RESOLUTION

SIGNING OF THE LPA PROGRAM AGREEMENT – FEDERAL-AID FUNDING

Lancaster County

Resolution No. R-16-0064

Whereas: Lancaster County is proposing to develop and construct a transportation project for which it would like to obtain Federal funds;

Whereas: County understands that it must strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project;

Whereas: County and State of Nebraska, Department of Roads (State) wish to enter into an **LPA Program Agreement – Federal-Aid Funds** which will set out the various duties and funding responsibilities for the Federal-aid project; and

Whereas: County wishes to designate its representative for this project.

Be It Resolved by the Board of Commissioners of Lancaster County that:

The Chair, Roma Amundson, is hereby authorized to sign the attached **LPA Program Agreement – Federal-Aid Funds** between the County and the State.

County hereby designates **Arlynn Brunke** to serve as County's representative and Project Liaison (PL) with State for this project.

Lancaster County is committed to providing local funds for the project as required by the **LPA Program Agreement – Federal-Aid Funds**.

NDOR Project Number: HRRR-55(180)

NDOR Control Number: 00869F

NDOR Project Name: Advanced Railroad Pavement Marking

Adopted this 6 day of September, 2016 at Lincoln Nebraska.
(Month) (Year)

The Board of Commissioners of Lancaster County

Larry Hudkins

Deb Schorr

R. Amundson Absent

Todd Wietig

Bill Avery

Board/Council Member Hudkins
Moved the adoption of said resolution
Member Schorr Seconded the Motion
Roll Call: 4 Yes 0 No 0 Abstained 1 Absent
Resolution adopted, signed and billed as adopted

Attest:

Dan Nolte

Signature Clerk

LPA PROGRAM AGREEMENT- FEDERAL-AID FUNDS

LANCASTER COUNTY
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO, HRRR-55(180)
STATE CONTROL NO. 00869F
ADVANCED RAILROAD PAVEMENT MARKING

THIS AGREEMENT is between Lancaster County, Nebraska, a local public agency ("LPA"), and the State of Nebraska, Department of Roads ("State"), collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, Federal-aid funds are available for transportation projects on eligible routes within the jurisdiction of Local Public Agencies under Title 23 of the United States Code and 23 Code of Federal Regulations, and

WHEREAS, federal law requires that the State act as a liaison for all Federal-aid local transportation projects, and

WHEREAS, LPA has a proposed project on an eligible route that LPA would like to seek Federal-aid funds to reimburse LPA for a percentage of the eligible and participating costs of the project, and

WHEREAS, LPA desires that this project, the location of which is shown on attached **Exhibit "A"**, be developed and constructed under the designation of Project No. HRRR-55(180) as evidenced by the Resolution of the LPA dated the _____ day of _____, 2016, attached as **Exhibit "B"** and made a part of this Agreement, and

WHEREAS, the project is described generally as follows:

Installation of Advanced Railroad Pavement markings on rural county roads to prevent or minimize rail-vehicle crashes on rural county roads throughout the County

WHEREAS, the Federal share payable on any portion of a local Federal-aid project will be a maximum of 90 percent of the eligible and participating costs; the LPA's share will be the remaining 10 percent of the eligible and participating costs; and LPA will also be responsible for all other nonparticipating or ineligible costs of the project, 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 allow and State requires that LPA use its own funds to match Federal Funds for the costs of local transportation projects, and

WHEREAS, State is willing to assist LPA in seeking Federal approval of the proposed project and use of Federal Funds to reimburse LPA for a percentage of the development and construction of the proposed improvement, with the understanding that LPA's project is not a State project and that no State Funds are to be expended on this project, and

WHEREAS, the LPA wishes and the State intends to act as the Responsible Charge (RC) for the project on the LPA's behalf, and

WHEREAS, State is willing to act as RC so long as the State is reimbursed for its costs and the parties understand that the project will be LPA's project and LPA will have ultimate responsibility for the development and construction of the project, and

WHEREAS, LPA understands that time is of the essence in the development of this project and LPA is willing to allow State to manage the schedule of the project and LPA commits to taking prompt action when requested by State so that this project will stay on schedule, and

WHEREAS, LPA understands that the State, on behalf of LPA, will advertise the project for bids, conduct a letting, make award recommendations to LPA and prepare a construction contract for LPA's execution and use, and

WHEREAS, the State will be responsible for paying directly the project construction contractor, preliminary and construction engineering providers, and any consultant related to Right-of-Way appraisal, appraisal review, negotiation and relocation assistance.

WHEREAS, it is understood that the State will act in two capacities for this project; (1) State will act as a liaison with Federal Highway Administration (FHWA) concerning issues about the eligibility of the project for Federal-aid funding; and (2) State will coordinate with the LPA to address any Federal-aid issues that have been identified with the project , and

WHEREAS, the Parties understand that this Agreement will be posted to a publically accessible database of agreements pursuant to the requirements Neb.Rev.Stat. § 84-602.02, unless otherwise provided by law.

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

WHEREAS, the funding for the project under this Agreement includes monies from the FHWA, therefore, if a non-federal entity expends $750,000 or more in total federal awards in a fiscal year then the audit requirements of 2 CFR, Subtitle A, Chapter 2, Part 200, Subpart F, must be addressed as explained further in this Agreement, and

WHEREAS, the planning level DR 530 estimate of the cost of the project is $19,000.00 but such costs may increase or decrease due to variations between the estimated and actual project costs, and

WHEREAS, LPA's share of the total project costs is estimated to be $1,900.00. LPA has earmarked and has placed in its fiscal budget at least the amount of the local match indicated above. LPA's share of the project costs may increase or decrease due to variations between the estimated and actual project costs.

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:

"CFDA" means Catalog of Federal Domestic Assistance.

"CFR" means the Code of Federal Regulations.

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

"LPA" means the Local Public Agency that is sponsoring a Federal-aid transportation project.

"NEB. REV. STAT" means the Nebraska Revised Statutes, which is the official compilation of Nebraska law.

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

"RESPONSIBLE CHARGE" or **"RC"** means the State representative(s) assigned to oversee the development of the project. The RC will ordinarily be the State's Project Coordinator from the Local Projects Section of the Material and Research Division of the Nebraska Department of Roads.

"PROJECT MANAGER" means the employee or designee of the State who will manage the construction of the project on behalf of the LPA.

"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 for LPA federally funded transportation projects.

"LPA's PROJECT LIAISON", "LPA's PL" or **"PL"** means the officially designated employee of LPA who has been properly authorized to serve as LPA's representative and to be a liaison between LPA and the State and Federal government for LPA's Federal-aid transportation project.

SECTION 2. DURATION OF THIS AGREEMENT (2-25-14)

2.1 ***Effective Date*** --This Agreement is binding on the date it is fully executed by the Parties.

2.2 ***Renewal, Extension or Amendment*** --This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.

2.3 ***Identifying Date*** – For convenience, this Agreement's identifying date will be the date the State signed the agreement.

2.4 ***Duration***– This 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, and operational commitments, will remain in effect as long as required by law, NEPA document, permit or agreement.

2.5 ***Termination*** -- Further, State reserves the right to terminate this Agreement as provided herein. If the LPA determines that for any reason it will not continue with the development of this project as a Federal-aid project, the LPA shall notify the State and negotiate any necessary project termination conditions consistent with this Agreement.

SECTION 3. PURPOSE OF AGREEMENT

3.1 The LPA wishes to obtain Federal-aid funding for a Federal-aid transportation project on a street, highway, road, trail or other transportation related facility under LPA's jurisdiction. The Federal Highway Administration (FHWA) will not provide funding directly to LPA for this project, but will provide 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. Further, State will act as the RC on behalf of LPA. 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. 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, but is not limited to, meeting all post-construction commitments, including but not limited to any maintenance and environmental document commitments. The LPA understands that failure of LPA or State to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that FHWA finds that the 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. 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 except in the event that an error or omission of State proximately caused the project to be declared ineligible for federal funding in whole or in part, LPA's sole remedy against State is that LPA shall not be required to repay State for State's costs attributable to the part of the project in which the error or omission occurred. 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.

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

3.3 The parties further understand that the project plans and specifications shall be sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates will be prepared and the construction will be 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 as required by Neb. Rev. Stat. § 81-3445.

SECTION 4. FEDERAL AID PROJECT REQUIREMENTS

For any work to be completed by LPA on this project, 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.

4.1 The Applicable Legal and Contract Requirements.

a. The primary provisions of law applicable to this Agreement are generally found in 23 U.S.C. Section 134; and 23 CFR Part 420, subpart A, and Part 450, subpart C. .

b. **LPA Guidelines Manual** - LPA also agrees to strictly comply with the applicable 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 does not 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, and shall make its best effort to comply with such guidelines or clarification.

4.2 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.

SECTION 5 – GENERAL PROJECT DUTIES

5.1 State's Responsibilities.

This Project is LPA's project and LPA understands that State will be acting as LPA's representative in the development and construction of the project. The State will act as Responsible Charge (RC), on behalf of LPA, for this project. The State will also act as Project Manager and Project Inspector to oversee the construction of the project. Except for the duties expressly delegated to LPA herein, the State shall be responsible for completing or overseeing all stages of the development of the Federal-aid project **on LPA's behalf** including planning, environmental, design, right-of-way, utilities, railroad, construction and construction engineering.

5.2 LPA's Responsibilities.

LPA will be responsible for confirming that the State's work on its behalf conforms to LPA's intentions and will keep the project eligible for federal-aid funds. LPA shall make its best efforts to provide approvals, sign documents, and to promptly do all things necessary to help State or the project consultant(s) with the development and construction of LPA's project. LPA's Project Liaison shall be responsible for safeguarding the interests of LPA in the project, for giving approvals as needed, and for obtaining formal LPA approval and authority when deemed necessary by the LPA. LPA shall also, when applicable, provide construction inspection services related to any LPA owned utility facility rehabilitation work included within the project construction contract.

SECTION 6 – LPA'S PROJECT LIAISON

LPA shall formally appoint an LPA employee, and provide the State with that employee's name, mailing address, email address and phone number, and shall authorize that employee to act as LPA's Project Liaison (hereinafter known as "LPA's Project Liaison" or "LPA's PL" or "PL"), to take all actions necessary for the project on behalf of LPA and to serve as a liaison between the State and LPA. LPA's PL shall be certified by a process developed by State to act as a PL for the project.

SECTION 7 – PROGRAMMING DOCUMENT

LPA has submitted to State the official project programming document, the DR Form 530 that specified the scope of the project and the estimated cost of the project. The State's Project

Scheduling Division has approved the DR530. **LPA shall formally approve the signing of this Program Agreement.**

SECTION 8 – PROCUREMENT OF PROFESSIONAL SERVICES

LPA hereby authorizes the State to retain the Professional Services providers deemed necessary by the State for the development and construction of LPA's project. The typical Professional Services Providers used for a project of this type include but are not limited to project design and construction engineering; NEPA and other Environmental Specialists; Right-of-Way Appraisal, appraisal review, negotiation and relocation assistance; and construction engineering. LPA authorizes the State to use State's qualification based selection process or a State "On-Call" Consultant for the selection of Engineering or Environmental Consultants, and to select a service provider from the State's list of Right-of-Way Service Providers. State is further authorized by LPA to select any other service providers deemed necessary by State for LPA's project using State processes for such selections. The State shall make the final decision as to which service provider(s) will be selected for LPA's project. The Consultant Agreement will specify that State will manage and administer the agreement and enforce the terms and the progress of the work under the agreement on behalf of LPA. Although, the Consultant Agreement will be between LPA and consultant, the Parties understand that the state will be solely responsible for the day-to-day scheduling and oversight of the progress of the work under the contract. **LPA agrees to promptly sign any service provider Agreements prepared by the State with the selected Consultant.** Further, LPA hereby authorizes State to issue a Notice-to-Proceed to the selected service provider as soon as State determines it is necessary, even if such date is prior to obtaining LPA's execution of the agreement, unless LPA notifies the State in writing that the agreement must be executed before work may begin.

SECTION 9 – PLAN DEVELOPMENT AND PROJECT ENVIRONMENTAL WORK

9.1 General

The plans, specifications and estimates for the construction of LPA's project are expected to be developed by a design consultant, but if State elects to not use a design consultant, State employees will design the project on LPA's behalf. LPA shall authorize its Project Liaison (PL) to carefully follow the development of the project plans so that PL will have a thorough understanding of the planned improvement and will ensure that the project design is acceptable to LPA. LPA shall immediately notify State when it has concerns or questions about the development of the plans. It is expressly understood that LPA is responsible for the completed design of this project as if LPA had designed the project itself.

9.2 Plan-in-Hand (PIH)

The State and the Design Consultant shall prepare for and hold a PIH meeting at the project site, and shall create a PIH report from the PIH meeting. LPA's Project Liaison shall attend the project PIH meeting and Project Liaison shall notify LPA's governing body of the conclusions of the PIH report. **LPA shall formally review and approve the project PIH plans and report.** State will continue with the development of the project based on the PIH report and plans unless LPA promptly notifies State that LPA's governing body objects to the plans or conclusion(s) of the report.

9.3 Project Environmental Work

The LPA hereby authorizes State to act as the agent for the LPA concerning all environmental issues on this project. LPA authorizes the State to select an Environmental Consultant to complete the development and writing of the environmental documents and permit applications. State will oversee and manage the development of the environmental documents and permit applications, as well as the schedule for the environmental work. **The LPA's PL shall promptly review and approve the project NEPA documents and the environmental commitments that will be associated with this project; LPA's PL shall communicate those commitments to LPA's governing body.** LPA shall notify State immediately after review of such documents if LPA decides not to proceed with the project because of the environmental costs and commitments for the project. LPA will sign NEPA documents and permit applications and be responsible for meeting all environmental commitments as the owner of the transportation facility. ***MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM.*** If LPA's project is within an area that is subject to the federal Storm Water Phase II Regulatory Requirements of 40 CFR 122.34 (b), then project consultant will design, construct and maintain, as a part of this project, water quality facilities as required by LPA's National Pollutant Discharge Elimination system (NPDES) permitted Municipal Separate Storm Sewer System (MS4) program. If the LPA does not have an active construction storm water management and post construction storm water management program, the project consultant shall follow the State (NDOR) MS4 program.

9.4 90% Plans Stage

LPA shall review and give its formal approval to the construction plans at the "90% Plans" stage, including, when applicable, the right-of-way plans and the right-of-way cost estimates completed by the State or the project design consultant. After LPA's approval of the 90% plans, LPA shall also review and approve the utility rehabilitation plans developed from the 90% plans.

9.5 Coordinating Professional

As required by Neb. Rev. Stat. § 81-3437, if LPA's project involves more than one licensed professional engineer or architect, the State shall designate a Coordinating Professional for this project. The Coordinating Professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional shall verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. "Coordinating Professional" shall have the meaning set out in §81-3408 of the Nebraska Engineers and Architects Regulation Act (Neb. Rev. Stat. § 81-3401 et. seq.) The Coordinating Professional shall also comply with the provisions of the Act, including Neb. Rev. Stat. § 81-3437(3)(g), and the implementing Rules and Regulations, Title 110, NAC section 6.3, and when applicable, shall complete the duties of design coordination set out in Neb. Rev. Stat. § 81-3421.

9.6 Professional Performance

It is understood by the Parties that the LPA is solely responsible for the professional performance and ability of the LPA and the project consultant(s) in the planning, design, construction, operation and maintenance of this project. Any review or examination by the State, or acceptance or use of the work product of the LPA or the project consultant(s) 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 the project 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.

9.7 Public Involvement

Early in the planning of the project, the State's Public Involvement Coordinator will evaluate the project and decide what process is required for Public Involvement. State will coordinate all required public notice and public involvement Statewide Transportation Improvement Plan (STIP) questions. State and the project design consultant will facilitate all public involvement activities with assistance, when necessary, from the LPA. The LPA shall assist with the public involvement process and will be represented at public involvement activities that require attendance of LPA's representatives(s). The State's Public Involvement Coordinator will continue to oversee all project Public Involvement processes.

SECTION 10 – RIGHT-OF-WAY (ROW)

10.1 Governing Documents

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

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

10.2 LPA Authorization for State to Act on LPA's Behalf

This Section applies when the State determines that property rights need to be acquired for the construction of LPA's project. When additional property rights are needed for the project, the State shall complete or provide oversight of the Right-of-Way activities, which are defined as appraisal, appraisal review process, acquisition process and, when necessary, relocation assistance. LPA hereby authorizes State to complete the ROW activities for the project on LPA's behalf, and authorizes State to complete the ROW activities for the project using State selected Right-of-Way service providers.

10.3 Right-of-Way Cost Estimate

The State will complete an estimate of the costs of acquiring the additional property rights. The State shall notify LPA of the aggregate estimated right-of-way costs. The parties understand that the estimate is preliminary and used primarily for planning and establishing the Federal ROW obligation. LPA shall review the right-of-way cost estimate and notify State immediately if LPA decides to not proceed with the project because of these costs. Withdrawing the project by LPA will require LPA to repay (1) all Federal-aid funds used for the project to date and (2) all costs incurred by State arising out of State's work under this Agreement.

10.4 Condemnations

LPA authorizes State to acquire the necessary ROW by voluntary conveyance from property owners; however, LPA understands and agrees that sometimes properties must be acquired by condemnation action. The State cannot complete condemnation actions for LPA's project. Therefore, the LPA shall be solely responsible for filing and handling condemnation actions to acquire the ROW from property owners when State, in its sole discretion, determines a condemnation action is necessary. LPA understands that it must file condemnation actions, hold hearings, and cause the amounts of the condemnation awards to be paid into County Court before State will advertise LPA's project for bid letting. If LPA does not promptly complete the condemnation of the properties needed for the project, the project will not be constructed. In the event the project will not be constructed for this reason, LPA will be subject to (1) the loss of federal-aid funds for the entire project, and (2) repayment to State in full of all Federal-aid funds used on the project and all costs incurred by State arising out of State work under this Agreement.

10.5 Encroachments

Federal law requires that the right-of-way for a Federal-aid project must be dedicated exclusively to the transportation use for which the project is to be constructed. The State will not advertise for, or hold, a bid letting for LPA's project until the existing ROW has been cleared of all encroachments. The LPA, at no cost to the project, shall clear the entire existing ROW of this project of any private or non-LPA uses or occupancy of the area above, below, or on the existing ROW. LPA agrees to take all necessary actions, including but not limited to (1) bringing appropriate legal proceedings to remove encroachments if the owner has no right to occupy the public ROW, (2) to acquire and pay for the removal of encroachments when the owner's right to occupy public ROW is clear, or (3) to litigate or otherwise resolve all disputed claims to State's satisfaction at LPA's sole cost. LPA understands that after the project is completed, LPA shall keep the project ROW free of future public or private encroachments or uses. LPA shall communicate regularly with State about the status of LPA's efforts to remove all encroachments identified on the project.

10.6 Land Corners

The LPA shall fully cooperate with State and the project Consultants to locate and reference or have located and referenced all section corners, quarter section corners and subdivision lot corners that may be affected by the construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

10.7 Special Assessments

Prior to initiating a special assessment on a Federal-aid project, the LPA shall notify the State of LPA's proposed assessment. A special assessment levied as part of this Federal-aid project shall be conducted as described in this section.

The LPA is required to provide to State documentation for each of the four points noted below. LPA is also required to follow all the terms of the Uniform Act in the acquisition of right-of-way for this Federal-aid project.

> "When federal funds participate in a project, an LPA may not levy a *special assessment*, solely against those property owners from whom acquisitions are made for the public improvement, for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act. However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances."

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

- The affected property owners will be provided just compensation for their property as required by the Federal and State Constitutions and reiterated in the Uniform Act.
- The acquisition costs will be paid by the LPA and property owners made aware they will not be assessed the cost to acquire their property needed for the project.
- The purpose of the special assessment is not to recover the acquisition costs.
- The assessment will not be arbitrarily imposed on selected property owners in the special improvement district in response to their demand for just compensation or that the assessment will be implemented in a way that differs from the way other like assessments have been imposed under similar circumstances.

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

10.8 Reimbursement of LPA's Right-of-Way

LPA is not expected to incur any reimbursable ROW costs for this project. However eligible ROW expenses include appraisal fees, title research fees, ROW Consultant fees, tract acquisition costs, reasonable relocation assistance costs, condemnation awards and Board of Appraisers fees. Additional expenses for condemnation proceeding or District Court Trial may be reimbursed to the LPA on a case-by-case basis.

All required documentation of Chapter 7 of the State's Right-of-Way Manual must be submitted to and approved by the State Right of Way Division in order for the LPA's ROW expenses to be reimbursed. All requests for ROW reimbursement should be submitted to State on ROW Form AP-23, along with supporting documents. One form needs to be completed for each property tract on the project.

10.9 Confidentiality of certain Right-of-Way

LPA understands that the State will manage the right-of-way design, appraisal and acquisition phase of this project. LPA understands that State will keep each individual property acquisition confidential until the State has completed the acquisition or turned the file over to LPA for condemnation. LPA will safeguard all right-of-way acquisition information consistent with State's practice.

SECTION 11 – RAILROAD PROPERTY ON LPA'S PROJECT

The Section applies when State determines that LPA's project includes work to be completed on property owned by a Railroad Company or Railroad Companies. For grade separation projects, LPA and State shall enter into a separate funding and crossing closure agreement with Railroad specifying the funding commitments for the project. **The State, with assistance from LPA, shall when required by Railroad, develop a Construction Agreement for LPA to formally approve and sign with each applicable Railroad Company.** The State shall assist LPA, when required by railroad, in acquiring the property rights using documents developed or approved by the State for each applicable Railroad Company. LPA shall promptly meet any requirements of State or Railroad deemed necessary by State to construct the project or to be allowed to occupy railroad property.

SECTION 12 – UTILITY REHABILITATION WORK

12.1 Overview

This Section applies when State determines that LPA's project includes utility facilities that serve the public interest, owned by LPA or by another entity, which may be affected by the Construction of LPA's project. LPA shall assist State in determining what, if any, public or private utility facilities that serve a public interest are located along, over, under or across the project route. Utility facilities installed, relocated or rehabilitated within the Right-of-Way for this project must be completed in accordance with the provisions of Federal-aid Highway Policy Guide, 23 C.F.R § 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR §645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, and the State's "Policy for Accommodating Utilities on State Highway Right-of-Way." Further, LPA utility work shall be performed in conformance with the Buy America provisions found at 23 U.S.C § 313 and applicable regulations in 23 C.F.R § 635.410. LPA's project utility work shall also follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way" and the LPA manual.

12.2 Eligible Costs

All eligible non-betterment municipally owned and operated utility rehabilitation costs within the corporate limits of the LPA will become a project cost. Outside the corporate limits, the non-betterment portion of utility rehabilitation costs will become a project cost

for facilities occupying private property. Further, there will be no Federal reimbursement for utility facilities if they are located on existing public Right-of-Way, unless a right to future reimbursement was retained in a prior project; however, non-betterment costs of privately owned and operated utilities that serve a public interest will be reimbursed if they exist on private property and it becomes necessary to rehabilitate the utilities due to this project. All such reimbursements will be based on items and actual costs submitted by the utility and approved by the LPA and the State up to the amount of federal funding obligation obtained by the State.

12.3 LPA Owned Utilities

12.3.1 Waterlines and Sanitary Sewer Lines – Along and under the project route

The transportation project design consultant will be responsible for designing the location within the new project of any waterlines or sewer lines that are located along and under the transportation project route. LPA shall cooperate with and provide the design consultant with the non-location design items, such as type, size and needed accessories, for any lines of these types.

12.3.2 All other Utility Facilities – Along or crossing the project

The eligible non-betterment costs of the necessary rehabilitation of all other LPA owned utility facilities shall be a project cost. No LPA owned utility rehabilitation work shall be performed by LPA prior to State obtaining Federal authorization and receipt of a Notice to Proceed; any work performed by LPA prior to receipt of Notice to Proceed will not be eligible for Federal-aid. **LPA shall develop the rehabilitation plan for the other LPA owned facilities affected by the project and submit the plan to State for review and approval.** The State may either (1) allow LPA to separately construct the other LPA owned utility rehabilitation plan, or (2) incorporate the other LPA owned utility rehabilitation plan into the plans for the transportation project to be constructed by the project construction contractor. When LPA separately constructs the other LPA owned utility rehabilitation, LPA shall submit to State its final invoice for the utility rehabilitation for State's review and reimbursement of actual eligible costs.

12.4 Non-LPA Owned Utilities

The State, with assistance from LPA, shall develop a Utility Rehabilitation Agreement for LPA to approve and sign with each non-LPA owned Utility Company that has utility facilities that may be affected by the project construction. **LPA shall formally approve and sign all Utility Rehabilitation Agreements with non-LPA owned utilities.** The agreements will require the owner of the utility facilities to develop a plan and schedule the completion of a project for the necessary rehabilitation of each facility caused by the project. The State will reimburse the eligible non-betterment rehabilitation costs incurred by the non-LPA owned utility. LPA shall take all actions State deems necessary to comply with any utility rehabilitation agreement(s) on this project, including enforcing the utility rehabilitation work schedule to avoid to the maximum extent possible any conflict with the project construction contractor's schedule.

12.5 State Highway Right-of-Way

Any project utility work to be completed within a State Highway ROW will require LPA to obtain approval and a form of a letter of authorization or a permit from the State. The State shall assist LPA with contacting the State's local District Engineer or Permits Officer to determine if a permit or permits are needed for the project and to make application for any needed permits to the District Engineer.

SECTION 13. FINAL PLANS, BID LETTING AND CONSTRUCTION

13.1 General

The construction of the project will be completed by a Contractor selected through the State's competitive bid process. LPA authorizes State to provide the construction project management and Inspection services on LPA's behalf. LPA shall authorize its PL to carefully follow the construction of the project so that PL will thoroughly understand the progress of the work to ensure that the construction will be acceptable to LPA. LPA shall immediately notify State when it has concerns or questions about the construction of the project. The parties understand that LPA is responsible for the conformance of the work of the construction contractor to the plans and specifications as if LPA had overseen the construction itself.

13.2 Plans, Specifications and Estimates (PS&E)

The State or the project design consultant will complete plans, specifications and estimates (the PS&E Package) for LPA's project. State shall simultaneously submit the PS&E Package to: (1) LPA for review and approval, and (2) State's Contract Lettings Section within the Construction Division, for final preparation of the PS&E Package for a bid letting. When the PS&E Package is finalized by State, and formal approval received from LPA, the State will advertise the project for a bid letting. **LPA will be requested to ratify any revisions made by the State in the final PS&E package when LPA approves the award of contract to the lowest responsible bidder on the project**. LPA agrees to not unreasonably withhold its ratification of PS&E package.

13.3 Bid Letting and Award of Construction Contract

The State, on behalf of the LPA, will provide the State's standard notice to bidders and will conduct a bid letting for LPA's Federal-aid project following the State's bid letting and award procedures. The State will recommend, for LPA's review and approval, its determination of the apparent low bidder for the project, except when the State rejects all bids. **LPA shall promptly review and formally approve the State's recommendation as to the lowest responsible bidder for LPA's project,** unless LPA has a compelling reason to withhold its approval. In the event that LPA withholds its approval, LPA shall provide State with its explanation of the reason for withholding approval and will make its best efforts to promptly resolve the dispute with State. If the parties are not able to promptly resolve the dispute, State shall reject all bids and at State's sole discretion, State may either re-let the project or terminate this Agreement. The LPA must provide a resolution concurring with the selection of the low bidder before the State will issue the construction contract for signing. LPA shall sign the construction contract with the selected contractor and will issue all applicable purchasing agent appointments and tax exempt certificates for this project.

13.4 Construction Oversight

LPA hereby authorizes the State to oversee the construction of LPA's project, including providing project management and inspection as necessary under the Construction Contract. LPA's PL shall be available to be present at the project site at all reasonable times during the construction of the project to act as a liaison and to represent the interests of LPA in the construction of the project.

13.5 Change Orders

The State will prepare any change orders to the project deemed necessary by the State. LPA hereby authorizes State to approve on its behalf, change orders deemed by State to be necessary for the construction of the project. **State reserves the right to seek formal approval from LPA for any change order.** When State seeks LPA's approval, the LPA shall make its best efforts to promptly respond so that contractors work will not be delayed. State shall provide copies of all change orders to LPA's PL. LPA shall hold State harmless, indemnify and defend the State against damages suffered by the State related to delay in approval of the change orders for the project.

13.6 Tentative and Final Acceptance

LPA hereby authorizes State to determine when the project is ready for tentative acceptance under the terms of the construction contract. At that time, the PL shall meet with the State's Project Manager and shall review the work of the project to confirm that the project has been constructed according to the contract. Unless the PL promptly objects in writing, LPA authorizes State to notify contractor in writing that the project has been tentatively accepted.

The State will notify the LPA's PL when the project is ready for final acceptance. LPA shall promptly review and act on the State's recommendation that the project is ready for final acceptance. **LPA shall formally approve the State's recommendation or provide a written explanation of why LPA cannot approve the State's recommended finding that the project is ready for final acceptance.** LPA shall make its best efforts to resolve any dispute it has with the State concerning final acceptance of the project.

13.7 Final Audit

LPA shall cooperate fully with State and shall provide any relevant information necessary to complete the final audit of the project. LPA shall take any actions necessary to resolve any issues involved with the audit of the project.

13.8 Maintenance and Environmental Commitments

LPA accepts sole responsibility for maintenance of the project after tentative acceptance of the project. LPA shall provide all future maintenance of the project consistent with the requirements for a Federal-aid project. LPA also accepts responsibility for meeting all project environmental and other commitments and responsibilities required by contract, permit, and environmental document or by federal or state law. The LPA will release and hold harmless the State and FHWA from any suits brought against the State arising out of the LPA's operation and maintenance of or related to the project.

13.9 Miscellaneous

LPA shall make its best efforts to provide approvals, sign documents, and do all things necessary to help State with the development and construction of LPA's project.

SECTION 14. FINANCIAL RESPONSIBILITY

14.1 General

LPA intends that its project be developed so that the project costs will be eligible for partial reimbursement with Federal-aid funds. The parties understand that no State funds will be used to finance the costs of LPA's project. The LPA understands that payment for the costs of this project, whether they be services, engineering, ROW, utilities, material or otherwise, are the sole responsibility of the LPA when Federal participation is not allowable or available or if the project is subsequently determined to be ineligible for Federal-aid funding. Therefore, if the Federal government declines 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 by the LPA, the LPA shall pay or repay the State for all costs incurred by the State or reimbursed with Federal-aid funds prior to such abandonment.

14.2 Total Project Costs and Funding Commitments

The total cost of the project is currently estimated to be $19,000.00 which is detailed in the table below:

ESTIMATED PROJECT FUNDING *(Attach supporting documentation for estimates)*						
	FFY of TIP/STIP	Federal	Local Match	Nonparticipating	Other	Total
PE Phase						
PE						
NEPA						
Final Design						
RC						
NDOR						
PE Subtotal						
ROW						
Utilities						
Construction		**$16,200.00**	**$1,800.00**			**$18,000.00**
CE Phase						
CE		$900.00	$100.00			$1,000.00
RC						
NDOR						
CE Total		**$900.00**	**$100.00**			**$1,000.00**
TOTAL		**$17,100.00**	**$1,900.00**			**$19,000.00**

Both the LPA and State recognize the above estimate is preliminary and the final cost is likely to be higher as the project goes through the development and design process.

14.3 Authority of State

LPA hereby authorizes State to pay project consultants and the construction contractor directly on LPA's behalf. LPA authorizes State to include State's costs for overseeing the development and construction of the project as a reimbursable cost of the project.

Generally, the cost of LPA and its PL will not be eligible for reimbursement with Federal-aid funds for this project. The following costs of LPA will be reimbursable with Federal-aid funds at the applicable percentage when State determines, in its sole discretion that the costs are proper and eligible for reimbursement under Federal and State Law:

a. LPA's cost of the non-betterment rehabilitation of LPA owned utility facilities as described elsewhere in this Agreement,
b. LPA's costs to file and handle any condemnation proceeding needed for this project including the costs of the property rights acquired as described elsewhere in this Agreement.

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

14.4 State-Incurred Costs

The costs incurred by State employees to perform tasks on behalf of LPA related to the development and construction of this project will be part of the cost of the project. The LPA shall be responsible for such costs as charged by State employees; however, these costs may be eligible for Federal-aid participation up to the amount for which federal funds have been obligated.

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

14.5 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 14.1 above.

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

Upon award of the construction contract, the State will send an invoice to the LPA requesting LPA to pay its share of (1) the costs of construction, based on the construction contract, (2) contingencies, (3) the costs of construction engineering (includes audit costs), and (4) any unbilled preliminary engineering expenses, unless other arrangement have been agreed upon in writing by the Parties. The LPA shall pay the State within 30 calendar days of receipt of invoice from State.

14.6 Audit and Final Cost Settlement

Final reimbursement requests must be made within 60 days after the filing of the State DR Form 299. Any invoices submitted after the 60 calendar day deadline 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.

14.7 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 by LPA.

SECTION 15. SUSPENSION OR TERMINATION

15.1 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 responsiveness, quality, project monitoring, eligibility or compliance with the terms of this Agreement 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. 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.

15.2 Termination

This Agreement may be terminated as follows:

a. The State and the LPA, by mutual written agreement, may terminate this Agreement at any time for any reason.

b. The State may terminate this Agreement for the following reasons:

   1. 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.

   2. When LPA's project has not been properly advanced as evidenced by the occurrence of any of the following events:

      a) LPA has failed to replace the Project Liaison (PL) with a PL approved by the State within 30 days during the design stage or 10 days during the project letting or construction stages, from when the PL leaves, or is removed from the project for any reason.

      b) LPA either (1) informs the State that it is unwilling to use condemnation to acquire any of the property interests needed to construct the project, or (2) does not move promptly to acquire the needed property rights.

      c) LPA has failed to take any action deemed necessary by State for the project to be ready for the targeted letting date within the year specified in the STIP.

      d) 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.

3. 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.
4. A notice or declaration of FHWA or the State that any part of the project is or has become ineligible for federal funding.
5. LPA's failure to sign any State requested project documents in a timely manner.
6. 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.
7. LPA's breach of a provision of this Agreement.

c. The LPA may terminate this Agreement upon sixty (60) days written notice of termination to the State, subject to the LPA meeting the conditions of paragraph (e) below.

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

e. 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 16. FEDERAL AUDIT REQUIREMENT

16.1 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 CFR, Subtitle A, Chapter 2, Part 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.

16.2 The LPA shall comply with this Single Audit mandate as described in Section 16.1. 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).

16.3 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: HRRR-55(180)

16.4 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 17. COMMITMENT TO CONTINUED USE OF TRANSPORATION FACILITY

LPA has requested Federal-aid funds for this project based on a specific need for the construction or improvement of a street, road, highway, bridge, trail, or other transportation facility. If the project is constructed, LPA commits to use the project facility to meet the specific need that was the basis for the expenditure of Federal-aid funds. LPA shall submit to the State, for review and approval, any proposed changes to the LPA routes which affect the function or operation of the project facility either during construction or after the project is completed.

SECTION 18. 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 19. TRAFFIC CONTROL

LPA shall assist State in the development, installation, and monitoring of the traffic control plan for the project, and for project related detours, before, during and after construction. Traffic control must conform to the current adopted Manual on Uniform Traffic Control Devices. LPA's PL shall monitor the construction work zone to confirm that the traffic control devices remain in conformance with the traffic control plan. LPA shall certify that all permanent traffic control devices on the completed project have been properly installed.

SECTION 20. CONFLICT OF INTEREST LAWS

The LPA shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and 2 CFR, and agrees to comply with all the Conflict of Interest provisions (including applicable State and local provisions) in order for the project to remain fully eligible for State and 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 the project, 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 21. DRUG FREE WORKPLACE

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

SECTION 22. RECORDS RESPONSIBILITY

The LPA shall keep a project file for this project and keep and maintain all correspondence, files, books, documents, papers, accounting records and other evidence related to LPA's involvement in the project. LPA 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 project completion; 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.

The State shall provide LPA with copies of the letting plans and specifications and all change orders. The State will also provide LPA with as-built plans after the conclusion of the project. LPA shall be given reasonable access upon request to State's project files.

SECTION 23. FAIR EMPLOYMENT PRACTICES

If the LPA performs any part of the work on this project, 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 CFR, Parts 21 and 27 as set forth in the SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES of this Agreement. The reference to "Contractor" in this section also means the "LPA".

SECTION 24. DISABILITIES ACT

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

SECTION 25. 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 26. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

26.1 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. .

26.2 Disadvantaged Business Enterprises (DBEs) Obligation

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

SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES

During LPA's performance of the work under this Agreement, the LPA, for itself, its assignees and successors in interest agrees as follows:

27.1 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.

27.2 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, age, disability, 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.

27.3. 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.

27.4. 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.

27.5. 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.

27.6 Incorporation of Provisions:

The LPA shall include the provisions of sections 27.1 through 27.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. LPA shall take such action with respect to any subcontract or procurement as State or 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, LPA may request State enter into such litigation to protect the interests of State, and in addition, LPA may request the United States enter into such litigation to protect the interests of the United States.

SECTION 28. ENTIRE AGREEMENT

This Agreement 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 6 day of September, 2016

WITNESS:
Dan Nolte

Dan Nolte
LPA Clerk

LANCASTER COUNTY
~~Roma Amundson~~ Todd Wiltgen

Todd Wiltgen
Vice-Chair, Board of Commissioners

EXECUTED by the State this 12th day of September, 2016

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

Materials & Research Engineer

DON R THOMAS
COUNTY ENGINEER

LANCASTER COUNTY

Advance Railroad Pavement Markings

KENNETH D SCHROEDER
DEPUTY COUNTY SURVEYOR

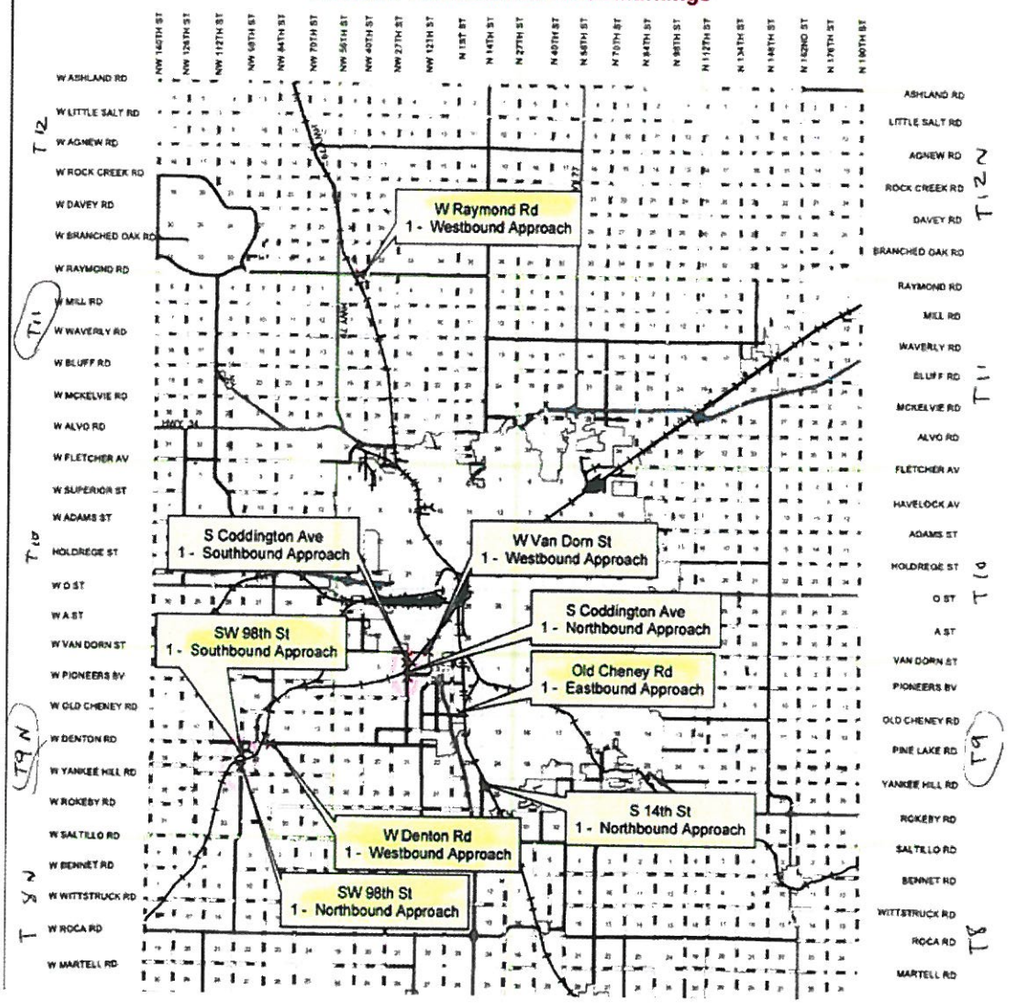

EXHIBIT "A"