LPA PROGRAM AGREEMENT- STP FUNDS

CITY OF LINCOLN, NEBRASKA
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. LCLC-5241(5)
STATE CONTROL NO. 13141
56TH STREET, SHADOW PINES TO OLD CHENEY

THIS AGREEMENT, made and entered into by and between the City of Lincoln, Nebraska hereinafter referred to as the "LPA", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and collectively referred to as the "Parties".

WITNESSETH:

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

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

WHEREAS, the Federal share payable on any portion of a STP project will be a maximum of 80% percent of the eligible costs, and

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

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

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

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

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

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

WHEREAS, the State and the LPA agree the State, on behalf of LPA, will advertise, conduct a letting and receive bids for the project and will pay all eligible costs directly to the Consultant and Contractors, and

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

WHEREAS, Trans*Port Site Manager will be used as the construction record-keeping system for construction and construction engineering services for this project, and

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

WHEREAS, the 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 OMB Circular A-133 audit requirements must be addressed as explained further in this agreement, and

WHEREAS, the total cost of the project, including preliminary engineering, is currently estimated to be $7,575,000, but such costs may increase or decrease due to variations between the estimated and actual project costs, and

WHEREAS, the LPA has earmarked and will place in its fiscal budget sufficient funds to pay all project costs not paid for by Federal funds; such costs are currently estimated to be $1,515,000, but such costs may increase or decrease due to variations between the estimated and actual project costs, and

WHEREAS, the project is described as follows:

The project consists of converting the existing two lane pavement section to a four lane divided roadway.

WHEREAS, the LPA desires that this project as shown on attached EXHIBIT "A" be constructed under the designation of Project No. LCLC-5241(5), as evidenced by the Resolution of the LPA dated the _____ day of _____, 2010, attached as EXHIBIT "B" and made a part of this agreement.

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

SECTION 1. PURPOSE OF AGREEMENT

The LPA wishes to implement, plan, design, construct, operate, and maintain a Federal-aid transportation project on a street, highway, road or other transportation related facility under LPA's jurisdiction. The LPA and the State understand that the Federal Highway Administration (FHWA) will not provide funding directly to LPA for this project; instead, FHWA provides funding for the project through the State. The State, pursuant to Neb.Rev.Stat. §39-1305, will act under this agreement as a steward of federal funds and as a liaison between LPA and FHWA. The purpose of this agreement is to set forth the understanding of the LPA and the State concerning their respective duties to enable the project to be eligible for federal-aid funding. Under this agreement, the LPA shall continue to have all duties concerning any aspects of project management, planning, design, construction, operation and maintenance. Nothing in this agreement shall be construed to create any duty of the State to LPA concerning such matters. LPA further agrees that LPA shall have no claim or right of action against the State under this agreement if FHWA determines that the project is not eligible in whole or in part, for federal-aid funding. The following sections of this agreement include the program requirements and other conditions State believes in good faith that LPA must meet for this project to be eligible for federal funding.

SECTION 2. DEFINITIONS

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

"AASHTO" means American Association of State Highway and Transportation Officials.

"ADA" means the Americans with Disabilities Act.

"ASTM" means the American Society for Testing and Materials.

"CFDA" means Catalog of Federal Domestic Assistance.

"CFR" means the Code of Federal Regulations.

"DOT" means the United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

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

"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.

"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 LPA "Responsible Charge" (RC's).

"LPA" means Local Public Agency sponsoring a federally funded transportation project and determined to be qualified to assume the administrative responsibilities for such projects by the State.

"LPD" means the Local Projects Division at Nebraska Department of Roads, in Lincoln, Nebraska.

"NEB. REV. STAT" means the Nebraska Revised Statutes as set forth in Nebraska law.

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

"PUBLIC EMPLOYEE" for the purpose of selecting an RC for this project means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

"RESPONSIBLE CHARGE" or "RC" means the public employee or elected official who is fully empowered by 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 and development through construction project activities, including all environmental commitments before, during and after construction. The RC is the day-to-day project manager, and 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 LPA's interests in the delegated technical tasks.

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

"STATE CERTIFIED CONSULTANT" means a consultant that has met the certification requirements of the Nebraska Department of Roads to provide professional services in certain work categories for federal and state funded work in Nebraska.

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

SECTION 3. TERM OF THE AGREEMENT

This agreement will begin upon proper execution and continue in effect until the LPA's Federal-aid project is finished and final financial settlement has been completed, except that any terms of this agreement that contemplate long term activities of the LPA such as environmental, maintenance, and operational commitments, will remain in effect as long as required by law or agreement. If the LPA determines that for any reason it

will not continue with the development of this project as a Federal-aid project, the LPA shall notify the State and negotiate any necessary project termination conditions, and the LPA shall pay or repay the State for all costs incurred by the State prior to the LPA notifying the State that it is discontinuing work on the project.

SECTION 4. RESPONSIBLE CHARGE (RC) REQUIREMENTS

The LPA must immediately and formally appoint an RC for this project according to or consistent with the following requirements:

A. The LPA hereby designates Kris Humphrey as the RC for this project.

B. Duties and Assurances of the LPA concerning its designated RC 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 or elected official of the LPA or of another entity as defined in "Public Employee" above.
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 and 49 CFR 18.36(b)(3) as described elsewhere in this agreement.
11. If, for whatever reason, the designated RC is 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 and the LPD 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 must be replaced during 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 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. 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 repay the State all previously paid Federal funds, as determined by the State, and any costs or expenses the State has incurred for the project, including but not limited to, any costs reimbursed for the time and expenses of 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. Ensure that funds have been authorized by FHWA, in writing, prior to doing work in any phase that the LPA expects to be reimbursed with Federal funds.
5. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
6. 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).
7. 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.
8. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
9. 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.
10. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
11. Keep the State informed of all project issues.
12. Arrange preconstruction conference.
13. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
14. Be trained in the use of Trans*Port Site Manager if the LPA is providing the construction engineering services.
15. Prepare contractor change orders.
16. Notify the State when consultant services agreements need to be supplemented.
17. 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.

18. Ensure that proper construction management processes have been developed and implemented for the project.
19. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
20. Attend all required training including the annual LPA RC workshop.
21. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.
22. Review and approve Professional Services invoices in accordance with the LPA Reimbursement Procedures located at http://www.dor.state.ne.us/gov-aff/lpa-guide-man.html#forms4.

SECTION 5. FEDERAL AID

The LPA understands and agrees that the LPA, its RC, agents, and Contractor have the sole duty of proper prosecution of the project, in accordance with the approved plans, and that failure to properly prosecute and construct the project in accordance with the approved plans may result in the 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, construction engineering, etc., according to Federal procedures and requirements. Although Federal Funds may be allocated to the project, all phases or certain phases of work may 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 coordinate with the State's Local Projects Division Section Engineer for direction and assistance concerning funding requirements to ensure that all upcoming project work will be accomplished according to Federal procedures and requirements. It is the responsibility of the LPA/RC to verify with documented evidence that federal funding authorization was obtained prior to beginning any new phase of project work.

SECTION 6. FEDERAL APPROVAL

The State, on behalf of the LPA agrees to present the project to the FHWA for its approval, if necessary. This project has not been designated as a full oversight project.

Federal approval for proceeding with the project must be obtained by the LPA at the beginning of each of the following phases of the project:

1. Preliminary Engineering and NEPA

2. Right of Way

3. Utilities

4. Construction Engineering

5. Construction

Before each new work phase begins, the LPA must confirm that FHWA (1) has approved the obligation of funds (2) authorized the work in that phase to begin, and (3) given approval for a notice to proceed to be issued. Before providing services covered in any original and/or supplemental services agreement, the LPA must confirm that FHWA (1) has approved the obligation of funds (2) authorized the work in that phase to begin, and (3) given approval for a notice to proceed to be issued.

SECTION 7. LPA GUIDELINES

The LPA agrees to conform to the requirements of the LPA Guidelines Manual throughout all phases of this project. In the event the LPA believes that the LPA Guidelines Manual doesn't address clearly a particular aspect of the project work, the LPA shall seek guidance or clarification from the State's Local Project Division Section Engineer or Project Coordinator.

SECTION 8. OMB CIRCULAR 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 OBM 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 an A-133 audit is necessary, the expenditures related to the federal funds expended under this project should be shown in the report's Schedule of Expenditures of the Federal Awards (SEFA).

The Federal award information needed for the SEFA includes:

Federal Grantor: U.S Department of Transportation – Federal Highway Administration

Pass-Through Grantor: Nebraska Department of Roads

Program Title: Highway Planning and Construction (Federal-Aid Highway Program)

CFDA Number; 20.205

Project Number: LCLC-5241(5)

If an A-133 Audit is performed, the LPA shall provide a copy of the audit report to the Nebraska Department of Roads, Highway Audits Manager, P.O. Box 94759, Lincoln, NE 68509-4759.

SECTION 9. TOTAL PROJECT COSTS, REIMBURSEMENT AND INVOICING

The LPA is responsible for submitting for payment only those costs that are eligible for Federal-aid. The State, on behalf of FHWA, will review the costs submitted and determine what costs are eligible for payment. Upon request from the State, the LPA will produce all cost records detailing the basis for all costs incurred on the project. The total cost of the project which includes: including preliminary engineering, final design, right-of-way, nonbetterment utility rehabilitation, construction, construction engineering, and LPA and State eligible expenses (as outlined below) is currently estimated to be $7,575,000. The LPA's share of all actual eligible costs which is estimated to be $1,515,000. The State agrees to use the LPA's Federal Funds for the actual eligible costs of the improvement which is estimated to be $6,060,000. Both the LPA and State recognize this is a preliminary estimate and the final cost may be higher or lower.

LPA Incurred Oversight Costs:

Project initiation and oversight costs incurred by the LPA with respect to the entire project will be part of the cost of the project to be paid out of LPA Federal Funds. Before the LPA can incur reimbursable costs, the LPA must receive pre-authorization in accordance with the LPA Reimbursement Procedures located at http://www.dor.state.ne.us/gov-aff/lpa-guide-man.html#forms4. Pre-authorized costs for project initiation, project oversight, and incurred expenses such as railroad, utilities, and right-of-way, must be invoiced to the State in accordance with the LPA Reimbursement Procedures and this agreement. The LPA may request reimbursement of their eligible actual costs by submitting an invoice to the State, no more than monthly. The State will reimburse the LPA for the Federal share of the eligible actual costs.

LPA Incurred Professional Services:

Professional services provided by the LPA, such as preliminary engineering and construction engineering, require execution of a Professional Services Agreement to identify the services to be provided by the LPA, associated costs, and method of reimbursement. **Any Professional Services performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

Professional Consultant Services:

Upon execution of any professional consultant services agreement for this project, the State may invoice the LPA their share of the total agreement amount. The RC will review and approve any professional services invoices in accordance with the LPA Reimbursement Procedures. Upon review and approval by the State of RC approved professional services invoices, the State will pay the consultant(s) directly.

Construction, Contingencies and Construction Engineering:

Upon award of the construction contract, the State will invoice the LPA their share of the construction contract plus contingencies and construction engineering, and any unbilled preliminary engineering expenses. The LPA shall pay the State within 30 calendar days of receipt of invoice from the State. The RC will review and approve any Construction Engineering invoices in accordance with the LPA Reimbursement Procedures. Upon review and approval by the State of RC approved professional services invoices, the State will pay the consultant(s) directly.

The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR 31) will be applied to determine the allowability of costs incurred by the LPA under this agreement; to include any Professional Services agreements.

State Incurred Costs

Any project coordination and quality assurance review 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 Federal Funds. The State at its discretion may invoice the LPA their share of these costs and the LPA shall make payment within 30 calendar days of receipt of invoice.

Final reimbursement requests must be made within 60 days after the LPA has filed a completed State DR Form 299 with the State. Any invoices submitted after the 60 calendar days will be ineligible for reimbursement.

The final settlement between the State and the LPA will be made after final funding review and approval by the State and after an audit, if deemed necessary, has been performed to determine eligible actual costs. Refer to the AUDITS AND FINAL SETTLEMENT section of this agreement for additional information.

SECTION 10. LPA FINANCIAL RESPONSIBILITY

The LPA's share of the total project cost will be all costs not paid for by Federal Funds. The LPA understands that payment for the costs of this project, whether they be services, engineering, Right-of-Way, utilities, material or otherwise, are the sole responsibility of the LPA

where Federal participation is not allowable or available or if the project is subsequently determined to be ineligible for Federal-aid funding. Therefore, where the Federal government refuses to participate in the project or any portion of the project the LPA is responsible for full project payment with no cost or expense to the State in the project or in the ineligible portion of the project. Should the project be abandoned before completion, the LPA shall pay or repay the State for all costs incurred by the State prior to such abandonment.

SECTION 11. SCHEDULE

The LPA shall provide the State with current project schedules, submittal dates and critical milestone dates. The LPA shall notify and keep the State informed on all project issues.

SECTION 12. PROCUREMENT OF PROFESSIONAL SERVICES

If a Consultant is to be selected to provide professional services for the project (preliminary engineering, construction engineering), the method of procurement and evaluation must follow all guidelines and requirements outlined in the LPA Guidelines Manual. For funding eligibility, the State will review and approve the Request for Proposals prior to advertising. To maintain Federal-aid eligibility for the project, the selected Consultant must be a State Certified Consultant.

SECTION 13. PRELIMINARY ENGINEERING

The Parties agree that preliminary engineering, which includes project design, plan development, environmental studies and final design, will be accomplished by the LPA or a State Certified Consultant selected by the LPA. Preliminary engineering costs are estimated to be $450,000. The scope of professional services to be provided by the selected Consultant must be negotiated by the LPA and outlined in a Professional Services Agreement and executed by the LPA and Consultant. The form of the Professional Services Agreement must be approved by the State for funding eligibility. **Any PE work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.** The State will pay the Consultant directly. The Consultant and LPA shall invoice the State for reimbursement in accordance with the TOTAL PROJECT COSTS, REIMBURSEMENT AND INVOICING section in this agreement.

The LPA, with State technical advice when requested, agrees to perform or caused to be performed a preliminary survey and all necessary plans, specifications and estimates for the proposed work. All plans, specifications, and estimates must be presented to the State for funding approval to ensure adherence to Federal Standards. The LPA or its Consultant shall design the project according to the current AASHTO Policy on Geometric Design of Highways

and Streets, the Nebraska Minimum Design Standards of the Board of Public Roads, Classifications and Standards, the Americans with Disabilities Act (ADA) Accessibility Guidelines and LPA Guidelines Manual for Federal-aid projects. Any deviations from the above publications must be approved for funding by the State on behalf of FHWA.

Professional Performance:

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

SECTION 14. ENVIRONMENTAL RESPONSIBILITY

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

The LPA agrees to acquire any or all permits necessary to accomplish the project.

When it is determined that public involvement is a federal requirement for the project, the LPA shall offer an opportunity for a location or design hearing or combined location and design public hearing.

If a public hearing/meeting is required, the LPA may contact the State's Public Hearing Officer (PHO) prior to doing any public hearing activity, so the PHO can advise the LPA of the proper procedures and policies for conducting the hearing, or to answer any questions.

SECTION 15. RAILROAD

The LPA shall prepare and execute any railroad agreement or agreements required for this project. The LPA shall send a copy of the executed railroad agreements to the State prior to advertising the project for bids. Should the railroad agreement include work to be performed by the Railroad as part of the project, which is eligible for reimbursement, the LPA shall pay the Railroad and bill the State for reimbursement in accordance with the TOTAL PROJECT COSTS, REIMBURSEMENT AND INVOICING section in this agreement.

SECTION 16. UTILITIES

Any utility rehabilitations or installations made within the Right-of-Way on 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", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, and a State approved Utility Accommodation Policy. In order to receive Federal-aid for this improvement, the LPA shall follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way" and the LPA manual. In order for the utility work to be eligible for Federal-aid, a utility agreement between the LPA and the Utility will need to be executed by both parties and approved by the State, and Notice to Proceed will be given by the State to the LPA, prior to beginning the utility work being done. The State's standard utility agreement (State Template AGR167) must be used; a copy of this agreement can be obtained from the LPD Project Coordinator.

Any local project work within a State Highway right-of-way requires an approval in the form of a letter of authorization or a permit from the State. The LPA shall contact the State's District Engineer or Permits Officer to determine if a permit or permits is needed for the project and to make application for those permits if necessary.

All nonbetterment municipally owned and operated utility rehabilitation costs within the corporate limits of the LPA will become a project cost. Outside the corporate limits, the nonbetterment portion of utility rehabilitation costs will be reimbursed for facilities occupying private property.

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 that serve a public interest will be reimbursed if they exist on private property and it is necessary to rehabilitate the utilities due to this project. All such reimbursements will 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 and/or privately owned and operated utilities, the parties hereto agree to enter into a separate agreement (State Template AGR167) to provide for the preliminary engineering, construction and construction engineering of the nonbetterment utilities and the reimbursement to the City by the State for the costs of the rehabilitation of municipally and/or privately owned and operated utilities. Said agreement shall be entered into and approved prior to utility work beginning.

SECTION 17. RIGHT-OF-WAY

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 shall comply with the Uniform Act, and the State's Right-of-Way Acquisition guide for LPA's.

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

Prior to beginning Right-of-Way appraisals and acquisition, the LPA shall submit to the Local Projects Division Project Coordinator Right-of-Way plans, legal descriptions and an estimate for review and approval for federal funding. If acceptable for funding, the State will issue the LPA a Notice-to-Proceed with the Right-of-Way work phase.

Prior to proceeding with the construction phase, the LPA shall present to the State a Right-of-Way Certificate that certifies the LPA has complied with the Uniform Act requirements and that the project is ready for construction. The State will allow the construction phase of the project to begin, if the documentation submitted by the LPA supports the Right-of-Way Certificate and if all other Right-of-Way requirements have been met.

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

Any eligible actual Right-of-Way costs incurred by the LPA shall be billed to the State for reimbursement in accordance with the TOTAL PROJECT COSTS, REIMBURSEMENT AND INVOICING section in this agreement.

SECTION 18. RIGHT-OF-WAY ENCROACHMENTS

The LPA, at no cost to the project, shall clear the entire existing Right-of-Way of this project of any private or non-LPA uses or occupancy of the area above, below, or on the existing Right-of-Way. Also, the LPA agrees to keep the old and new Right-of-Way free of future encroachments, except those specifically authorized by permit.

The LPA must have all encroachments cleared from the Right-of-Way before requesting a Right-of-Way Certificate and must attest to said clearance.

SECTION 19. LAND CORNERS

The LPA shall locate and reference or have located and referenced all section corners, quarter section corners and subdivision lot corners required for construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

SECTION 20. SPECIAL ASSESSMENTS

Prior to initiating a special assessment on a federal aid project, the LPA shall notify the NDOR LPD-PC of their proposed assessment. If a special assessment is levied as part of a Federal-aid project, it shall be conducted as described in the NDOR Right of Way manual, which, as of October 2010, is in the process of being revised on this issue. See the revised NDOR Right of Way manual language below.

The LPA is required to provide the four points of documentation to the LPD-PC. They are also required to follow all the terms of the Uniform Act in the acquisition of right of way for a Federal-aid project.

Revised NDOR Right of Way Manual language:

"When federal funds participate in a project, an LPA may not levy a *special assessment*, solely against those property owners from whom acquisitions are made for the public improvement, for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act.

However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances."

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

- The affected property owners will be provided just compensation for their property as required by the Federal and State Constitutions and reiterated the Uniform Act.
- The acquisition costs will be paid by the LPA and property owners made aware they will not be assessed the cost to acquire their property needed for the project.
- The purpose of the special assessment is not to recover the acquisition costs.

- The assessment will not be arbitrarily imposed on selected property owners in the special improvement district in response to their demand for just compensation or that the assessment will be implemented in a way that differs from the way other like assessments have been imposed under similar circumstances.

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

SECTION 21. LETTING

At the request of FHWA, the State, on behalf of the LPA, will hold a bid letting for this project. The State agrees to receive and review all plans, specifications, estimates and surveys of the LPA and to advertise and conduct a bid letting for this project. The State will recommend the selection of low bidders and the awarding of a contract or contracts which shall be concurred in by the LPA, and the construction contract shall be signed by the LPA.

The LPA shall submit the final plans package (100 percent plans, specifications, engineers' estimate, status of utilities, environmental permits, right-of-way certificate and contract bidding documents) to the State's Local Projects Division Project Coordinator for review when the package is complete. The State will review the submitted items and proceed with advertising the project for bids when appropriate. The LPA is solely responsible for the accuracy and completeness of the plans and bidding documents. The selection of low bidders and awarding of a contract or contracts must be concurred in by the LPA prior to State award. The LPA will sign the contract and will issue all applicable purchasing agent appointments and tax exempt certificates for this project.

SECTION 22. CONTRACTOR PAYMENTS

All project contractor construction costs will be paid directly to the contractor by the State, on behalf of the LPA. Progress invoices and final invoices shall be prepared by the RC or Consultant using **Trans*Port Site Manager Software**. The RC or Consultant must be trained by the State in the use of **Trans*Port Site Manager Software**. Any progress and final invoices approved by the LPA or RC shall be submitted to the State Representative for funding approval and processed for payment.

SECTION 23. CONSTRUCTION ENGINEERING

The LPA will be solely responsible for all construction engineering on this project. The Parties agree that the construction engineering, which is an eligible project expense and which includes construction management, staking, inspection and field testing, will be accomplished by LPA forces or a State Certified Consultant selected in accordance with the LPA Guidelines

Manual. Prior to the selected Consultant providing any construction engineering services, the scope of services and associated costs must be negotiated by the LPA and outlined in a Professional Services Agreement executed by the Consultant and the LPA. The form of the Professional Services Agreement must be approved by the State for funding eligibility. **Any construction engineering services performed prior to execution of said agreement, Federal authorization and receipt of a written Notice to Proceed 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, the Quality Assurance Program for Construction, and the State Standard Methods of Tests or applicable AASHTO or ASTM procedures and as outlined in the Professional Services Agreement.

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 LPA is solely responsible for inspecting the project, performing quality assurance, and insuring that the project is constructed in compliance with this contract, plans, specifications, scope of work, regulations, statutes, etc. The State Representative will evaluate the LPA's work solely for federal funding eligibility.

SECTION 24. PROJECT COMPLETION

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 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. 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 Representative assigned to the project will conduct a final review of the project and will determine if the project meets federal program requirements. If the State District Construction Representative determines the project, meets federal program requirements 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 Division Section Engineer for signing, project closeout and final payment. If the State District Construction Representative determines the project does not meet federal program requirements, the State District Construction Representative will notify the LPA's RC in writing of what needs to be done to bring the project into compliance before the State District Construction Representative will sign the DR Form 299 and recommend the project is ready for closeout. The LPA shall contact the State's District Engineer for State District Construction Representative assignment. It is understood that any time spent by the State Representative on this project 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.

Upon project completion and final review, the LPA shall send one set of "As-Built" plans to the State's Local Projects Section Engineer and one set to the State's District Engineer.

SECTION 25. AUDIT AND FINAL SETTLEMENT

Final settlement cannot be made between the State and the LPA until the LPA has filed a completed State DR Form 299 with the State, and both the LPA and the State have signed it.

The final settlement between the State and the LPA will be made after final funding review and approval by the State and after an audit, if deemed necessary, has been performed to determine eligible actual costs. The amount of the final settlement between the State and the LPA will be the calculated LPA's share of the total eligible project costs less the total local funds paid to the State by the LPA.

If the LPA's share of the eligible project costs is more than the local funds paid to the State, the State will bill the LPA an amount up to the LPA's share of the eligible project costs. The LPA agrees to reimburse the State for any overpayments discovered by the State within thirty (30) days of receipt.

If the LPA's share of the eligible project costs is less than the local funds paid to the State, the State will reimburse the LPA an amount up to the LPA's share of the eligible project costs.

SECTION 26. CHANGES TO LPA ROUTES

Changes to the LPA routes which affect the function or operation of the improvement 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 who will then forward it to the Local Projects Division Project Coordinator for final approval.

SECTION 27. MAINTENANCE AND ENVIRONMENTAL COMMITTMENTS

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 required 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, operation, and maintenance of or related to the project.

SECTION 28. TRAFFIC CONTROL

The LPA shall be responsible for all traffic control along the project, and on project related detours, before, during and after construction. Traffic control must conform to the Manual on Uniform Traffic Control Devices. By requesting financial settlement of the project the LPA certifies that all traffic control devices on the finished project have been properly completed or installed.

SECTION 29. CONFLICT OF INTEREST LAWS

This LPA Federal-aid transportation project will be subject to federal conflict of interest provisions, including 23 CFR § 1.33 and 49 CFR § 18.36(b)(3). Generally, federal conflict of interest laws prohibit a full or part-time public employee, public official or agent who negotiates, approves, accepts, administers, or is otherwise involved with, any consultant contract or subcontract on a federal-aid project, from having a direct or indirect financial or personal interest, real or apparent, in such consultant contract with the public entity for which he or she is a public official, employee or agent. Conflicts of Interest can also arise when someone associated with a public employee or official has an interest in an LPA Consultant contract, or if they own real estate that may be needed for the project.

SECTION 30. DRUG FREE WORKPLACE

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

SECTION 31. RECORDS RESPONSIBILITY

The LPA shall maintain all correspondence files, books, documents, papers, field notes, quantity tickets, accounting records 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 cost settlement under this agreement; such records must be available for inspection by the State and the FHWA or any authorized representatives of the Federal government, and the LPA shall furnish copies to those mentioned in this section when requested to do so.

SECTION 32. FAIR EMPLOYMENT PRACTICES

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

SECTION 33. DISABILITIES ACT

The LPA agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

SECTION 34. LAWFUL PRESENCE IN USA AND WORK ELIGIBILITY STATUS PROVISIONS

The LPA agrees to comply with the requirements of Neb.Rev.Stat. §4-108 to 4-114 with its Federal-aid project, including, but not limited to, the requirements of §4-114(1)(b)) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

SECTION 35. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

A. Policy

The LPA shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

B. Disadvantaged Business Enterprises (DBEs) Obligation

The LPA and State shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal Funds provided under this agreement. In this regard, the LPA shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. 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 subrecipient of Federal-aid funds on this project shall 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 shall 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 36. TITLE VI NONDISCRIMINATION CLAUSES

During the performance of this agreement, the LPA, for itself, its assignees and successors in interest agrees as follows:

(1) Compliance with Regulations: The LPA shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: The LPA, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.

(4) Information and Reports: The LPA shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this

information, the LPA shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to,

(a) Withholding of payments to the LPA under this agreement until the LPA complies, and/or

(b) Cancellation, termination or suspension of this agreement, in whole or in part.

(6) Incorporation of Provisions: The LPA shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The LPA shall take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the State to enter into such litigation to protect the interests of the State, and in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 37. REPRESENTATIONS

This agreement contains the entire agreement of the LPA and State. No representations were made or relied upon by LPA or State other than those that are expressly set forth herein. No agent, employee or other representative of LPA or 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 LPA and State hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this _____ day of _____, 2010.

WITNESS:
Joan Ross

City of Lincoln
Chris Beutler

_____
LPA Clerk

_____
Mayor

EXECUTED by the State this _____ day of _____, 2010.

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

_____
Local Projects Division Engineer

RECOMMENDED:
Tom Goodbarn

_____
District 1 Engineer

EXHIBIT A

CITY OF LINCOLN, NE
SOUTH 56TH STREET PAVING
SHADOW PINES DRIVE TO
NEBRASKA HIGHWAY 2
PROJECT #701763

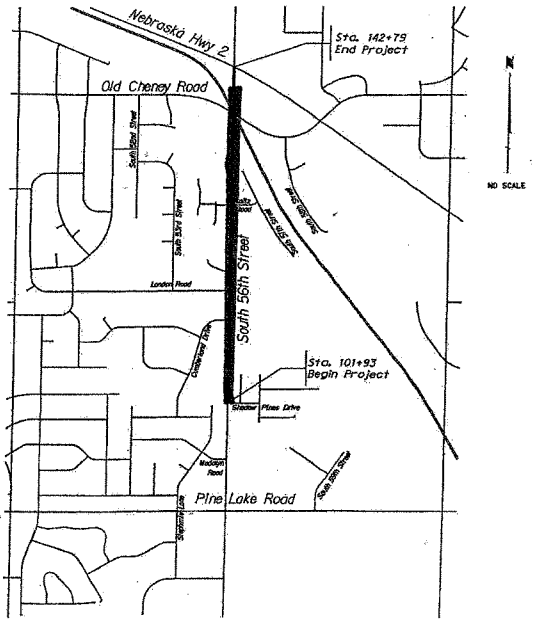

Exhibit B

RESOLUTION

(SIGNING OF THE PROJECT PROGRAM AGREEMENT)

City of Lincoln, Nebraska

Resolution No. _____

Whereas: The City of Lincoln, Nebraska is proposing a transportation project for which it would like to obtain Federal funds;

Whereas: The City of Lincoln, Nebraska 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 City of Lincoln, Nebraska 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 City Council of the City of Lincoln, Nebraska that:

Mayor Chris Beutler is hereby authorized to sign the attached Project Program Agreement between the City of Lincoln, Nebraska and the NDOR.

The City of Lincoln, Nebraska is committed to providing local funds for the project as required by the Project Program Agreement.

NDOR Project Number LCLC-5241(5),

NDOR Control Number 13141,

56th Street, Shadow Pines to Old Cheney

Adopted this _____ day of _____, _____at _____Nebraska.
(Month) (Year)

The City Council of The City of Lincoln, Nebraska

_____ _____

_____ _____

_____ _____

_____

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