LPA PROGRAM AGREEMENT- STP FUNDS

CITY OF LINCOLN, NEBRASKA
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. LCLC-5231(15),
STATE CONTROL NO. 13247
27th & FAIRFIELD & WEST "O" STREET BRIDGES OVER SALT CREEK, LINCOLN

THIS AGREEMENT, made and entered into by and between the City of Lincoln, Nebraska, a local public agency ("LPA"), and the State of Nebraska, Department of Roads ("State"), 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 and participating costs; the LPA's share will be the remaining 20 percent of the eligible and participating costs; and LPA will also be responsible for all other nonparticipating or ineligible 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 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, 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 that the State, on behalf of LPA, will advertise the project for bids, conduct a letting, make award recommendations to LPA and prepare a construction contract for LPA's execution and use, and

WHEREAS, the State will be responsible for paying directly the LPA's construction contractor, preliminary and construction engineering providers, and may pay directly other services providers when specified in subsequent agreements, and

WHEREAS, the State's role is only federal funding eligibility, including providing quality assurance to ensure FHWA on the LPAs behalf 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 on behalf of the LPA, and

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

WHEREAS, the funding for the project under this agreement includes 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, is currently estimated to be $1,230,544.00, but such costs may increase or decrease due to variations between the estimated and actual project costs, and

WHEREAS, the LPA's share of the total project costs is estimated to be $361,624.80. The LPA's share may include both in kind services and a local match. LPA's local match is estimated to be $361,624.80. These costs may increase or decrease due to variations between the estimated

WHEREAS, the project is described as follows:

The project will consist of repair and rehabilitation of the bridge at 27th and Fairfield and the bridge at West "O" Street and Sun Valley Boulevard. The 27th and Fairfield location will include moving and replacing the expansion joints and repairing deteriorating abutments. West "O" Street and Sun Valley repairs will consist of adding piling to support the grade beam,

repairing and replacing the grade beam and replacing expansion joints. Both of these projects will prevent further deterioration and extend the life of the bridges.

WHEREAS, the LPA desires that this project, the location of which is shown on attached Exhibit "A", be developed and constructed under the designation of Project No. LCLC-5231(15), as evidenced by the Resolution of the LPA dated the _____ day of _____, 2013, 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. 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.

"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.

"LPS" means the Local Projects Section 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.

"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" 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 2. 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 consistent with this agreement.

SECTION 3. PURPOSE OF AGREEMENT

The LPA wishes to plan, design, construct, operate, and maintain a Federal-aid transportation project on a street, highway, road, trail 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 Federal funding for eligible and participating project costs 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 aspect 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.

LPA acknowledges that many conditions must be met for the transportation project contemplated by this agreement to be constructed and for project costs to be reimbursed with federal-aid funds. Those conditions include, but are not limited to, the unknown availability of federal-aid funds, the timely and satisfactory completion of all federal-aid funding requirements and the perceived priority of this project with other projects competing for limited federal-aid funds. Therefore, LPA agrees to develop this project in an effort to meet all federal and state eligibility requirements so the project may be determined eligible for federal-aid funding.

SECTION 4. RESPONSIBLE CHARGE (RC) REQUIREMENTS

A. The LPA hereby designates Devin Biesecker as the RC for this project.

B. Duties and Assurances of the LPA concerning its designated RC for this project.

1. The LPA understands the duties and responsibilities of the LPA and RC as outlined in the LPA Guidelines Manual for Federal-Aid Projects.
2. 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.

3. The RC is a full-time public employee or elected official of the LPA, or a full-time employee of another entity as defined in "Public Employee" above.
4. 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.
5. 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 LPS Quality Management Manager and the LPS 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 LPS Quality Management Manager, the LPS 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. With advance written approval by the State, the LPA may use a Provisional RC in accordance with the State's Provisional RC Policy.
6. 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 commitments, including but not limited to environmental or maintenance. 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.
7. 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).

SECTION 5. FEDERAL AID PROJECT REQUIREMENTS

LPA agrees to comply with all Federal-aid project procedures and requirements applicable to this project, including federal laws, and when applicable, state and local laws, and the LPA Guidelines Manual for Federal-aid Projects.

A. **The Applicable Legal and Contract Requirements**.

1. **Title 23 U.S.C., 23 CFR, and 49 CFR** - Title 23, Chapter I, of the United States Code contains most of the federal laws governing this Federal-aid transportation project. Title 23 of the Code of Federal Regulations is a codification of the rules and regulations including provisions governing Federal-aid highway projects administered by the Federal Highway Administration, Department of Transportation. Title 49 of the Code of Federal Regulations, Parts 1-99, also includes regulations applicable to LPA's Federal-aid highway project. The Federal-aid highway program provisions of 49 CFR are found primarily in Parts 18, 19, 24, 26-29, 32, 37 and 38.

2. **LPA Guidelines Manual** - LPA also agrees to develop its project in strict compliance with the provisions of the LPA Guidelines Manual for Federal Aid Projects (The Manual), which is incorporated herein by this reference. The Manual is a document drafted in part, and formally approved, by the FHWA as a document setting out requirements for LPA projects funded with Federal-aid funds. A current version of The Manual can be found in its entirety at the following internet address: http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html. In the event the LPA believes that The Manual doesn't clearly address a particular aspect of the project work, the LPA shall seek guidance or clarification from the State's Local Project Section Engineer or Project Coordinator.

B. **Work Stage Pre-approval** - There are certain stages of development of this project that will require federal approval before work on that stage may begin, unless it is a stage for which federal-aid reimbursement will not be requested. The following is a non-exclusive list of the most common federal-aid stages of a project:

- Preliminary design services
- NEPA services
- Final design services
- LPA RC services
- Right-of-Way acquisition
- Utilities
- Construction
- Construction Engineering

Prior to beginning any work or incurring any expenses on a new project stage for which reimbursement will be sought, LPA shall confirm 1) FHWA's authorization of funds for that stage, and 2) receipt of a notice-to-proceed from NDOR for that stage.

C. **Federal Oversight.** If the project has been designated as full federal oversight, then additional federal oversight and approvals will be required. It is the responsibility of the LPA to understand the additional requirements and ensure that the State and FHWA are provided timely notice for additional oversight and approvals.

D. **Loss of Funding**. In order for the LPA to receive Federal Funds for any part of this project, the LPA shall perform the services for all stages of work, including, but not limited to preliminary and final design, environmental studies, acquisition of Right-of-Way, construction, and construction engineering, according to Federal procedures and requirements. Although Federal Funds may be allocated to the project, all stages or certain stages of work may become ineligible for Federal Funds if Federal procedures and requirements are not met. The LPA understands and agrees that the LPA, its RC, agents, and Contractor have the sole duty of proper development of plans and construction 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.

SECTION 6. SUSPENSION OR TERMINATION

A. Suspension.

The State, in its sole discretion, reserves the right to suspend both (1) NDOR's work on this project and (2) LPA's right to incur any additional reimbursable costs on the project when the State determines that there are issues related to project performance, responsiveness, quality or eligibility that must be corrected by LPA. The State shall provide LPA with notice of the suspension including a description of the reason(s) for the suspension, a timeframe for LPA to correct the deficiencies, and when applicable, a description of the actions that must be taken for the State to revoke the suspension.

A suspension may also be imposed by the State for any of the reasons listed in the Termination subsection below, or for any significant change in the scope of the project that has not been previously approved by the State or FHWA.

Failure to correct the deficiencies identified in a suspension will be grounds for the loss of eligibility for federal funding for the project and for termination of this agreement.

B. Termination.

This agreement may be terminated for the following reasons:

1. The State and the LPA, by mutual written agreement, may terminate the agreement at any time.
2. The State may terminate this agreement for the following reasons:
   (a) A decrease or shift in available federal-aid funding that will, in the sole discretion of the State, make it unlikely or impossible for this project to be prioritized to receive federal-aid funding.
   (b) When LPA's project has not been properly advanced as evidenced by the occurrence of any of the following events:
      (i) LPA has not sought reimbursement from State for any RC or other eligible project costs for a period of one year.
      (ii) LPA has not advanced the project to Right-of-Way acquisition or construction within the time periods set out in 23 USC Section 102(b) and 23 CFR part 630.112(c)(2) (10 years), and 23 USC Section 108 (a)(2) and 23 CFR Part 630.112(c)(2) (20 years). (See also the FHWA Federal-Aid Policy Order number 5020.1, dated April 26, 2011.)
      (iii) LPA's designated RC has not met all RC qualification requirements for the project by the time specified by the State.
      (iv) LPA has failed to replace the RC with an RC approved by the State within 30 days during the design stage or 10 days during the project letting or construction stages, from when the RC leaves, or is removed from the project for any reason.
      (v) LPA either (1) informs the State that it is unwilling to use condemnation to acquire any of the property interests needed to construct the project, or (2) fails to complete the Right-of-Way acquisition process within the time necessary to allow the project to have construction funds authorized within the year planned for Federal funding obligation for construction.
      (vi) LPA has failed to cause the project to be ready for the targeted letting date by obtaining construction funds authorization within the programmed year of the STIP.

(vii) LPA has not included the project or project phases within the LPA's one or six year plans or, when applicable, within the LPA's Transportation Improvement Program (TIP), in the correct fiscal year.

(c) LPA's failure to meet the requirements for Federal-aid local projects found in federal, state, or local law or policy, or the requirements of the LPA Guidelines Manual.

(d) A notice or declaration of FHWA or the State that any part of the project is or has become ineligible for federal funding.

(e) LPA's failure to sign any State drafted or approved project agreement including supplemental agreements.

(f) LPA's failure to pay in full the local share specified in any agreement within 30 days after receipt of an invoice from the State.

(g) LPA's breach of a provision of this agreement.

(h) LPA's failure to cause the project to be constructed according to the approved project plans and specifications.

3. The LPA may terminate the agreement upon sixty (60) days written notice of termination to the State, subject to the LPA meeting the conditions of paragraph 5 below.

4. Prior to the State terminating this agreement, the State shall provide written notice to the LPA of the basis for termination and, when applicable, provide the LPA sixty (60) days to properly resolve all issues identified by the State.

5. Whenever the project is terminated for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project that have not been reimbursed under 5.(a). Further, the LPA will thereafter be solely responsible for all costs associated with LPA's project.

SECTION 7. OMB CIRCULAR A-133 AUDIT

The funding for the project under this agreement includes 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. Any federal funds for LPA projects paid directly to contractors and Consultants by the State, on behalf of the LPA, will be reported on

the State's schedule of expenditures of federal awards (SEFA) and need not be reported by LPA. (as per FHWA's February 16, 2012 letter and State's February 24, 2012 letter). 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).

If necessary, 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-5231(15)

If an A-133 Audit is submitted by the LPA, 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 8. FINANCIAL RESPONSIBILITY

A. TOTAL PROJECT COSTS AND FUNDING COMMITMENTS

The total cost of the project is currently estimated to be $1,230,544 as set out in the table below:

ESTIMATED PROJECT FUNDING						
	FFY of TIP/STIP	Federal	Local Match	Nonparticipating	Other	Total
7. PE Phase						
a. PE		0	$91,8420.00			$91,842.00
b. NEPA		0	$15,000.00			$15,000.00
c. Final Design	2014	0	$27,553.00			$27,553.00
d. RC		0	0			
e. NDOR		0	$10,000.00			$10,000.00
PE Subtotal		**0**	**$144,395.00**			**$144,395.00**
8. ROW		0	0			
9. Utilities		0	0			
10. Construction	2015	$734,734.40	$183,683.60			$918,418.00
11. CE Phase						
a. CE		$110,210.40	$27,552.60			$137,763.00
b. RC		$14,694.40	$3,673.60			$18,368.00
c. NDOR		$9,280.00	$2,320.00			$11,600.00
CE Total		**$134,184.80**	**$33,546.20**			**$167,731.00**
12. TOTAL		**$868,919.20**	**$361,624.80**			**$1,230,544.00**

Both the LPA and State recognize this is a preliminary estimate and the final cost may be higher or lower. In order to exceed the costs obligated for some of the phases set out above, the LPA must seek and obtain from the State additional Federal funding obligation by:

- Submitting a detailed cost estimate, when applicable, and receiving State's approval of such estimate,
- Receiving notification from the State that additional Federal funds have been obligated,
- Receipt of a notice to proceed from the State to incur costs, if applicable

B. LPA RESPONSIBILITY

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 when Federal participation is not allowable or available or if the project is subsequently determined to be ineligible for Federal-aid funding. Therefore, when 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.

C. REIMBURSEMENT OF COSTS INCURRED BY THE LPA

LPA incurred project costs of the four (4) types listed in this section may be eligible for reimbursement from Federal-aid funds for this project if:

- The LPA submits a detailed cost estimate, when applicable, and the State approves such estimate,
- The State has obtained Federal funds obligation,
- The State issues notice to proceed to the LPA to incur costs. Work performed on the project prior to receipt of the Notice-to-Proceed is ineligible for Federal-aid reimbursement, and
- The LPA submits invoices no more frequently than monthly and in accordance with this agreement and the LPA Reimbursement Procedures located at: http://www.roads.ne.gov/gov-aff/lpa-guide-man.html#forms4. The LPA is responsible for submitting for reimbursement the total actual costs expended that are eligible for Federal-aid. The State, on behalf of FHWA, will review the costs submitted and determine what costs are eligible for reimbursement. The State will reimburse the LPA for the Federal share of the eligible actual costs. The LPA shall retain detailed cost

records supporting all invoices, and shall submit those records to the State upon request.

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

1. LPA Project oversight costs

   Project oversight costs include: direct costs, such as compensation of LPA employees for their time devoted and related directly to the performance of the project phase for which the federal-aid was approved; cost of materials consumed as part of the project; and indirect costs, with an approved Indirect Cost Allocation Plan as outlined in the LPA Guidelines Manual for Federal Aid Projects. If the LPA wishes to be reimbursed for these costs, the State will request an initial Federal funding obligation of $5,000 for this purpose, so that the LPA may commence work immediately following receipt of a notice to proceed from the State prior to performing any work which would result in exceeding the initial $5,000 Federal funding authorization.

   If additional reimbursement is desired by the LPA, the LPA must submit a detailed cost estimate for approval by the State. If approved, the State will request an adjustment to the Federal funding obligation.

2. LPA provided 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 and associated costs. **Any Professional Services performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

3. Non-betterment Utility Relocation Costs

   Certain utility relocation costs incurred by the LPA may be eligible for reimbursement from Federal-aid funds. Reimbursement of these costs require the LPA to execute a Utility Agreement with the applicable utility using the State's template agreement, which shall identify the services to be provided by the utility and associated costs. **Any utility work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

4. Right-of-Way

Certain right-of-way costs incurred by the LPA may be eligible for reimbursement from Federal-aid funds. Eligible ROW expenses include, but are not limited to, appraisal fees, title research fees, ROW Consultant fees, tract acquisition costs, reasonable relocation assistance costs, condemnation awards and Board of Appraisers' fees. Additional expenses for condemnation proceedings or District Court Trials may be reimbursed to the LPA on a case-by-case basis.

If the LPA uses ROW service providers, the LPA shall execute an Agreement using the State's template agreement, which shall include a detailed scope of services and associated costs. **Any right-of-way costs incurred prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

5. Railroad

Certain railroad costs incurred by the LPA may be eligible for reimbursement from Federal-aid funds. Reimbursement of these costs require the LPA to execute a Railroad Agreement with the applicable railroad using the State's template agreement, which shall identify the services to be provided by the railroad and associated costs. **Any railroad work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

D. PAYMENT OF CONSULTANT PROFESSIONAL SERVICES BY THE STATE

When the LPA uses Consultant professional services for this project, the costs of these services may be eligible for payment from Federal-aid funds. For the State to pay for these professional services, the LPA must execute an agreement with the service provider using the State's template agreement. Such agreement shall include a detailed scope of services and fee proposal. The State shall pay the Consultant directly, with Federal and local funds, for any eligible costs. Any non-participating costs, or costs determined to be ineligible, shall be the sole responsibility of the LPA and LPA shall reimburse the State for any such costs paid to the Consultant. **Any professional services performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal-aid.**

E. PAYMENT OF CONSTRUCTION COSTS BY THE STATE

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 SiteManager Software**. All progress estimates and final

estimates must be approved by the RC prior to submittal to the State Representative for funding approval and processing of payments.

F. STATE INCURRED COSTS

The expense incurred by State employees to perform tasks related to the development and construction of this project may be part of the cost of the project. The LPA shall be responsible for such costs as charged by State employees; however, these costs are eligible for Federal-aid participation up to the maximum amounts outlined below.

The maximum amount for which federal funds will participate in State incurred costs are:

1. PE Phase (including ROW Design activities)

   Upon execution of this agreement, the State may obligate up to a maximum of $10,000, allocated in accordance with the table above, for State incurred PE Phase services.

2. Construction Phase

   The State will request an obligation of federal funds equal to 1% of the estimated construction costs or $5,000, whichever is greater, allocated in accordance with the table above, for Construction Phase services. The State will request an additional obligation of federal funds of $2,500 for internal audit costs incurred by the State.

LPA shall be solely responsible for any State incurred costs 1) exceeding the Federal share of the obligated funds, 2) not eligible for reimbursement for any reason, or 3) for which an obligation is not obtained.

G. LPA PROJECT BUDGET AND INVOICING BY THE STATE

The LPA will earmark and place in its fiscal budget an amount sufficient to fund LPA's project commitments as shown in subsection A. above.

At times determined by the State, and after execution of this agreement, the State will invoice the LPA for some or LPA's entire share of the State incurred preliminary engineering project costs. After execution of a professional consultant services agreement for this project, the State will invoice the LPA their share of the total agreement amount.

Upon award of the construction contract, the State will invoice the LPA their share of the construction contract plus contingencies and construction engineering (includes $2,500 audit costs), and any unbilled preliminary engineering expenses, unless other arrangement have been agreed upon by the Parties. The LPA shall pay the State within 30 calendar days of receipt of invoice from the State.

H. AUDIT AND FINAL COST SETTLEMENT

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 SECTION 19. PROJECT COMPLETION, ACCEPTANCE, AUDIT, AND FINAL SETTLEMENT of this agreement for additional information.

I. PROJECT WITHDRAWAL

If the LPA withdraws the project for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project that have not been reimbursed.

SECTION 9. SCHEDULE

In order to retain federal funding for this project, the LPA shall cause the project to move promptly through all project stages to meet the targeted letting date. LPA shall coordinate with the State concerning the progress of the project and notify State of any issues that will affect the project schedule. Failure of LPA to properly advance the project or meet project deadlines may result in suspension or termination and loss of federal funding for this project. See SECTION 6. SUSPENSION OR TERMINATION.

SECTION 10. PROCUREMENT OF PROFESSIONAL SERVICES

A. ENGINEERING SERVICES

The LPA shall procure engineering services providers using the Qualifications Based Selection process set out in the LPA Guidelines Manual. Engineering services include, but are not limited to; planning studies, preliminary engineering, environmental activities, Right-of-Way design, construction engineering, or architectural services.

B. RIGHT-OF-WAY SERVICES

The LPA shall comply with the State's "Right-of-Way Acquisition Guide for Local Public Agencies" and the State's "Right-of-Way Manual" for the procurement of Right-of-Way services for property acquisition appraisals, appraisal reviews, negotiations, and relocation assistance.

SECTION 11. COORDINATING PROFESSIONAL

As required by Neb.Rev.Stat. § 81-3437, if LPA's project involves more than one licensed professional engineer or architect, the LPA shall designate a Coordinating Professional for this

project and notify the State in writing of such designation prior to commencement of professional services. The Coordinating Professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional shall verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. "Coordinating Professional" shall have the meaning set out in §81-3408 of the Nebraska Engineers and Architects Regulation Act (Neb.Rev.Stat. §81-3401 et. seq.) The Coordinating Professional shall also comply with the provisions of the Act, including Neb.Rev.Stat. §81-3437(3)(g), and the implementing Rules and Regulations, Title 110, NAC section 6.3, and when applicable, shall complete the duties of design coordination set out in Neb.Rev.Stat. §81-3421. LPA's failure to provide written notice to the State under this section may result in the costs of previous professional services being declared ineligible for reimbursement or other sanctions allowed by law or both.

SECTION 12. DEVELOPMENT OF THE PROJECT

LPA shall be responsible for all stages of the development and construction of this Federal-aid project. The stages of the LPA's project may include all or any of the following services: environmental, design, right-of-way, utilities, railroad, and construction. Sections X-Y of this agreement, in conjunction with the LPA Guidelines Manual, will define the responsibilities and actions required by the LPA for each of these applicable services.

SECTION 13. ENVIRONMENTAL RESPONSIBILITY

A. NEPA

The LPA must comply with the National Environmental Policy Act (NEPA) and all applicable federal, state and local environmental requirements because this project is federally funded. Therefore, prior to letting the project, the LPA shall be responsible for (1) completing all environmental reviews, (2) obtaining permits and approvals. Additionally, the LPA shall be responsible for meeting all environmental commitments during and after the construction of the project.

Prior to appraising property, acquiring right-of-way, or final design for the project, the LPA shall receive approval by the State and the FHWA of one of the following: (1) Categorical Exclusion, (2) Environmental Assessment - Finding of No Significant Impact, (3) Environmental Impact Statement - Record of Decision.

Public involvement must be held in accordance with the State's "Pursuing Solutions Through Public Involvement" located at:

http://www.transportation.nebraska.gov/docs/public-involvement.pdf. When the NEPA process requires public involvement, the LPA shall conduct necessary location or design hearings or combined location and design public hearings. The State Local Projects, Project Coordinator is available to assist the LPA in determining what public involvement efforts are required based upon NEPA and public sensitivities.

B. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM

If LPA's project is within an area that is subject to the federal Storm Water Phase II Regulatory Requirements of 40 CFR 122.34 (b), then LPA must design, construct and maintain, as a part of this project, water quality facilities as required by LPA's National Pollutant Discharge Elimination system (NPDES) permitted Municipal Separate Storm Sewer System (MS4) program. If the LPA does not have a NPDES permitted MS4 program, they shall follow the NDOR MS4 program.

SECTION 14. DESIGN

A. PREPARATION OF PLANS, SPECIFICATIONS, AND ESTIMATES

The LPA will develop project plans, specifications, and estimates sufficient for a bid letting. This work may be accomplished by the LPA or a Consultant selected by the LPA following the process set out in SECTION 10. PROCUREMENT OF PROFESSIONAL SERVICES. The scope of services and associated costs will be set out in a Professional Services Agreement using the States' standard template agreement. Any work performed prior to execution of said agreement, Federal authorization of funding, and receipt of a Notice to Proceed will not be eligible for Federal-aid. All plans, specifications, and estimates must be submitted to the State for review and comment for federal funding eligibility.

B. 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 15. RIGHT-OF-WAY

A. OVERVIEW

Governing Documents

The Federal law governing acquisition and relocation on federally assisted projects is found in 23 CFR Part 710, and Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, commonly called the Uniform Act (49 CFR Part 24). The LPA shall comply with 23 CFR part 710, the Uniform Act, the State's "Right-of-Way Acquisition Guide for Local Public Agencies" and the State's "Right-of-Way Manual".

The Uniform Act applies whenever Federal dollars are used in any phase of a project, such as planning, 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.

Right-of-Way Costs

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.

B. 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.

C. 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.

D. SPECIAL ASSESSMENTS

Prior to initiating a special assessment on a federal aid project, the LPA shall notify the NDOR LPS-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 this section.

The LPA is required to provide the four points of documentation to the LPS-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 16. UTILITIES

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 the State's "Policy for Accommodating Utilities on State Highway Right-of-Way." 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. A Notice to Proceed given by the State to the LPA must be obtained prior to beginning the utility rehabilitation or utility installation work. The State's standard utility agreement (State Template AGR167) must be used; a copy of this agreement can be obtained from the LPS Project Coordinator.

Local project work within a State Highway right-of-way requires an approval and a 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 are needed for the project and to make application for any needed permits to the LPS Coordinator.

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 become a project cost 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 the 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. RAILROAD

This section has intentionally been left blank in this contract.

SECTION 18. CONSTRUCTION

A. PLANS, SPECIFICATIONS AND ESTIMATES (PS&E)

The LPA is solely responsible for the accuracy and completeness of the PS&E package for LPA's project. Approximately five months prior to the targeted letting date, the LPA shall submit a complete final plans package (including, but not limited to the following documents; 100 percent plans, specifications, engineers' estimate, status of utilities, status of environmental

commitments, environmental permits, right-of-way certificate) to the State's Local Projects Section Project Coordinator for review. The PS&E package will be reviewed by the State. The LPA shall promptly make, or cause to be made, any necessary or requested changes and provide all required certifications, in order for the PS&E package to be ready for advertisement to meet the targeted date of the bid letting.

B. **BID LETTING**

The State, on behalf of the LPA, will provide the State's standard notice to bidders and will conduct a bid letting for LPA's federal-aid project following the State's bid letting and award procedures. The State will recommend, for LPA's review and approval, the apparent low bidder for the project, except when the State rejects all bids. The LPA must provide a resolution concurring with the selection of the low bidder before the State issues the contract for execution. LPA shall sign the construction contract with the selected contractor and will issue all applicable purchasing agent appointments and tax exempt certificates for this project.

C. CONSTRUCTION AND CONSTRUCTION ENGINEERING

The LPA agrees to cause the project to be constructed in compliance with the approved PS&E package, State approved change orders, and applicable rules, regulations and statues. The construction of this project will require a) the services of the RC as LPA's representative, b) construction oversight by a licensed professional engineer (see Neb.Rev.Stat. §81-3445), and c) a State Representative from the District whose review of the project's construction will relate solely to the eligibility of the project for federal funding.

Trans*Port SiteManager shall be used as the construction record-keeping system for construction and construction engineering services for this project. The RC and construction Consultants must complete the State's training in the use of Trans*Port SiteManager software.

The LPA will be solely responsible for all construction engineering on this project. The construction engineering is an eligible project expense and includes, but is not limited to; construction management, staking, inspection and field testing. This work may be accomplished by the LPA, or a Consultant selected by the LPA, following the process set out in SECTION 10. PROCUREMENT OF PROFESSIONAL SERVICES. The scope of services and associated costs will be set out in a Professional Services Agreement using the State's standard template agreement. Construction engineering services will not be eligible for Federal funding if performed prior to: 1) execution of said agreement, 2) Federal authorization of funding, and 3) receipt of a written Notice to Proceed.

SECTION 19. PROJECT COMPLETION, ACCEPTANCE, AUDIT, AND FINAL SETTLEMENT

A. TENTATIVE FINAL ACCEPTANCE

Consultant or LPA providing the construction engineering shall notify the RC in writing when all contract work is complete and ready for inspection. RC shall, within one week, inspect the work for conformance with the construction contract. Within one week of acceptance of the work by the LPA, the LPA shall issue a Tentative Final Acceptance letter to the Contractor, with a copy to the State, advising them that all contract work has been tentatively accepted.

B. DR FORM 91 – NOTIFICATION OF CONTRACT COMPLETION

Upon receipt by the State of the LPA's Tentative Final Acceptance letter to the Contractor, the State's District Engineer will prepare and distribute a DR Form 91. Consultant or LPA providing construction engineering services may only incur expenses for up to 45 days following the construction completion date sited on the DR Form 91 or the Tentative Final Acceptance letter.

C. DR Form 299 – Project Construction Conformity Certification

When the project final records are ready to be submitted to the State for approval, LPA and, when applicable, LPA's Consultant shall certify project construction conformity by signing the DR Form 299. The LPA shall submit the DR Form 299, one set of As-Built Plans (per the Nebraska Department of Roads Construction Manual) and all final records to the State Representative.

The State Representative assigned to the project will then conduct a final review of the project and determine whether the project meets federal program requirements. If the State Representative determines the project meets federal requirements, the State Representative will submit the DR Form 299, the final records, and one set of As-Built Plans to the State Construction Division – Final Review Section. If the State Representative determines the project does not meet federal program requirements, the State Representative will notify the LPA's RC in writing of what must be done to bring the project into compliance.

The State Construction Division – Final Review Section will review and approve the finals package, and when approved, will sign the DR Form 299 and distribute it to the NDOR Controller Division, to provide notification of project closeout and to request final payment to the Contractor.

D. Audit and Final Settlement with LPA

If deemed necessary, an audit will be performed by the State to determine whether the actual costs incurred on the project are eligible for reimbursement with Federal funds. The

amount of the final settlement between the State and the LPA will be the LPA's share of the total eligible project costs, plus all ineligible project costs, less the total local funds previously paid to the State by the LPA.

If the LPA's calculated share is more than the amount of local funds previously paid to the State, the State will bill the LPA for the difference. The LPA agrees to pay the amount due the State within thirty (30) days of receipt of invoice.

If the LPA's calculated share is less than the amount of local funds previously paid to the State, the State will reimburse the LPA for the difference.

SECTION 20. CHANGES TO LPA ROUTES

The project facility must be used by LPA for the purposes for which this project was developed. LPA shall submit to the State, for review and approval, any proposed changes to the LPA routes which affect the function or operation of the project facility either during construction or after the project is completed. Requests for changes during project construction must be made to the State Representative who will then forward it to the Local Projects Section Project Coordinator for final approval.

SECTION 21. MAINTENANCE AND ENVIRONMENTAL COMMITMENTS

Upon project completion, the LPA shall maintain the constructed improvements and continue to meet environmental commitments at its own expense, and agrees to make provisions each year for such costs. 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 22. INDEMNITY

The LPA agrees to hold harmless, indemnify, and defend the State and FHWA against all liability, loss, damage, or expense, including reasonable attorney's fees and expert fees, that the State and/or FHWA may suffer as a result of claims, demands, costs, or judgments arising out of LPA's project and the terms of this agreement.

SECTION 23. 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 current adopted 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 24. CONFLICT OF INTEREST LAWS

The LPA shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for the project to remain fully eligible for State or Federal funding. LPA should review, understand and follow the instructions provided in the **NDOR CONFLICT OF INTEREST GUIDANCE DOCUMENT FOR LPA OFFICIALS, EMPLOYEES & AGENTS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS** located on the State website at the following location:

http://www.roads.ne.gov/gov-aff/lpa/chapter-forms/coi/coi-guidance-doc-lpa.pdf

The LPA must also complete and sign the **NDOR CONFLICT OF INTEREST DISCLOSURE FORM FOR LPAS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS**, for each project. This form is located on the State website at the following location:

http://www.roads.ne.gov/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-lpa.pdf

Consultants and Subconsultants providing services for LPA's, or submitting proposals for services, shall submit a Conflict of Interest Disclosure Form for Consultants. Consultants and Subconsultants shall submit a revised form for any changes in circumstances, or discovery of any additional facts that could result in someone employed by, or who has an ownership, personal, or other interest with Consultant or Subconsultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

SECTION 25. DRUG FREE WORKPLACE

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

SECTION 26. 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 at least 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 27. 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 SECTION 30. TITLE VI NONDISCRIMINATION CLAUSES of this agreement. The reference to "Contractor" in this section also means the "LPA".

SECTION 28. 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 29. 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(2) 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 30. 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 sub-recipient 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 31. 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 paragraphs (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 32. ENTIRE AGREEMENT

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

IN WITNESS WHEREOF, the Parties hereby execute this agreement pursuant to lawful authority as of the date signed by each party.

EXECUTED by the LPA this _____ day of _____, 2013.

WITNESS:
Joan E. Ross

CITY OF LINCOLN
Chris Beutler

_____
LPA Clerk

_____
Mayor

EXECUTED by the State this _____ day of _____, 2013.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Mick Syslo, P.E.

_____
Materials & Research Engineer

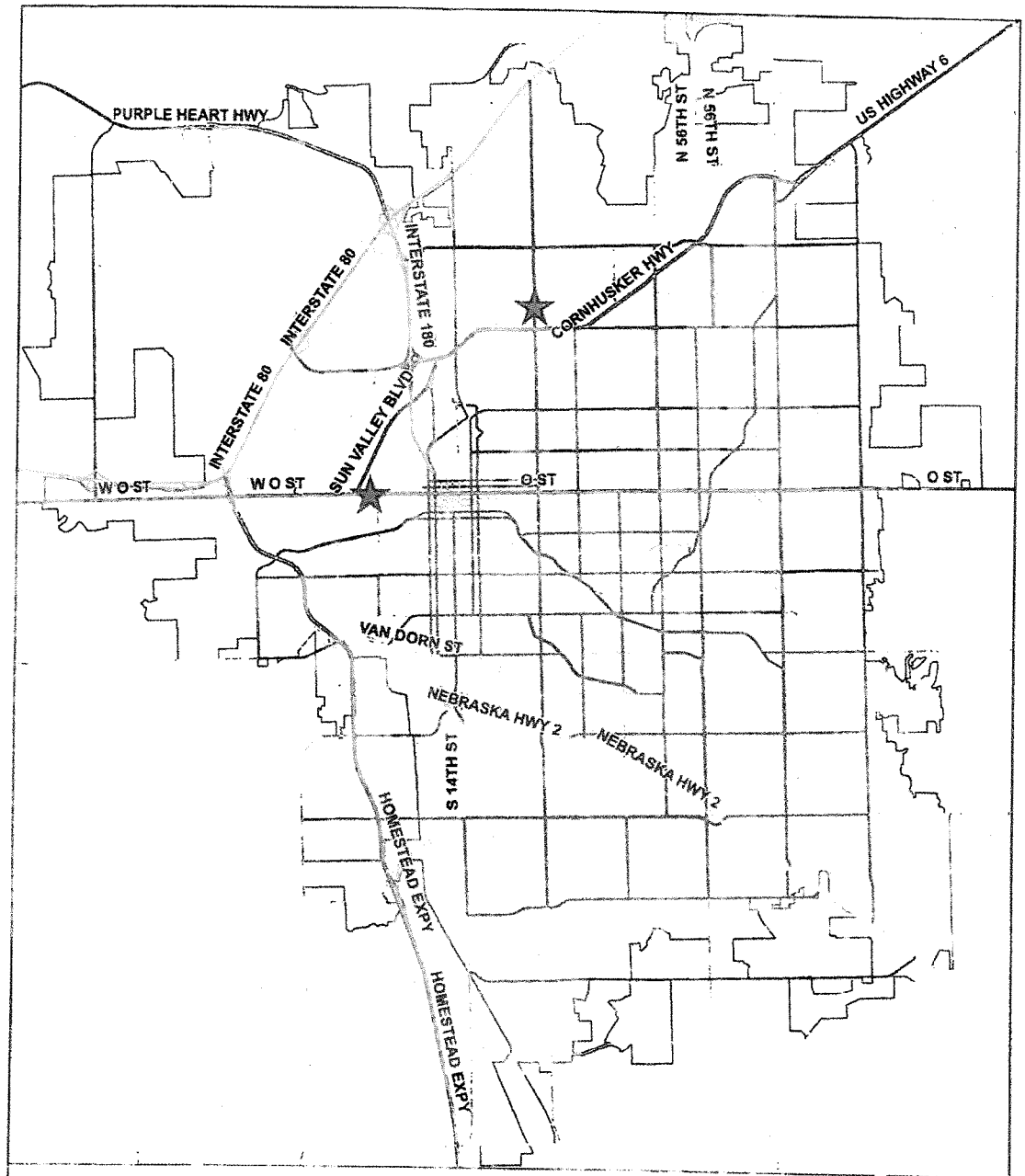
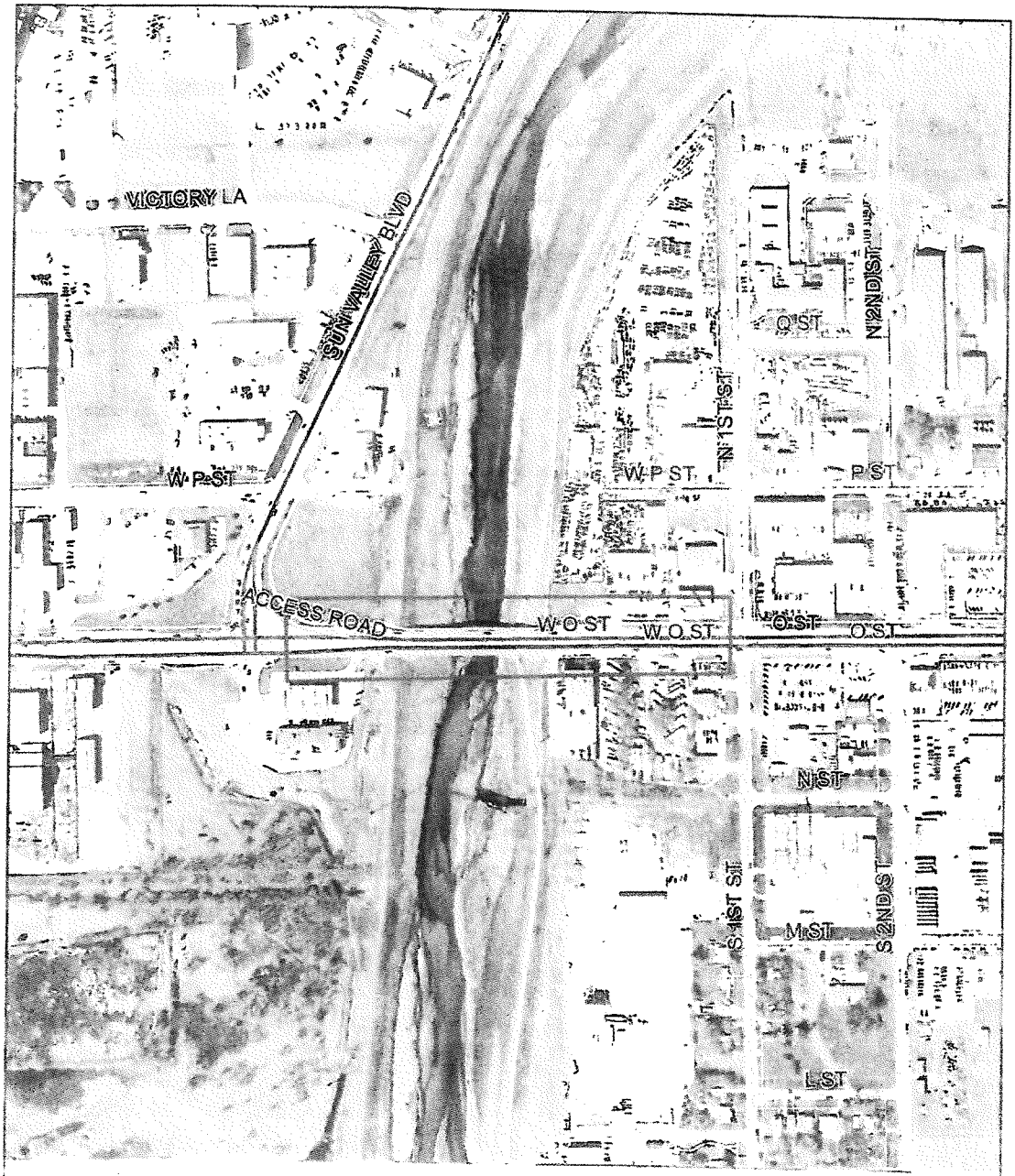


EXHIBIT "A"
Page 1 of 3



Legend

Project Limits

City of Lincoln
West 'O' Street Bridge

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EXHIBIT "A"
Page 2 of 3

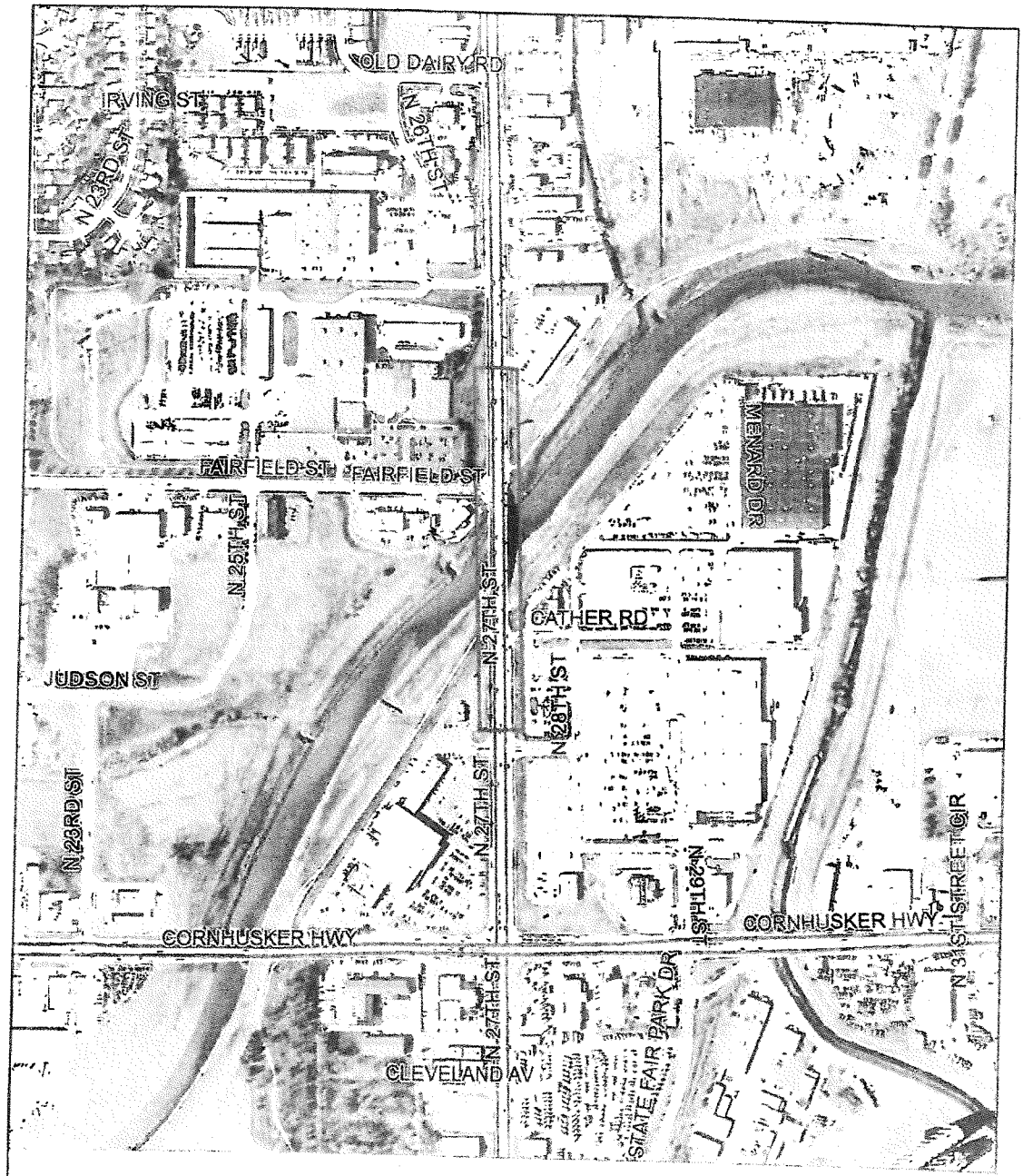

EXHIBIT "A"
Page 3 of 3