



**LPA PROGRAM AGREEMENT**

LANCASTER COUNTY, NEBRASKA  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
PROJECT NO. SRR-7831(1)  
STATE CONTROL NO. 13370  
BRANCHED OAK LAKE NORTH

**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, the State Recreation Road Fund is a source of funding for the construction or maintenance of roads that meets certain requirements and are designated as State Recreation Roads, (See, Neb.Rev.Stat.§39-1390), and

WHEREAS, the Nebraska Game and Parks (NG&P) Commission in consultation with Nebraska Department of Roads (NDOR) designates which roads will be State Recreation Roads and the priority of construction and maintenance projects for such roads, and

WHEREAS, the Nebraska Department of Roads (NDOR) is responsible for overseeing the design and completion of State Recreation Road construction and maintenance projects, and

WHEREAS, Lancaster County has jurisdictional responsibility over the Branched Oak Lake North area in Lancaster County, Nebraska, that provides access to the Branched Oak Lake Recreation Area as shown on Attachment "A", which is hereby made a part of this Agreement, and

WHEREAS, the Branched Oak Lake North road was previously constructed with State Recreation Road funds; is not on the State Highway System; and Lancaster County is responsible for the construction, reconstruction, operations and maintenance of this Recreation Road, and

WHEREAS, the NG&P concurs with Lancaster County's request that the Branched Oak Lake North road is in need of a maintenance project described as follows: Approximately 4.15 miles of roadway will be milled for 2 inches and a 2-inch overlay will be placed on West Rock Creek Road. The project begins at Northwest 140<sup>th</sup> Street and continues southeast along West Rock Creek Road, along the north side of Branched Oak Lake, for approximately 4.15 miles, ending at the intersection of Northwest Crouse and West Branched Oak Road.

WHEREAS, Lancaster County will share in the cost of the project in the percentage set out herein because the Branched Oak Lake North road is also used by local county traffic that is not accessing the State Recreation area, and

WHEREAS, the Parties intend that this Agreement provide details as to the project, and

WHEREAS, the County desires that this project be developed and constructed under the designation of Project No. SRR-7831(1) , as evidenced by the Resolution of the LPA dated the \_\_\_\_\_ day of \_\_\_\_\_, 2017, attached as Exhibit "B" and made a part of this agreement, and

**WHEREAS**, the State share payable on this project will be a maximum of 60 percent of the eligible and participating costs; the LPA's share will be the remaining 40 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**, the regulations further allow and State requires that LPA use its own funds to match State Funds for the costs of local transportation projects, 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 coordinate with the LPA to address any issues that have been identified with the project , and

**WHEREAS**, the planning level DR 530 estimate of the cost of the project is \$1,049,950.00, 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 \$419,980.00. 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:

“LPA” means the Local Public Agency that is sponsoring a transportation project.

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

“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.

“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 government for LPA’s 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 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, 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 State funding for a transportation project on a street, highway, road, trail or other transportation related facility under LPA’s jurisdiction. 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 State funding. The LPA agrees that it is ultimately responsible for complying with all State requirements and policies applicable to State transportation 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 to meet any eligibility requirements for State funding may result in the loss of all State funding for the project. In the event that State finds that the project is ineligible for State funds, the LPA will repay the State all previously paid State 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 the State determines that the project is not eligible, in whole or in part, for State funding except in the event that an error or omission of State proximately caused the project to be declared ineligible for state 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 State funding.

The County and the State agree that the funding split for all project costs shall be as follows:

State Recreation Road Funds	60%
County Funds	40%

- 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 State Recreation Road funds. Those conditions include, but are not limited to, the availability of funds, and the timely and satisfactory completion of all funding requirements. Therefore, LPA agrees to assist in the development of this project in an effort to meet all state eligibility requirements so the project may be determined eligible for this 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. PROJECT REQUIREMENTS**

For any work to be completed by LPA on this project, LPA agrees to comply with all State project procedures and requirements applicable to this project, including State laws, and when applicable local laws.

**SECTION 5. COUNTY ROAD CLASSIFICATION/MAINTENANCE**

After construction of the project, Branched Oak Lake North Recreation Road will not be added to the State Highway System, but instead will continue to be a County road. Lancaster County shall continue to maintain the road to the standards established by the Nebraska Board of Public Roads Classifications and Standards. As a Recreation Road, this segment of the



Branched Oak Lake North Recreation Road will be eligible for future Recreation Road funding, subject to availability of funds, priority of other eligible projects, traffic count, and a requirement by State for County to pay the share of the project that represents non-recreation area use of the roadway.

## **SECTION 6 – GENERAL PROJECT DUTIES**

### **6.1 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 project **on LPA’s behalf** including planning, environmental, design, right-of-way, utilities, railroad, construction and construction engineering.

### **6.2 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 state 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 7 – 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 8 – 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 9 – 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 10 – PLAN DEVELOPMENT AND PROJECT ENVIRONMENTAL WORK**

### **10.1 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.

### **10.2 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.

### **10.3 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.

#### **10.4 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.

#### **10.5 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.

#### **10.6 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.

#### **10.7 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 11 – UTILITY REHABILITATION WORK**

### **11.1 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. LPA's project utility work shall also follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way" and the LPA manual.

### **11.2 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 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 funding provided by the State.

### **11.3 LPA Owned Utilities**

#### **11.3.1 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.

#### **11.3.2 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 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 State funds. **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.

#### **11.4 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.

#### **11.5 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 12. FINAL PLANS, BID LETTING AND CONSTRUCTION**

#### **12.1 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.

#### **12.2 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.



### 12.3 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 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.

### 12.4 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.

### 12.5 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.

### 12.6 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.

**12.7 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.

**12.8 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 State Recreation Road project. LPA also accepts responsibility for meeting all project environmental and other commitments and responsibilities required by contract, permit, and environmental document or by state law. The LPA will release and hold harmless the State from any suits brought against the State arising out of the LPA's operation and maintenance of or related to the project.

**12.9 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 13. FINANCIAL RESPONSIBILITY**

**13.1 General**

LPA intends that its project be developed so that the project costs will be eligible for partial reimbursement with State Recreation Road funds. 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 State participation is not allowable or available or if the project is subsequently determined to be ineligible for State funding. Therefore, if the State 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 State funds prior to such abandonment.

**13.2 Total Project Costs and Funding Commitments**

The total cost of the project is currently estimated to be \$1,049,950.00, which is detailed in the table below:

<b>ESTIMATED PROJECT FUNDING (Attach supporting documentation for estimates)</b>						
	FFY of TIP/STIP	Federal	Local Match	Nonparticipating	Other	Total
<b>PE Phase</b>						
PE						
NEPA						
Final Design						
RC						
NDOR						
<b>PE Subtotal</b>						
<b>ROW</b>						
<b>Utilities</b>						
<b>Construction</b>			365,200.00		547,800.00	913,000.00
<b>CE Phase</b>						
CE			54,780.00		82,170.00	136,950.00
RC						
NDOR						
<b>CE Total</b>			<b>54,780.00</b>		<b>82,170.00</b>	<b>136,950.00</b>
<b>TOTAL</b>			<b>419,980.00</b>		<b>629,970.00</b>	<b>1,049,950.00</b>

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.

### **13.3 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 State funds for this project. The following costs of LPA will be reimbursable with State funds at the applicable percentage when State determines, in its sole discretion that the costs are proper and eligible for reimbursement under 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.

### **13.4 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 State participation up to the amount for which State funds have been obligated.

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

### **13.5 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 13.2 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.

### **13.6 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.

### **13.7 Project Withdrawal**

If the LPA withdraws the project for any reason, LPA shall pay State for all of State's costs associated with the project that have not been reimbursed by LPA.

## **SECTION 14. SUSPENSION OR TERMINATION**

### **14.1 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 State funding for the project and for termination of this Agreement.

### **14.2 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 State funding that will, in the sole discretion of the State, make it unlikely or impossible for this project to be prioritized to receive State 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 local projects found in state or local law or policy.
  4. A notice or declaration of the State that any part of the project is or has become ineligible for state 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 pay State for all of State's costs associated with the project that have not been reimbursed under this agreement. Further, the LPA will thereafter be solely responsible for all costs associated with LPA's project.

#### **SECTION 15. COMMITMENT TO CONTINUED USE OF TRANSPORTATION FACILITY**

LPA has requested State 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 State 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 16. INDEMNITY**

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

#### **SECTION 17. 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 18. DRUG FREE WORKPLACE**

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

**SECTION 19. 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 or any authorized representatives of the State 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 20. 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 State 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 21. 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 22. 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 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 23. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2017.

WITNESS:  
Dan Nolte

LANCASTER COUNTY  
Todd Wiltgen

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

\_\_\_\_\_  
Chairman of the Board

**EXECUTED** by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

\_\_\_\_\_  
Materials & Research Engineer



EXHIBIT "A"



RESOLUTION

SIGNING OF THE LPA PROGRAM AGREEMENT

LANCASTER COUNTY, NEBRASKA

Resolution No. \_\_\_\_\_

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

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

**Whereas:** County and State of Nebraska, Department of Roads (State) wish to enter into an **LPA Program Agreement**, which will set out the various duties and funding responsibilities for the 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 Chairman of the Board, Todd Wiltgen, is hereby authorized to sign the attached **LPA Program Agreement** between the County and the State.

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

County is committed to providing local funds for the project as required by the **LPA Program Agreement**.

NDOR Project Number: SRR-7831(1)

NDOR Control Number: 13370

NDOR Project Name: Branched Oak Lake North

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_\_\_ Nebraska.  
(Month)

The Board of Commissioners of Lancaster County:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Board Member \_\_\_\_\_  
Moved the adoption of said resolution  
Member \_\_\_\_\_ Seconded the Motion  
Roll Call: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Abstained \_\_\_\_\_ Absent  
Resolution adopted, signed and billed as adopted

Attest:

\_\_\_\_\_

Signature -- County Clerk