

**BIKE SHARE PROGRAM AGREEMENT CONGESTION MITIGATION AND AIR
QUALITY (CMAQ) FUNDS**

CITY OF LINCOLN, NEBRASKA
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. CMAQ-55(181)
STATE CONTROL NO. 13331
LINCOLN BIKE SHARE PROJECT

THIS AGREEMENT is 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, LPA proposes a federal-aid project to implement a bike sharing program within the Lincoln municipal area, and

WHEREAS, a bike sharing program involves a member or a renter renting a bicycle at a bike share station which frequently includes bike racks, docks, kiosks and related equipment, hereafter call bike share equipment. or a bike share dock/kiosk located on public right-of-way for use for a limited period of time and returning the bike to the check-out location or to any other designated bike share station or dock/kiosk location in the area, and

WHEREAS, federal-aid funds are available to procure bicycles and to procure and install bicycle stations or bike share equipment for a bike share program within LPA's jurisdictional area, and

WHEREAS, pursuant to Neb. Rev. Stat. § 39-1305, the LPA desires State to act as the LPA's agent in accepting federal funds on the LPA's behalf for procuring bicycles and procuring and installing bike stations or bike share equipment, and

WHEREAS, this project is not a State project and 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-installation 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, LPA will be solely responsible for planning (including NEPA), installing, owning, operating, maintaining, accounting, and reporting for the bike share program; State's primary responsibility is to present the proposed project to FHWA for funding approval and to act as a liaison with FHWA for federal funding eligibility questions, 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 Federal Audit requirements must be addressed as explained further in this agreement; and

WHEREAS, the Federal share payable on any portion of this 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, the total cost available for this bike share project will be no more than a maximum of \$750,000.00 (capped); and

WHEREAS, the LPA's local match is estimated to be \$150,000.00. The LPA has earmarked and has placed in its fiscal budget at least the amount of the local match indicated above. The LPA's costs may increase or decrease due to variations between the estimated and actual project costs; and

WHEREAS, the LPA desires that the Bicycles and bike share equipment be procured and installed at the locations shown on attached Exhibit "A", and the project be designated as Project No. CMAQ-55(181) as evidenced by the Resolution of the LPA dated the _____ day of _____, 20____, 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:

“ADA” means the Americans with Disabilities Act.

“CFDA” means Catalog of Federal Domestic Assistance.

“C.F.R.” 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.

“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, an MPO, 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 through procurement and installation, 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: PROJECT DESCRIPTION

LPA wishes to obtain federal funding for 80% of the costs of purchasing and installing the equipment necessary for a bike sharing system within the City of Lincoln.. A bicycle sharing system is an evolving concept where a person rents and uses a bicycle for a short period of time for one way or two way travel. The bicycles are typically rented from and returned to one of several locations on public right-of-way. With some systems, there are docks with locking mechanisms and payment kiosks at each location. With other systems, there are locks attached to the bicycles and the stations merely have bike rack type facilities. LPA is expected to choose the type or types of systems to be used for its bicycle sharing system after review and approval by State. The bicycles are uniquely designed for easy identification to thwart theft. The bicycles and bike share equipment may be large, heavy and bulky enough to simply be placed on the public sidewalk or they may be bolted in place. Any dock/kiosk is expected to operate by solar power, except when lighting conditions are not sufficient for solar power, minor trenching to an adjacent power source may be necessary.

SECTION 3. TIME PERIODS APPLICABLE TO THIS PROJECT

A. Term of the Agreement. This agreement begins upon the signing of the agreement by the State. The State intends to sign the agreement after the LPA has signed. The agreement will expire upon completion of the LPA's Federal-aid project and final financial settlement, except that any terms of this agreement that contemplate long term activities of the LPA such as environmental, maintenance, accounting 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.

B. Life Cycle of the Project. LPA shall own, use maintain and keep in good repair all bicycles and bike share equipment bicycles acquired as part of this project for 10 years from the date when any of the acquired items are first placed into service and made available for public use. LPA shall promptly notify State in writing of the date when any acquired item is first placed into service. If any

items acquired with Federal-aid funds are stolen, missing non-functioning or damaged beyond repair during the 10-year life cycle, then LPA shall replace all stolen, missing, non-functioning or damaged beyond repair items using local funds, or upon advanced written approval from State, using excess bike share revenue. Bicycles and bike share equipment bicycles acquired by LPA from excess revenue shall also be maintained and kept in good repair for 10 years from when each of any of those items are placed into service. After the 10 year period has lapsed from the initial federal-aid bike share in service date, LPA shall continue to own the bicycles and bikes share equipment acquired with Federal-aid funds but will not be required to report revenue and expenses or meet any further Federal-aid requirements. At that time, LPA may discontinue the initial bike share program after agreeing with State to a phase out plan that may include pro-rata pay back of federal-aid funds for bicycles or bike share equipment for which ten years of use has not been obtained.

SECTION 4. PURPOSE OF AGREEMENT

The LPA wishes to plan, procure, install, operate, and maintain bike share systems on a sidewalk, street, highway, road, trail or other transportation related facility of LPA, another LPA, or an institute of higher learning. 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, procurement, installation, accounting, 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 project contemplated by this agreement to be completed 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 5. RESPONSIBLE CHARGE (RC) REQUIREMENTS

- A. The LPA hereby designates Zach Becker 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 this agreement and 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 C.F.R. § 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 projects. This includes meeting all post-installation commitments, including but not limited to, annual accounting and reporting requirements, revenue use limitations, maintenance, and 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.

SECTION 6. 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 C.F.R., and 49 C.F.R.** - Title 23, Chapter I, of the United States Code contains most of the federal laws governing this Federal-aid 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 C.F.R. 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 Division Section Engineer or Project Coordinator.

3. 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. At this time, these stages include NEPA, procurement specifications drafting and procurement/installation. 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.

B. 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.

C. 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 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 Consultants have the sole duty of proper development of procurement specifications, procurement, and installation of the procured items and that failure to properly procure and install the procured items or to maintain, operate, account or report revenues and costs in accordance with the approved project may result in the loss of federal funding.

SECTION 7. PROJECT DEVELOPMENT

This project is not expected to be a Construction project, but will be a procurement project that will include any necessary dock/kiosk installation. LPA agrees to develop this procurement project in accordance with all applicable federal-aid provisions related to procurement projects.

A. NEPA

LPA shall identify (a) all potential sites for the installation of the bicycle dock/kiosk structures, and (b) outline the expected placement and installation involved in placing the bicycle dock/kiosk structures at each location. LPA shall also be solely responsible for completing all required NEPA review of the project, and meeting all NEPA commitments applicable to the project.

B. PROCUREMENT SPECIFICATION

LPA shall be solely responsible for developing the detailed specifications applicable to the procurement of the bike share equipment and any bicycles to be purchased as a part of this project. The specifications may be written to make such facilities interoperable with any existing bicycles and bicycle dock/kiosk structures currently being used within LPA's boundaries. The specifications must be written to maximize, whenever possible, the opportunity for competition among vendors who may be interested in bidding on the procurement project.

LPA shall obtain written approval from the NDOR's Local Project Section of its procurement specifications prior to the procurement process.

C. PROCUREMENT PROCESS

LPA will be responsible for completing all procurement activities for this project. Within a reasonable period of time, State will notify LPA as to whether LPA will procure equipment for this project using LPA's own procurement process or whether States standard procurement process will be used with the actual procurement being completed by State employees. LPA will then meet the provisions of the following applicable option based on State's decision.

Option 1. State will be using State's procurement process for all items procured for this project. LPA agrees to begin discussions with State's procurement specialists as soon as possible to coordinate the development of the specification, and to coordinate the scheduling of the procurement. Items shall not be procured until LPA's project has received approval from NDOR's Local Project Section and until federal-aid funding has been obligated by FHWA for the project.

Option 2. LPA will be using a procurement process reviewed and approved by State and FHWA for all items procured for this project. LPA agrees to begin discussions with State as soon as possible to coordinate the development of the specification, and to coordinate the scheduling of the procurement. Items shall not be procured until LPA's project has received approval from NDOR's Local Project Section and until federal-aid funding has been obligated by FHWA for the project.

D. BUY AMERICA REQUIREMENTS

The FHWA Buy America requirements apply to this procurement project. Some of FHWA's Buy America requirements can be found at 23 U.S.C. § 313 and at 23 C.F.R. § 635.410. Steel and iron purchased for the Bike Share Project must be produced in the United States. These requirements apply only to actual steel and iron that is incorporated into a product, and there is an allowance for a minimal amount of foreign-produced steel or iron (\$2,500 or one-tenth of one percent of the total contract price, whichever is greater). LPA shall notify and fully cooperate with State in addressing any Buy America issues for this project.

E. ADA

LPA shall comply with all applicable Federal-aid requirements related to the American with Disabilities Act including but not limited to making sure that pedestrian's access requirements are met in areas where bicycles and bike share equipment are placed on public right-of-way. (See Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164)).

F. ENGINEERING SERVICES

When approved in advance by State, the LPA shall procure engineering services providers using the Qualifications Based Selection process set out in the LPA Guidelines Manual. Engineering services may include, but are not limited to; planning studies, preliminary engineering, environmental activities, right-of-way design, construction engineering, or architectural services.

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, procurement, 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.

G. OPERATING ENTITY LPA may hire an independent operating entity to manage, operate, maintain and account for the LPA's bike share program. In that event, LPA shall have an operating agreement with its operating entity that requires the operating entity to meet all the requirements (including the limitations on the use of revenue generated by the bike share program; see Section 11) and be responsible for performing all the duties of LPA under this agreement not completed by LPA. LPA shall be solely responsible for the operating entity,

including but not limited to the acts, omissions, decisions, and negligence of the operating entity related to all aspects of the bike share program supported by federal-aid funds (see also Section 12).

SECTION 8. OUTDOOR ADVERTISING

LPA understands that State regulates outdoor advertising that is visible from State highways designated as a part of the Highway Beautification Control System (HBCS), as defined in Neb.Rev.Stat. § 39-201.01(1) (See Neb.Rev.Stat §§ 39-201.01 to 39.226 and Title 410 N.A.C Chapter 3). A copy of the map showing the location of Highways on the HBCS in the Lincoln area is attached as "Exhibit C" to this Agreement. LPA agrees to not violate the outdoor advertising statutes, rules and regulations or the requirements of this Agreement related to the control of outdoor advertising. Failure to meet these requirements will cause the termination of this Agreement and will require full repayment of all Federal-aid funds paid to LPA for the project.

Advertising messages on bicycles, bicycles and bike share equipment will not be considered outdoor advertising so long as those messages conform to the FHWA requirements applicable to advertising messages at bus stops, including but not limited to requirements limiting the size of the advertising and visibility of such advertising from motor vehicles on the HBCS (See 23 C.F.R. § 750.153q). Any approved advertising should not be visible to the traffic in the roadway by orienting and sizing to target the pedestrians and patrons along the sidewalk. Additionally, any approved advertising allowed on bicycles or bicycles and bike share equipment must be offered to the public using competitive processes that give all interested and eligible parties a fair chance at participating, in conformance with all federal guidelines and requirements. Advertising proposals shall be developed by LPA and submitted to State and FHWA for review and approval in advance.

SECTION 9. SPONSORSHIP

State is in the process of developing a sponsorship policy for review and approval by FHWA that will apply to the contributions of sponsors to LPA's project. Upon approval of State's Sponsorship Policy, LPA will either officially adopt State's Sponsorship Policy as its own policy, or shall develop and obtain approval of State and

FHWA of a separate LPA Sponsorship Policy. LPA's sponsorship policy shall conform to federal guidance and requirements for sponsorship policies. See, for example FHWA Order 5160.1A, Policy on Sponsorship Acknowledgement and Agreements within the Highway Right-of-Way, April 7, 2014. LPA shall comply with LPA's approved sponsorship policy during the planning, implementation, operation and maintenance of this project and for so long as bicycles and bike share equipment are located on public rights-of-way. LPA will be allowed to acknowledge sponsorship participation in this project with sponsorship signs or plaques in accordance with the requirements of the sponsorship policy and when not covered by the policy, the Manual on Uniform Traffic Control Devices (MUTCD). LPA shall obtain review and approval in advance by State and FHWA of the design and location of any proposed sponsorship signs and plaques for this project from State and FHWA.

SECTION 10. RIGHT-OF-WAY

LPA plans to place or install the bicycles and bike share equipment on existing public street or public University sidewalk locations. It is therefore expected that there will be no need to acquire right-of-way for the project. LPA will obtain a properly signed "Declaration of Use" document from each Governmental entity or public University, other than LPA, whose public right-of-way will be used for the placement or installation of a bicycle dock/kiosk structure for the project. A copy of a sample form may be obtained from State. The Declaration of Use form created by LPA shall be reviewed and approved by State in advance of LPA obtaining signatures on those documents.

The LPA, at no cost to the project, shall clear the existing right-of-way at each proposed bicycle dock/kiosk location 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.

In the event that LPA's project changes and LPA needs to acquire right-of-way for the project, this Agreement will be supplemented to provide applicable provisions for

the acquisition of right-of-way, and all right-of-way activities will be completed in compliance with the supplemental Agreement and with the following provisions. The Federal law governing acquisition and relocation on federally assisted projects is found in 23 C.F.R. pt. 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 C.F.R. pt. 24). The LPA shall comply with 23 C.F.R. pt. 710, the Uniform Act, the State's "Right-of-Way Acquisition Guide for Local Public Agencies" and the State's "Right-of-Way Manual".

SECTION 11: REVENUE AND REPORTING

There will be revenue generated by the sale of memberships, the renting of individual bicycles and revenue from sponsorship as a part of the bike share program. There will also be direct and indirect expenses incurred in operating the bike share program. Federal law places limitations on the use of revenue generated from projects for which federal-aid has been used.

LPA shall develop a system of accounting to track and report to State revenue and expenses related to the bike share program. The tracking system shall be presented to State for review and approval prior to the renting of any bicycles or the use of bicycles and bike share equipment acquired for this project. LPA's system shall track and report total bike share revenue and expenses and separately track the percentage proportion of revenue attributable to federal funding as calculated below.

LPA may use a system-wide approach to track revenue and expenses for the bike share program. With this system, LPA will calculate the percentage of LPA's bike share assets (bicycles and bike share equipment) that were acquired with federal-aid funds in relation to total bike share assets. The calculated percentage will then be applied to revenue and expenses (specified below) in order to determine the proportions of revenue and expenses attributable to the federal-aid project.

Revenue generated from federal-aid bike share assets may only be offset by direct expenses arising from federal-aid bike share assets. Direct expenses include costs of direct labor and material for the operation, maintenance and repair of bike share assets. Direct expenses do not include overhead or administrative costs of the

program, such as administrative or support staff salaries. LPA shall obtain approval in advance from State for any cost that LPA believes should be allowed to offset federal-aid bike share revenue.

Time of Reporting. By October 1 of each year, LPA shall provide to State an annual accounting of all bike share revenue (including sponsorship revenue) generated and expenses incurred, and separately report the Federal-aid excess revenue as calculated in this section, for the previous State fiscal year (July 1 thru June 30). LPA shall provide State with a final accounting and project closeout report 3 months after the 10-year life cycle of the project has expired.

Maintenance and Environmental Commitments. Upon project completion, the LPA shall properly care for and maintain the procured and installed 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 procurement, installation, accounting, operation, and maintenance of or related to the project. LPA shall develop a protocol, to be approved in advance by State, for safeguarding, maintaining and reasonably protecting the bicycles and bike share equipment from the elements. LPA shall use best practices to maximize the useful life of the project assets.

SECTION 12: OWNERSHIP, USE AND OPERATION OF BIKE SHARE FACILITIES

The City of Lincoln will own the bicycles and bike share equipment, be responsible for operating or overseeing the operation of the Bike Share Program and will be responsible for meeting all other Federal-aid requirements. The City of Lincoln is expected to contract with an organization to operate the bike share program. In this event, the City of Lincoln shall enter into an Agreement with the Operator to require the Operator to meet all the requirements (including the limitations on the use of revenue generated by the bike share program) of this Agreement and all federal-aid requirements applicable to this project.

City of Lincoln understands that Federal-aid funds will be used to procure and install the bicycles and bike share equipment and procure bicycles for this project. It is

understood that the procured items will be used on a seasonal basis; however City of Lincoln will make its best good faith efforts to fully use the bicycles and bike share equipment throughout the useful life of the procured items. City of Lincoln agrees to notify State immediately if City of Lincoln is not able to meet the requirements of the proceeding sentence. City of Lincoln's inability to meet the requirements of this section may require, in State's discretion, full or partial repayment of Federal-aid funds or transfer of the procured items to another entity for use as determined in the sole discretion of State.

SECTION 13. FINANCIAL RESPONSIBILITY

A. TOTAL PROJECT COSTS AND FUNDING COMMITMENTS

The total cost available for this bike share project will be no more than a maximum of \$750,000 (capped), 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		\$8,000.00	\$2,000.00			\$10,000.00
b. NEPA		\$4,000.00	\$1,000.00			\$5,000.00
c. Final Design						
d. RC		\$8,000.00	\$2,000.00			\$10,000.00
e. NDOR		\$8,000.00	\$2,000.00			\$35,000.00
PE Subtotal		\$28,000.00	\$7,000.00			\$35,000.00
8. ROW						
9. Utilities						
10. Construction	2016	\$572,000.00	\$143,000.00			\$715,000.00
11. CE Phase						
a. CE						
b. RC						
c. NDOR						
CE Total						
12. TOTAL		\$600,000.00	\$150,000.00			\$750,000.00

Both the LPA and State recognize this is a preliminary estimate and the final cost may be higher or lower. In the event LPA and State agree to Federal-aid funding for other phases, 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 planning, procurement, installation, accounting, operation or maintenance services, engineering, right-of-way,, 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, if 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

For this project LPA has chosen to not seek Federal-aid funding for any phase of the project except for procurement and installation of bicycles and bike share equipment and procurement of bicycles. It is expected that LPA will not incur any costs for the project that will be reimbursed by the State because State will pay directly, on LPA's behalf, the procurement and installation costs up to no more than the amount of the cap. This agreement will be supplemented in the event that the parties agree that there will be LPA costs to be reimbursed by State.

D. 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.

State will invoice LPA for LPA's share of the entire project costs once State knows the actual procurement and installation costs for the project,

E. 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.

H. 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 14. FEDERAL AUDIT REQUIREMENT

- 14.1 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 2 C.F.R., Subtitle A, Chapter 2, pt. 200, Subpart F (hereinafter Part 200), the Part 200 Audit is required if the non-federal entity expends \$750,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.
- 14.2 The LPA shall comply with this Single Audit mandate as described in Section 14.1. Any federal funds for LPA projects paid directly to contractors and consultants by State, on behalf of the LPA, will be reported on 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 a Part 200 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).

- 14.3 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:** CMAQ-55(181)

- 14.4 If a Part 200 Audit is submitted by the LPA, the LPA shall notify the Nebraska Department of Roads, Highway Audits Manager, at P.O. Box 94759, Lincoln, NE 68509-4759 when the audit reporting package and the data collection form have been submitted to the Federal Audit Clearinghouse (FAC) website.

SECTION 15. PROJECT COMPLETION, ACCEPTANCE, AUDIT, AND FINAL SETTLEMENT

A. CERTIFICATE OF CONTRACT COMPLETION

LPA shall certify completion of the procurement and installation for this project using the State's current Certificate of Completion form, which can be obtain from State . LPA shall submit the form to State on or about 30 days after procurement, installation, and start of use of any bicycles and bike share equipment acquired by LPA for this project.

B. 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 16. SUSPENSION OR TERMINATION

A. Suspension.

The State, in its sole discretion, reserves the right to suspend LPA's project when the State determines that there are issues related to project performance, responsiveness, quality or eligibility that must be corrected by LPA. Suspension of the project may include, but is not limited to, the State declaring LPA's continued work on the project ineligible for reimbursement and State discontinuing assistance with and review of LPA's work on the project. The State shall provide LPA with notice of the suspension including (1) a description of the reason(s) for the suspension, (2) a timeframe for LPA to correct the deficiencies, and (3) 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 as follows:

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 eligible project costs for a period of one year.
 - (ii) LPA has not advanced the project to completion within a reasonable after State has notified the LPA of State's intent to terminate the agreement.

- (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 planning stage or 10 days during the procurement and installation stages.
 - (v) When applicable, LPA either (1) informs the State that it is unwilling to use condemnation to acquire any of the property interests needed to complete the project, or (2) fails to complete the right-of-way acquisition process, within the time necessary to allow the project to have funds authorized within the year planned for Federal funding obligation for procurement.
 - (vi) 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 procured and installed according to the approved project procurement, installation, accounting, and operation of maintenance plans.
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 for cause, 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 17. 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 18. TRAFFIC CONTROL

The LPA shall be responsible for any necessary traffic control related to the installation and operation of the project, before, during and after installation. 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 any permanent traffic control devices installed for the project have been properly completed or installed.

SECTION 19. CONFLICT OF INTEREST LAWS

The LPA shall review the Conflict of Interest provisions of 23 C.F.R. § 1.33 and 49 C.F.R. § 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 20. DRUG FREE WORKPLACE

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

SECTION 21. RECORDS RESPONSIBILITY

The LPA shall maintain all planning documents, procurement documents, correspondence, files, books, documents, papers, field notes, accounting records and other evidence pertaining to revenue generated and 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 22. 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 to 48-1126, and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 C.F.R. pts. 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 23. DISABILITIES ACT

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

SECTION 24. 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 25. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

A. Policy

The LPA shall ensure that disadvantaged business enterprises as defined in 49 C.F.R.pt. 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 C.F.R. pt. 26 are hereby made a part of and incorporated by this reference into this agreement.

A. Disadvantaged Business Enterprises (DBEs) Obligation

The LPA and State shall ensure that disadvantaged business enterprises as defined in 49 C.F.R. pt. 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 C.F.R.pt. 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 26. 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 27. 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 _____, 2016.

WITNESS:
Therea J. Meier

CITY OF LINCOLN
Chris Beutler

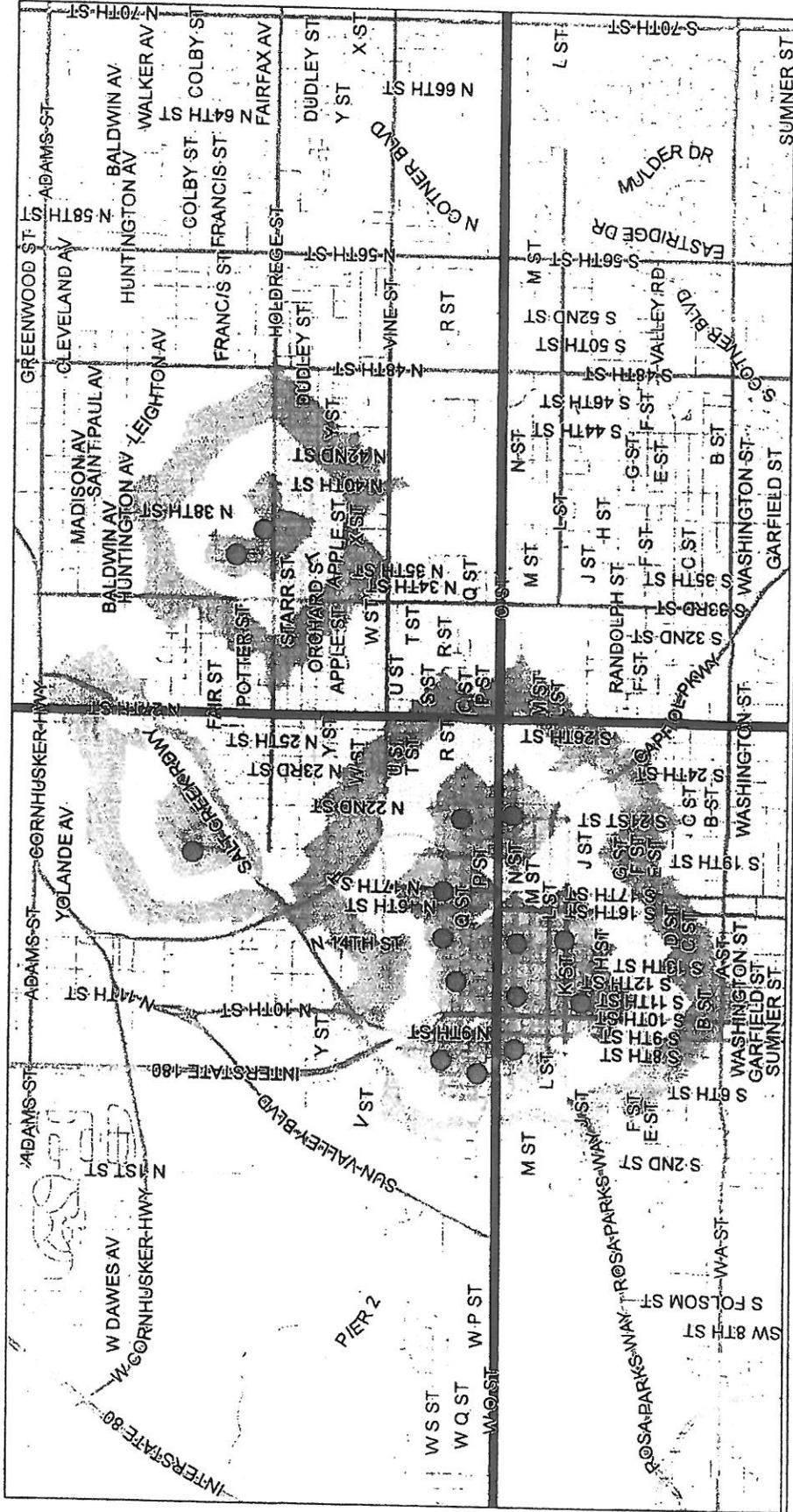
LPA Clerk

Mayor

EXECUTED by the State this _____ day of _____, 2016.

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

Materials & Research Engineer



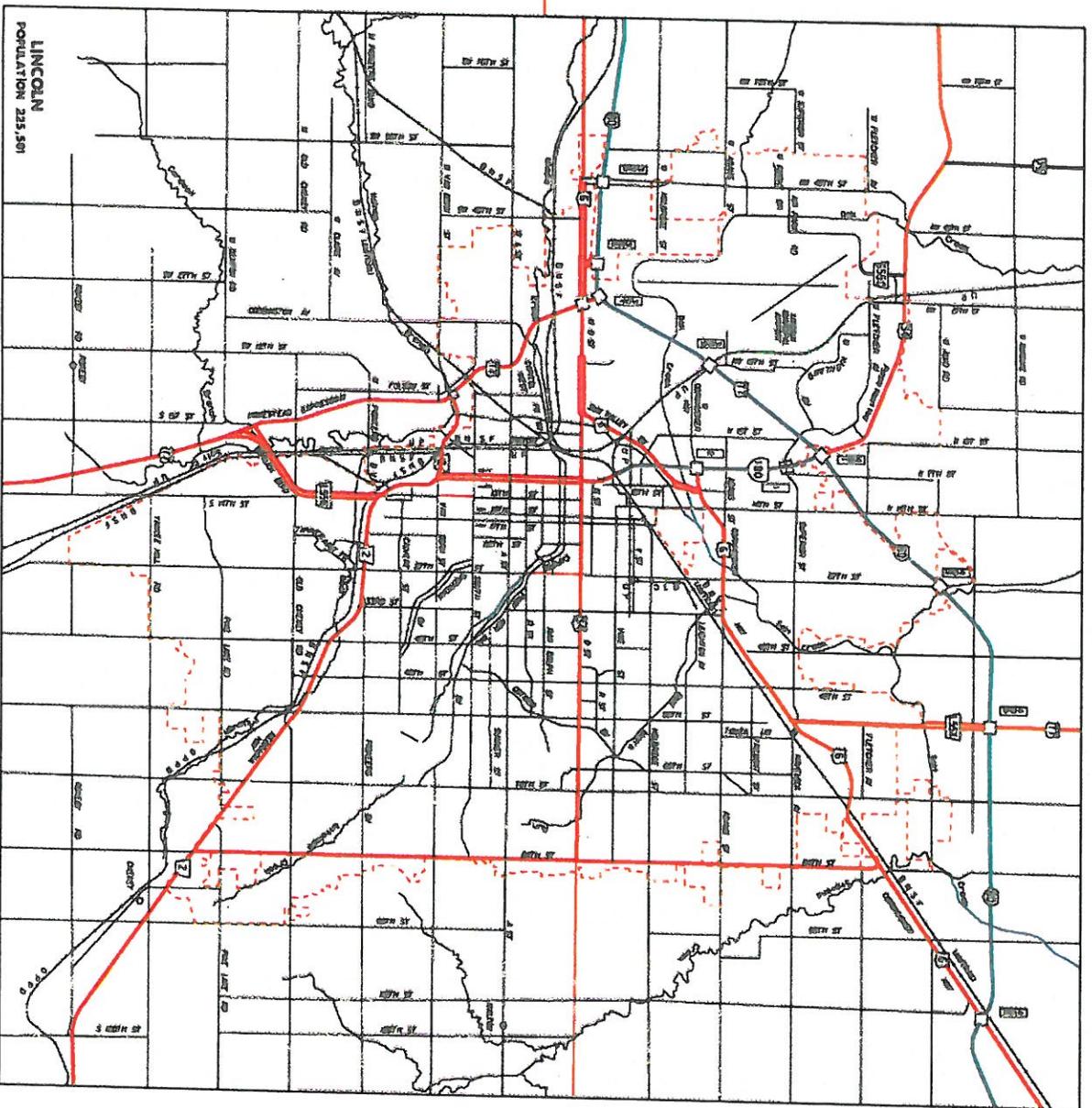
Service Area: Time in minutes (5, 10 and 15 @ 3 Mph) from Selected Proposed Bike Stations

- Proposed Stations
- 5
- 10
- 15
- St & 27th St
- Major Streets
- Streets

City of Lincoln: Urban Development



HIGHWAY BEAUTIFICATION CONTROL ROUTES - LINCOLN, NEBRASKA



- INTERSTATE
- CONTROLLED ROUTES
- COMBINED CONTROLLED ROUTES & NEBRASKA BYWAYS
- NEBRASKA BYWAY