, 2006 and by the State February 21, 2006, and Supplemental Agreement No. 2 executed by the NRD July 18, 2006 and by the State July 25, 2006 and Supplemental Agreement No. 3 executed by the NRD November 17, 2006 and by the State February 12, 2007, and Supplemental Agreement No. 4 executed by the NRD May 24, 2007 and by the State May 30, 2007, and Supplemental Agreement No. 5 executed by NRD December 2007 and by the State December 13, 2007, and Supplemental Agreement No. 6 executed by the NRD June 17, 2008 and by the State June 20, 2008 and Supplemental Agreement No. 7 executed by NRD February 11, 2009 and by the State February 20, 2009, providing for the construction of Project No. STPB-77(49), and

WHEREAS, it now becomes necessary that said agreement be supplemented to provide for the State to advertise, conduct a letting, and receive bids for the project and pay all eligible project costs directly to the consultants and contractors, and

WHEREAS, it now becomes necessary to supplement the agreement to extend the deadline for securing a construction contract to construct the project, and

WHEREAS, Federal regulations provide that the State shall have the responsibility for all Federal-Aid projects, and will be responsible for insuring that such projects receive the same degree of supervision and inspection as projects constructed under a contract let and directly supervised by the State and that the project is completed in conformity with approved plans and specifications, and

WHEREAS, the NRD has designated an available 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 NRD 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, the NRD will support the RC and is ultimately responsible to ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

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

WHEREAS, it is the desire of the NRD that the project be constructed under the designation of Project No. STPB-77(49), as evidenced by the Resolution of the NRD Board dated the _____ day of _____, 20____, attached and identified as EXHIBIT "A" and made a part of this agreement, and

WHEREAS, the NRD is responsible for any costs not paid for by Federal funds.

NOW THEREFORE, in consideration of these facts, the Parties hereto 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 NRD 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 NRD'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. This project has been designated as a full Federal oversight project and the State will present this project to the FHWA for its approval.

SECTION 3. Responsible Charge (RC)

A. The NRD hereby designates _____ as the NRD's RC for this project.

B. Duties and Assurances of the NRD for this project.

1. The NRD 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 NRD.
3. The RC is fully qualified and has successfully completed required training to serve as an RC.
4. The NRD 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 NRD 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 NRD shall provide necessary office space, materials and administrative support for the RC.

7. The NRD 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 NRD 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 NRD 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 NRD shall comply with the conflict-of-interest requirements of 23 CFR 1.33.
11. The NRD shall notify the State immediately in the event the designated RC(s) will no longer be assigned to the project. A supplemental agreement designating a replacement RC will be required by the State.
12. The NRD 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 NRD 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 NRD or its agents or representatives result in a finding that a project is ineligible for Federal funding, the NRD 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 NRD understands that the following are the duties of the RC:

1. Serve as the NRD's contact for issues or inquiries for Federal-aid projects assigned by the NRD
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 NRD, which includes the NRD'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 NRD'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 4. The State and the City agree the State will advertise, conduct a letting, and receive bids for the City on the contemplated improvement. The selection of the lowest bidder and the awarding of a contract or contracts must be concurred in and signed by the City prior to award.

SECTION 5. 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 NRD using **Site Manager software** and must be approved by the NRD Responsible Charge before payment to the Contractor can be made by the State.

- B. The NRD Responsible Charge shall submit the NRD 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 Program Manager and to the Enhancement Program Consultant. 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 Program Manager and the Enhancement Program Consultant. The State will make payment directly to the consultant for the construction engineering.
- C. The NRD Responsible Charge shall submit the NRD approved **preliminary engineering** invoice and progress report to the State's LPD Enhancement Program Manager, with a copy to the Enhancement Program Consultant. The LPD Enhancement Program Manager 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 6. The Parties agree that all costs of this project shall be the sole responsibility of the NRD if the proposed project improvements are not awarded for construction by August 15, 2010. This includes repayment to the State of Federal Funds reimbursed for preliminary engineering costs and payment of all other expenses incurred as specified in of the original program agreement.

SECTION 7. Except as specifically amended by this supplemental agreement, all terms and conditions of the agreement executed by the NRD March 30, 2005 and by the State April 12, 2005, and Supplemental Agreement No. 1 executed by the NRD February 15, 2006 and by the State February 21, 2006, and Supplemental Agreement No. 2 executed by the NRD July 18, 2006 and by the State July 25, 2006 and Supplemental Agreement No. 3 executed by the NRD November 17, 2006 and by the State February 12, 2007, and Supplemental Agreement No. 4 executed by the NRD May 24, 2007 and by the State May 30, 2007, and Supplemental Agreement No. 5 executed by NRD December 2007 and by the State December 13, 2007, and Supplemental Agreement No. 6 executed by the NRD June 17, 2008 and by the State June 20, 2008 and Supplemental Agreement No. 7 executed by NRD February 11, 2009 and by the State February 20, 2009, shall remain in full force and effect.

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 _____, 20__.

WITNESS:

Papio-Missouri River NRD

General Manager

EXECUTED by the State this _____ day of _____, 20__.

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

Local Projects Engineer