

RESOLUTION NO. 2010-

WHEREAS, it is in the best interests of the City of Lexington to enter into an Agreement with the Nebraska Department of Roads for Project No. STPAA-6556(4), State Control No. 61338, 13<sup>th</sup> Street, Park Street to Airport Rd., which Agreement will replace the original agreement (XL0343) and a supplemental agreement (XL0343#1); and

WHEREAS, said project will include a request for Federal funds; and

WHEREAS, the City of Lexington understands that it must strictly follow all Federal, state and local laws, rules, regulations, policies and guidelines applicable to the funding of a Federal aid project; and

WHEREAS, the City of Lexington and Nebraska Department of Roads which to enter into a Project Program Agreement providing the various duties and funding responsibilities for the specified Federal aid project;

BE IT THEREFORE RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, that John Fagot, the President of the Council, is hereby directed and authorized to execute on behalf of the City of Lexington the Project Program Agreement as attached to this Resolution, with the State of Nebraska Department of Roads for Project No. STPAA-6556(4), State Control No. 61338, 13<sup>th</sup> Street, Park Street to Airport Rd.

BE IT FURTHER RESOLVED, that the original program agreement XL0343 and the supplemental agreement XL0343#1 shall be null and void upon execution of the new agreement.

BE IT FURTHER RESOLVED, that the City of Lexington is committed to providing local funds for the project as required by the said Project Program Agreement, STPAA-6556(4), State Control No. 61338, 13<sup>th</sup> Street, Park Street to Airport Road.

. Passed and approved on August 24, 2010.

---

John Fagot, President of Council

ATTEST:

---

City Clerk

# A G R E E M E N T

PROJECT NO. STPAA-6556(4)  
CONTROL NO. 61338  
CITY OF LEXINGTON, NEBRASKA  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
13<sup>TH</sup> STREET, PARK STREET TO AIRPORT RD

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

WITNESSETH:

WHEREAS, the City of Lexington and the State have previously entered into a program agreement for Project No. STPAA-6556(4) executed by the City on June 24, 2003 and executed by the State on July 7, 2003, and Supplemental Agreement #1 executed by the City on October 5, 2005 and executed by the State on October 14, 2005, and

WHEREAS, the City of Lexington and the State agree that the original program agreement XL0343 and the supplemental agreement XL0343 #1 are null and void and will be replaced with this agreement, and

WHEREAS, this project has been designated as being eligible for American Recovery and Reinvestment Act (ARRA) funds by the Department of Transportation, Federal Highway Administration, in compliance with Federal Laws pertaining thereto, and

WHEREAS, the LPA certifies that it will request and use the funds provided by ARRA and that the funds will be used to create jobs, promote economic growth and certifies that this project meets the requirements of ARRA, and

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, 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 cooperate to the end of obtaining Federal approval of the proposed work and Federal Funds for the construction of the proposed improvement, with the understanding that no State Funds are to be expended on this project, and

WHEREAS, ARRA funds will be used for eligible construction and construction engineering; matching funds are not required. Any eligible expenses not funded by ARRA can be funded using 80 percent Federal Surface Transportation Program (STP) funds and 20 percent LPA funds or using 100 percent LPA funds, and

WHEREAS, ineligible costs will be 100 percent LPA funds, and

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

WHEREAS, the RC has successfully completed training required by the State to serve as an RC for the Federal-aid Transportation project, and

WHEREAS, the RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities and maintain the project's eligibility for Federal-aid Transportation project funding, and

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

WHEREAS, the LPA will support the RC and is ultimately responsible to ensure that, at a minimum:

1. The project receives independent and careful development, supervision and inspection,
2. The project is constructed in compliance with the plans and specifications,
3. All aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and
4. Decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

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



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

WHEREAS, the State's responsibility is to provide quality assurance and project oversight to ensure that the project is designed, constructed and managed according to federal rules and regulations. The State will notify the LPA when federal funding will be withheld or lost where such development and/or construction of the project was not prosecuted in accordance with the proposed plans, 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 pass-through monies from the Federal Highway Administration (FHWA). If a non-federal entity expends \$500,000 or more in total federal awards in a fiscal year, then the A-133 audit is required as explained further in this agreement, and

WHEREAS, the total cost of the project including construction, construction engineering and utilities is currently estimated to be \$1,640,983.89, but such costs may increase or decrease due to variations between the estimated and actual project costs and due to variations in funding sources, and

WHEREAS, the LPA has earmarked and will place in its fiscal budget sufficient funds to pay all project costs that may not be paid for by Federal funds; such costs are currently estimated to be \$328,196.78 (20 percent of \$1,640,983.89), but such costs may increase or decrease due to variations between the estimated and actual project costs, and due to variations in funding sources, and

WHEREAS, the project is described as follows:

13<sup>th</sup> Street, from Park Street to Airport Road, the City would like to remove and replace the pavement, full width, including the replacement of curbside sidewalks, and the construction of a 10' wide hike/bike trail. The trail runs on the north side of 13<sup>th</sup> Street from Airport Road to the east property boundary of Optimist Park, then across to the south side of 13<sup>th</sup> Street and continues east to Park Street. During construction, the City intends to upgrade the existing water main from Park Street to Erie Street to a 12" main as well as install a sanitary sewer main from Erie Street to Hampton Street to improve facilities and eliminate a lift station at the 13<sup>th</sup> Street Intersection.

WHEREAS, the LPA desires that this project as shown on attached EXHIBIT "A" be constructed under the designation of Project No. STPAA-6556(4), as evidenced by the Resolution of the LPA dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010, attached as EXHIBIT "B" and made a part of this agreement.

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

SECTION 1. DEFINITIONS

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

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

**Full-Time Public Employee** means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which Federal-aid is sought.

**Public Employee** means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

**Responsible Charge** means the public employee who is fully empowered by the LPA and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project from planning 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 owner's interests in the delegated technical tasks.

## SECTION 2. RESPONSIBLE CHARGE (RC)

- A. The LPA hereby designates Dennis Burnside as the RC for this project.
- B. Duties and Assurances of the LPA for this project.
  - 1. The LPA has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision making.
  - 2. The RC is a full-time employee of the LPA or of another entity as defined in "Public Employee" above.
  - 3. The RC is fully qualified and has successfully completed required training to serve as an RC.
  - 4. The LPA shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.
  - 5. The LPA shall not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this agreement.
  - 6. The LPA shall provide necessary office space, materials and administrative support for the RC.
  - 7. The LPA shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.
  - 8. The LPA shall take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.
  - 9. The LPA agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.
  - 10. The LPA shall comply with the conflict-of-interest requirements of 23 CFR 1.33.

11. If the designated RC becomes no longer assigned to the project during the design phase, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer and the LPD Project Coordinator; after such notification the LPA shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC becomes no longer assigned to the project in the letting or construction phases, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Project Coordinator, and the State District Representative; after such notification, the LPA shall replace the RC no later than ten calendar days or sooner if possible. The State will require the LPA to sign a supplemental agreement designating the replacement RC.
  12. The LPA agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes meeting all post-construction environmental commitments. The LPA understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the LPA or its agents or representatives result in a finding that a project is ineligible for Federal funding, the LPA will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.
- C. The LPA understands that the following are the duties of the RC:
1. Serve as the LPA's contact for issues or inquiries for Federal-aid projects assigned by the LPA.
  2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
  3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.
  4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
  5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a



professional engineer licensed in the State of Nebraska (reference Neb. Rev. Stat. §81-3445).

6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the LPA, which includes the LPA's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.
9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
10. Keep the State informed of all project issues.
11. Arrange preconstruction conference.
12. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the LPA's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.
15. Ensure that proper construction management processes have been developed and implemented for the project.
16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.
18. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.

**SECTION 3.** If ARRA funds are used, this project will be designated as a full Federal oversight project and the State shall present this project to the FHWA for its approval.

**SECTION 4.** Acknowledging the necessity for prioritizing of funding and the unknown availability of remaining unobligated ARRA funds as the time of eligibility is determined,



the 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 ARRA funding.

SECTION 5. The LPA and the State agree that the funding on this project will be as follows:

- A. ARRA funds will not be used for preliminary engineering or Right-of-Way phases.
- B. Any eligible utility work authorized prior to construction, authorized with other (non-ARRA) Federal funds or done under a separate contract will not be eligible for ARRA funds, and may be paid for with 80 percent Federal and 20 percent LPA funds, or 100 percent LPA funds. If eligible utility work is authorized with the construction, and the authorization occurred after February 17, 2009, then it is eligible for ARRA funds.
- C. ARRA funds will be used for eligible construction and construction engineering; matching funds are not required. Any eligible charges or costs not funded by ARRA funds can be funded using 80 percent Federal Surface Transportation Program funds and 20 percent LPA matching funds, or 100 percent LPA funds.
- D. The LPA is responsible for any costs not paid by Federal or State funds.

SECTION 6. FEDERAL APPROVAL

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

SECTION 7. RECORDS RESPONSIBILITY

The LPA shall maintain all correspondence files, books, documents, papers, field notes, quantity tickets, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office at all reasonable times during the contract period and for three years from the date of final project acceptance by FHWA 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 8. DRUG FREE WORKPLACE

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

SECTION 9. FEDERAL AID

The LPA understands and agrees that the sole duty of proper prosecution of the project, in accordance with the approved plans, belongs with the LPA, its RC and Contractors, and that

failure to properly prosecute and construct the project in accordance with the approved plans may result in the loss of federal funding.

Prior to beginning any phase of work on the proposed project, the LPA shall contact the State's Local Projects Division Section Engineer for direction and assistance to ensure that all project work will be accomplished according to Federal procedures and requirements. It is the responsibility of the LPA/RC to verify with documented evidence that federal funding authorization was obtained.

#### SECTION 10. FAIR EMPLOYMENT PRACTICES

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

#### SECTION 11. A-133 AUDIT

The funding for the project under this agreement includes pass-through federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 and the implementing regulations contained in OBM Circular A-133, the A-133 Audit is required if the non-federal entity expends \$500,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.

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

#### SECTION 12. LPA GUIDELINES

The LPA agrees to follow the LPA Guidelines Manual for this project. In the event that the LPA Guidelines Manual doesn't address clearly any part of the project work, the LPA shall seek clarification from the State's Local Project Division Section Engineer or Project Coordinator.



### SECTION 13. SCHEDULE

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

### SECTION 14. COSTS

The total cost of the project which includes nonbetterment utility rehabilitation, construction and construction engineering is currently estimated to be \$1,640,983.89. The State agrees to use 100% ARRA funding, if available for construction and construction engineering. Any eligible expenses not funded by ARRA can be funded using 80 percent Federal Surface Transportation Program (STP) funds. Both the LPA and State recognize this is a preliminary estimate and the final cost may be higher or lower due to variations between the estimated and actual project costs, and due to variations in funding sources.

The final settlement between the State and the LPA will be made after final review and approval by the State and a final audit, if deemed necessary, by the State or its authorized representative has been performed to verify actual costs. The LPA agrees to reimburse the State for any overpayments discovered by the State or its authorized representative.

The LPA understands that payment for the costs of this project, whether they be services, engineering, Right-of-Way, utilities, material or otherwise, are the sole responsibility of the LPA where Federal participation is not allowable or available. Therefore, where the Federal government refuses to participate in the project or any portion of the project the LPA is responsible for full project payment with no cost or expense to the State in the project or portion of the project. Should the project be abandoned before completion, the LPA shall pay all costs incurred by the State prior to such abandonment.

The LPA further agrees, that if reimbursement to the State is required on this project, and if the LPA is unable to or does not make reimbursement within 60 calendar days after the State notifies the LPA of such required reimbursement; the State by this agreement is authorized to withhold money from State Highway funds apportioned or to be apportioned to the LPA, in an amount equal to the required reimbursement to the State.

Project coordination and quality assurance review costs incurred by the State with respect to the entire project will be part of the cost of the project to be paid out of LPA and Federal Funds. The State may, at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the LPA agrees to pay such invoices within thirty days of receipt. The LPA's share of the total project cost will be all costs not paid for by Federal Funds.

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

The State and the LPA agree that the Federal (STP) share payable on this project will not exceed 80 percent of the eligible construction, construction engineering and utility costs.

#### SECTION 15. PRELIMINARY ENGINEERING

The parties agree that preliminary engineering, which includes project design, plan development, environmental studies and final design, will be the responsibility of the LPA.

The LPA, with such assistance as may be required from the State, agrees to perform or caused to be performed a preliminary survey and all necessary plans, specifications and estimates for the proposed work. All plans, specifications and estimates must be presented to the State for approval to ensure adherence to Federal Standards. The LPA or its Consultant shall design the project according to the current AASHTO Policy on Geometric Design of Highways and Streets, the Nebraska Minimum Design Standards of the Board of Public Roads Classifications and Standards, the Americans with Disabilities Act (ADA) Accessibility Guidelines and LPA Guidelines Manual for Federal-aid projects. All plans, specifications and bid proposals, permits and any other contract documents must be submitted to and reviewed by the State prior to bid letting. Any deviations from the above publications must be approved by the State.

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

#### SECTION 16. PAYMENT

The State will pay the Consultant (if applicable) and contractor directly as follows.

- A. If the **construction engineering** is provided by a Consultant, the LPA Responsible Charge shall submit the LPA approved **construction engineering** invoice and progress report to the State District Construction Representative for approval of payment, with a copy to the State's Local Projects Division Coordinator.



The State District Construction Representative will forward the invoice and progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the Consultant for the construction engineering.

B. All project **contractor construction costs** will be paid directly to the contractor by the State. Progress estimates and final estimates shall be prepared by the LPA, or its Consultant, using **Site Manager Software** and must be approved by the LPA Responsible Charge before payment to the Contractor can be made by the State.

C. The LPA Responsible Charge shall submit the LPA approved **construction engineering** invoice and progress report to the State District Construction Representative for **approval of payment**, with a copy to the State's Local Projects Division Coordinator. The State District Construction Representative will forward the invoice and progress report to the State's **Planning and Project Development Division** for payment processing. The State will make payment directly to the engineering firm and/or agency for the construction engineering.

#### SECTION 17. SITE MANAGER:

- A. The State will furnish the following items, equipment, and services:
- (1) Two sets of project design plans and any required standard report forms.
  - (2) State of Nebraska Road Construction Manual and Materials Sampling Guide on the Internet ([www.transportation.nebraska.gov](http://www.transportation.nebraska.gov)).
  - (3) Prepare Supplemental Construction Engineering Agreements.
  - (4) Field books and assist in their initial preparation, with the LPA, or its Consultant, setting up and making the field entries. Electronic field books are acceptable with weekly copies to the State District Construction Representative
  - (5) Software: Trns•port Site Manager (NDOR construction recordkeeping system)  
RUG (Report & Utility Generator)  
IBM DB@ UDB Client  
Virtual Private Network (VPN) connection software  
Necessary access to State's computer network  
All upgrades related to the software above.
  - (6) Hardware: The State will not supply any hardware.
  - (7) Provide training to use the software (Trns•port Site Manager).

(8) Signs.

B. LPA or its Consultant, to furnish or perform:

The LPA, or its Consultant, will furnish and provide the following items and services:

- (1) Hard hats or orange ball caps when hard hats are not required, yellow/green vest, safety-toed shoes, eye and ear protection and will wear such when on the project site. Projects associated along railroad areas may restrict the use of hard hats, ball caps, vests or shirts of certain colors. The LPA, or its Consultant, shall coordinate with the State Representative as to specific project requirements.
- (2) The LPA shall be responsible for all required sampling and testing as required in the current Materials Sampling Guide. (Refer to Table of Contents, Section 1, LPA Inspection Instructions). The LPA, or its Consultant, shall provide the list of material samples to be tested (at which NDOR Laboratory) to the State's Representative.
- (3) Submit completed forms and reports as outlined in the scope.
- (4) Install and remove all portable surveying signs.
- (5) Prepare contractor change orders with the assistance of the State Representative.
- (6) Construction stakes, nails and flagging material for survey party.
- (7) Obtain an Internet Service Provider capable of providing a reliable connection between the State's computer network and the LPA's, or its Consultant's, personal computer.

**Software:** Windows XP Pro SP3; Windows Vista Business 32bit  
Window 7 Business 32bit

Microsoft Office 2000 or higher (Word, Excel)

Adobe Acrobat Reader Version 8.0 or higher

All upgrades related to software

**Hardware:** Personal computer capable of running required software (Transport Site Manager). The minimum requirements are as follows:

**Processor:** 1.8 GHz or better recommended

**RAM:** 1.0 GB minimum (more recommended)



**Disk Storage:** 10 GB available hard disk

Only the LPA's Project Manager and Inspectors assigned to this project, as defined in the LPA's proposal, and approved by the State, are allowed to use the State-provided software and connections. Transport Site Manager is an AASHTOWare® product licensed for use by the State and its agents. Use of the software and connections provided by the State shall be project-related only. Unauthorized access, alteration, use or distribution of the software and connections provided is strictly forbidden.

On completion of the project, as determined by the State, all software furnished by the State will be removed from the LPA's, or its Consultant's, personal computer and all connections to the State network will be disabled. The removal of software and connections will be at the discretion of the State.

- (8) Plant inspection of concrete materials for project.
- (9) Have testing and sampling equipment calibrated and checked prior to commencing work.
- (10) Project signing plan.
- (11) Furnish the test equipment (retroreflectometer) and check reflectivity of barricades and other warning devices.
- (12) The LPA, or its Consultant, shall perform all required services under the direct supervision of a registered Professional Engineer licensed to practice in the State of Nebraska.
- (13) The LPA, or its Consultant, shall prepare and keep: detailed notes, computations and measurements, records of quantities of pay items used in the work; records of the materials entering the work and the tests or basis of acceptance of these materials; and a diary record of the contractor's operations. Upon completion of the work, the LPA, or its Consultant, shall prepare as-built plans and a summary of the final quantities of all contract items covered by this agreement in the format provided by the State Representative, which together with all original notes, computations, measurements and records outlined herein, shall be

promptly submitted to and become the property of the State. The LPA, or its Consultant, shall certify in writing as to the completeness of the above reports, verifications and analyses, and shall affix to the title page and all other sheets that corrections, additions, or deletions have been made, the signature and seal of registration of a Professional Engineer licensed to practice in the State of Nebraska. The completed as-built plans and the final quantities shall be delivered to the State no later than forty-five (45) calendar days after completion of the construction of this project as noted in the letter of tentative acceptance by the State's District Engineer. The LPA, or its Consultant, shall certify in writing to the State Representative compliance with the contract, plans, scope of work and statutes prior to acceptance of the project by the State's District Engineer. The State will provide written notification of the acceptance of the construction to the LPA, and its Consultant if applicable.

If the delivered as-built plans and the final quantities are not complete or accurate to the satisfaction of the State, the State will return them to the LPA, or its Consultant, for necessary action. The LPA, or its Consultant, shall make such corrections without expense to the project. Additional work required to complete previous incomplete submittals will be paid for in accordance with Section 14 herein.

- (14) Sampling and Testing frequency and methods shall be in accordance with the State of Nebraska Materials Sampling Guide and any Supplements to the Guide, the Standard Specification for Highway Construction, the special provisions of the contract, or as directed by the State. The LPA, or its Consultant, will perform all sampling duties in the same manner as if the NDOR had performed the samples. The LPA, or its Consultant, shall take custody of all asphalt QA samples as described in Section 1028.03 Section 4 of the Standard Specifications until custody can be properly transferred to NDOR laboratory personnel. The LPA, or its Consultant, shall also monitor all Contractor QC testing for compliance to the standards.



## SECTION 18. ENVIRONMENTAL RESPONSIBILITY

The LPA shall be responsible to complete any federally required environmental actions, commitments, and documents for this project.

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

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

## SECTION 19. UTILITIES

Any utility rehabilitations or installations made within the Right-of-Way on this project after execution of this agreement must be in accordance with the provisions of Federal-Aid Highway Policy Guide, 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, and a State approved Utility Accommodation Policy. In order to receive Federal-Aid Funds for this improvement, the LPA shall follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way" and the LPA manual. Any work within the State right-of-way requires an approval in the form of a letter of authorization or a permit. The LPA shall contact the State's District Engineer or Permits Officer to determine if a permit or permits is needed for the project and to make application for those permits if necessary.

All nonbetterment municipally owned and operated utility rehabilitation costs within the corporate limits of the LPA will become a project cost. Outside the corporate limits, the nonbetterment portion of utility rehabilitation costs will be reimbursed for facilities occupying private property. Further, there will be no Federal reimbursement for private or nonmunicipally owned and operated utilities if they are located on public Right-of-Way, however, nonbetterment costs of privately owned and operated utilities will be reimbursed if they exist on private property and it is necessary to rehabilitate the utilities due to this project. All such reimbursements will be based on items and estimates submitted by the utility and approved by the LPA and State. Should this project necessitate the nonbetterment rehabilitation of any privately owned and operated utilities, then the LPA shall send the State an estimate of those nonbetterment utility rehabilitation costs prior to the work being done. The LPA shall pay for utility nonbetterment rehabilitation and then bill the State for those eligible reimbursement costs. All reimbursements will be based on the actual costs of material, services and labor. This will be subject to audit, if the State deems that one is necessary.

## SECTION 20. RIGHT OF WAY ENCROACHMENTS

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

## SECTION 21. LAND CORNERS

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

## SECTION 22. ASSESSMENTS

The LPA may not levy a special assessment against only adjacent properties. However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved. Any misuse of assessments could jeopardize the federal reimbursement for the entire project. The LPA shall seek approval from NDOR and FHWA for the use of any assessment.

## SECTION 23. LETTING

The State agrees to receive and review all plans, specifications, estimates and surveys of the LPA to ensure they conform to Federal Standards and to advertise, conduct a letting and receive bids for this project. The selection of low bidders and the awarding of a contract or contracts shall be concurred in by the LPA and the contract shall be signed by the LPA.

Prior to advertising the project for bids, the LPA shall submit a Right-of-Way Certificate and the final plans package (100 percent plans, specifications, engineers' estimate, status of utilities, environmental permits and contract bidding documents) to the State's Local Projects Division Project Coordinator. The State will review the submitted items and proceed with advertising the project for bids. The selection of low bidders and awarding of a contract or contracts must be concurred in and signed by the LPA prior to State award.



## SECTION 24. CONSTRUCTION ENGINEERING

The State and LPA agree that the construction engineering, which is an eligible project expense and which includes construction management, staking, inspection and field testing, will be accomplished by LPA forces or a State Certified Consultant selected by the LPA.

The LPA agrees, if a Consultant is to be selected, that the method of procurement and evaluation and the resulting agreement between the Consultant and the LPA must conform to the State's standard practices and will be subject to State review and concurrence prior to agreement execution between the LPA and the Consultant. **Any CE work performed prior to Federal authorization and receipt of a NTP will not be eligible for Federal funding.**

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

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

The State District Construction Representative assigned to the project will conduct a final review of the project and will determine if the project is acceptable. If the State District Construction Representative determines the project is acceptable, the State District Construction Representative will sign the DR Form 299 and send it to the State District Engineer for signature. The State District Engineer will forward the form to the State's Local

Projects Division Section Engineer for signing, project closeout and final payment. If the State District Construction Representative determines the project is not acceptable, the State District Construction Representative will notify the LPA's RC in writing of what needs to be done to bring the project into compliance for acceptability before the State District Construction Representative will sign the DR Form 299 and recommend the project for closeout. The LPA shall contact the State's District Engineer for State District Construction Representative assignment. It is understood that any construction services furnished by the State will be part of the cost of the project and the State's expenses will be included as costs of the project, as specified in this agreement.

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

#### SECTION 25. CHANGES TO LPA ROUTES

Changes to the LPA routes which affect the function or operation of the improvement made either during construction or after the project is completed, will require prior approval of the State. Requests for changes during project construction must be made to the State Representative who will then forward it to the Local Projects Division Project Coordinator for final approval.

#### SECTION 26. MAINTENANCE

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

#### SECTION 27. TRAFFIC CONTROL

Traffic control during project construction must conform with the Manual on Uniform Traffic Control Devices. Before final acceptance of the project by the State, all signing and marking must be in conformance with the current Manual on Uniform Traffic Control Devices.

#### SECTION 28. DISADVANTAGED BUSINESS ENTERPRISES

##### 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



disadvantaged business requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

**B. Disadvantaged Business Enterprises Obligation**

The LPA and State shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal Funds provided under this agreement. In this regard, the LPA shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

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

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

**SECTION 29. NONDISCRIMINATION CLAUSES**

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

- (1) **Compliance with Regulations:** The LPA shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) **Nondiscrimination:** The LPA, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be

performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.

- (4) Information and Reports: The LPA shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to,
- (a) Withholding of payments to the LPA under this agreement until the LPA complies, and/or
  - (b) Cancellation, termination or suspension of this agreement, in whole or in part.
- (6) Incorporation of Provisions: The LPA shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The LPA shall take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the State to enter into such litigation to protect the interests of the State, and in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

### SECTION 30. FINAL SETTLEMENT

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



SECTION 31. REPRESENTATIONS

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

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

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

WITNESS:

LPA OF LEXINGTON

\_\_\_\_\_  
LPA Clerk

\_\_\_\_\_  
Mayor

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

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

\_\_\_\_\_  
Local Projects Division Engineer

RECOMMENDED:  
Gary Thayer, P.E.

\_\_\_\_\_  
District 6 Engineer

AGRC5-HL