

**LANCASTER COUNTY ENGINEER–CITY OF LINCOLN DEPARTMENT
OF TRANSPORTATION AND UTILITIES MUTUAL AID AND
ASSISTANCE**

INTERLOCAL AGREEMENT

THIS AGREEMENT made and entered on this date, _____, 2019, by and between the County of Lancaster County, a county and political subdivision of the State of Nebraska, on behalf of the Lancaster County Engineer’s Office (“County”) and the City of Lincoln, a municipal corporation and political subdivision of the State of Nebraska. The County and the City may be referred to hereinafter collectively as “Parties” or individually as a “Party”.

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 *et seq.*, permits public agencies in the State of Nebraska to cooperate with other localities on a basis of mutual advantage and thereby provide services in a manner that will best serve local communities;

WHEREAS, pursuant to Neb. Rev. Stat. §§ 22-155 and 23-101 *et seq.*, the County is a public agency duly organized pursuant to the laws of the State of Nebraska;

WHEREAS, pursuant to Neb. Rev. Stat. §§ 15-101 *et seq.*, the City is a public agency duly organized pursuant to the laws of the State of Nebraska;

WHEREAS, pursuant to Neb. Rev. Stat. §§ 39-1506 and 39-1507, the Lancaster County Engineer (“County Engineer”), in the County Engineer’s capacity as County Highway Superintendent, has control, government, and supervision of all the public roads and bridges in the county under the general supervision and control of the County Board;

WHEREAS, [Department of Transportation and Utilities (“Department”) definition and authority];

WHEREAS, the services provided by the County Engineer and the Department are critical to the lives and property of the residents of the County and the City;

WHEREAS, on occasion the Parties to the Agreement may require aid from other sources in order adequately to protect the lives and property of their citizens and to respond to Emergencies; and

WHEREAS, the Parties hereto desire, when requested, to combine their resources and expertise to provide mutual assistance during Emergencies;

NOW, THEREFORE, in consideration of the mutual covenants herein, the Parties agree as follows:

1. For purposes of this Agreement, the following definitions shall be used:

- a. “Agency” shall mean:
 - i. For the County, the County Engineer; and
 - ii. For the City, the Department.

- b. "Agency Head" shall mean:
 - i. For the County, the County Engineer; and
 - ii. For the City, the Director of the Department.
 - c. "Emergency" shall mean any event or occasional combination of circumstances that calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; or unforeseen occurrence or condition; that is designated as an Emergency by action of the executive or governing body of a Party to this Agreement.
 - d. "Responding Agency" shall mean the Agency from which aid is requested by the Requesting Agency.
 - e. "Requesting Agency" shall mean the Agency that has requested aid from the Responding Agency.
2. The Parties of this Agreement pledge their mutual assistance to each other in the use of Agency equipment, employees, and any other items under Agency control, required for assistance in protecting the lives and property of the public during an Emergency.
 3. During an Emergency, a request for assistance may be made by the Agency Head of a Requesting Party, or her/his designee(s), to the Agency Head of a Responding Party, or her/his designee(s).
 4. The Responding Party may provide such equipment and personnel as may be necessary for the proper and adequate support of the Requesting Party. The Responding Party shall have sole discretion in the determination of available resources, equipment, and personnel that safely can be provided to the Requesting Party. The Responding Party at any time may recall to its own jurisdiction such resources, equipment, and personnel necessary to meet the needs of its own jurisdiction. The Responding Party shall have sole discretion in the determination of available resources, equipment, and personnel that are needed in its own jurisdiction. Further, the Responding Party may recall to its jurisdiction such resources, equipment, and personnel, if the Responding Party, in its sole discretion, determines it is unsafe or inappropriate to remain in the Requesting Party's jurisdiction.
 5. The Responding Party's determination to provide assistance or recall such assistance shall be final and conclusive. In no event shall any Party to this Agreement be liable to the other Party for failure to provide assistance, for discontinuing assistance, or for interrupting assistance.
 6. The Parties agree that assistance shall be reimbursable up to and including an amount of \$[desired spending threshold]. Any amount of reimbursement exceeding \$[desired spending threshold] shall require prior written approval of the Parties' governing bodies. Failure to obtain such prior written approval shall limit the compensation to be paid to Responding Party to a maximum of \$[desired spending threshold], irrespective of the assistance provided.

- a. Assistance in the form of equipment or supplies from a Responding Agency to a Requesting Agency shall be reimbursed to the Responding Agency at the scheduled rates for equipment and supplies of that Party. Each Party's scheduled rates for equipment and supplies are contained in Attachment A to this Agreement, which Attachment is attached hereto and incorporated herein by this reference. Attachment A may be amended from time to time as provided in Paragraph 6.d of this Agreement.
 - b. Assistance provided in the form of labor from a Responding Agency to a Requesting Agency shall be reimbursed to the Responding Agency in an amount equal to, for each employee who works pursuant to this Agreement, the sum of:
 - i. that employee's gross hourly rate(s) of pay that is(are) paid by the Responding Agency to the employee for hours worked pursuant to this Agreement multiplied by the number of hours worked by that employee pursuant to this Agreement at each such rate of pay; plus
 - ii. an amount equaling 20.45% multiplied by the amount calculated under Paragraph 6.b.i of this Agreement as reimbursement to Responding Agency for benefits paid by Responding Agency to employee for the hours worked pursuant to this Agreement.
 - c. Responding Agency shall submit a detailed invoice to the Requesting Agency indicating the type of assistance provided, the number of units of assistance, the applicable rate of reimbursement for such unit of assistance, and the names and titles of employees, as the case may be, within 90 days of the rendering of such assistance. Requesting Agency shall reimburse the Responding Agency within 60 days from receipt of invoice.
 - d. The Agency Head of a Party's Agency may update that Party's scheduled rates, supplies, and equipment contained in Attachment A once each calendar year after the conclusion of the calendar year during which this Agreement has been executed by submitting a written schedule of updated rates, supplies, and equipment to the Agency Head of the other Party's Agency. A Party's updated scheduled rates, supplies, and equipment shall apply to assistance rendered by that Party pursuant to this Agreement beginning on the day after the day of the other Party's receipt of the updated scheduled rates, supplies, and equipment, and continuing until the scheduled rates, supplies, and equipment are further updated pursuant to the terms of this Agreement.
7. No separate legal or administrative entity is created by this Agreement and no property shall be jointly owned pursuant to this Agreement.
 8. To the fullest extent permitted by law, each Party ("Indemnifying Party") shall indemnify, defend, and hold harmless the other Party ("Indemnified Party"), its elected officials, officers, employees, agents, consultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising

out of or resulting from performance of this Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible or intangible property, but only to the extent caused by the negligent, wrongful, or intentional acts or omissions of the Indemnifying Party, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder. In the event the claim, damage, loss or expense is caused in part by the negligence of the Indemnified Party, the indemnification by the Indemnifying Party shall be prorated based on the extent of the liability of the Indemnified Party. Such obligation shall not be construed to negate, abridge, or reduce obligations of indemnity which would otherwise exist as to a Party or person described in this Paragraph. Nothing herein shall be construed to be a waiver of sovereign immunity by either Party.

9. Each Party shall provide workers compensation coverage and, as required by Neb. Rev. Stat. § 13-1802, liability insurance coverage for its own employees providing services under this Agreement, or shall self-insure such risks. Such coverage shall be in amounts sufficient to satisfy the potential liability of such Party, its agents or employees for injuries, losses or damages reasonably foreseeable for the activities and services contemplated under this Agreement. In no event, however, shall such coverage amounts be less than the potential liability the Party may have to its employees under the Nebraska Worker's Compensation Act or to others under the Nebraska Political Subdivisions Tort Claims Act.
10. No default in performance of any obligation shall constitute a breach of the Agreement to the extent that such failure to perform, delay, or default arises out of a cause that is beyond the reasonable control and without negligence of the Party otherwise responsible for such breach including, but not limited to: acts of God; interruption of power, utilities, transportation, or communications services; action of civil or military authority; sabotage; fires; explosions; earthquakes; nuclear accidents; floods; usually severe weather conditions; work stoppages; national emergencies; or, catastrophes.
11. This Agreement shall be binding upon the Parties and their respective successors and assigns. No third person shall acquire any rights or claims by reason of or under this Agreement.
12. This Agreement may be modified only by written agreement of the Parties dated subsequent to the effective date of this Agreement.
13. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby.
14. No representations, promises, or warranties have been made by one Party which are not contained in this Agreement. Performance is not related to or dependent upon any obligations, payment, or responsibility of one Party to the other which is not set forth herein.

15. This Agreement shall become effective upon execution by both Parties and shall remain in effect until termination by any of the Parties hereto upon thirty (30) days written notice to the Parties setting forth the date of such termination.
16. It is the express intent of the Parties that this Agreement shall not create an employer-employee relationship. Employees of one Party shall not be deemed to be employees of the other Party. The Parties shall be responsible to their respective employees for all salary and benefits. The employees of one Party shall not be entitled to any salary, wages, or benefits from the other Party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. The Parties shall also be responsible for maintaining their own workers' compensation insurance and unemployment insurance for their respective employees, and for payment of all federal, state, local and any other payroll taxes with respect to their respective employees' compensation
17. Each undersigned representative certifies that she or he is authorized to enter into this Agreement and to bind the Parties to the terms of the Agreement. The Parties, intending to be bound, do hereby execute this Agreement and commit to its principles and responsibilities.

EXECUTED this ____ day of _____, 20____, by the County.

By: _____
Chair
Lancaster County Board of County
Commissioners

APPROVED AS TO FORM:

This ____ day of _____, 20____.

Deputy County Attorney
for PATRICK F. CONDON
County Attorney

DRAFT

EXECUTED this ____ day of _____, 20__, by the City.

City of Lincoln

By: _____

Mayor
City of Lincoln

APPROVED AS TO FORM:

This ____ day of _____, 20__.

City Attorney

DRAFT