

# **City of Scottsbluff, Nebraska**

**Tuesday, September 6, 2016**

**Regular Meeting**

## **Item Resolut.5**

**Council to consider approval of the Permit to Occupy State Highway Right of Way between the Nebraska Department of Roads and the City for the Scottsbluff Monument Valley Pathway project and approve the Resolution.**

**Staff Contact: Perry Mader, Park and Rec Director**

## AGREEMENT

CITY OF SCOTTSBLUFF  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
PROJECT NO. ENH-79(42)  
CONTROL NO. 51512  
SCOTTSBLUFF VALLEY PATHWAY NORTH

THIS AGREEMENT, is made and entered into by and between the City of Scottsbluff, a local public agency ("LPA") and the State of Nebraska, Department of Roads, hereinafter referred to as the "State," and sometimes collectively referred to herein as the "Parties".

WITNESSETH:

**WHEREAS**, State and LPA have entered into a Program Agreement ENH-79(43), Agreement No. BM1226 for the design and construction of a local federal-aid shared-use path ("Pathway" project); and

**WHEREAS**, the project is scheduled for construction in FY 2017 and will use Federal funds and Local funds for the construction of the project; and

**WHEREAS**, LPA has requested to occupy State's highway right-of-way with a portion of LPA's pathway project, as shown on the situation sketch attached as Exhibit "A" and hereby incorporated in this agreement; and

**WHEREAS**, the project is described generally as follows:

The City of Scottsbluff is planning a new pedestrian/bicycle trail and bridge project mostly located within the municipal limits of Scottsbluff, Nebraska. The "Scotts Valley Pathway North Project" includes a 5.8 mile concrete trail that connects logical termini: the project begins at the existing Monument Valley Pathway Trail within Riverside Park, and extends north to 37<sup>th</sup> Street and east to Western Nebraska Community College and the nearby business complex. In most locations, the trail would be 10-foot-wide and would include a minimum 2-foot-wide graded shoulder on either side. All project components, including the trail and bridge, would be designed and constructed in compliance with the American with Disabilities Act (ADA). The trail would cross US-26 at 2<sup>nd</sup> Avenue via a new grade-separated pedestrian bridge. The 162-foot, single span pedestrian bridge would connect planned trail segments on both side of US-26, while allowing sufficient vertical clearance for oversized vehicular loads traveling on US-26.

**WHEREAS**, Neb. Rev. Stat. § 39-1359 requires that State's right-of-way be held inviolate for highway purposes and that written permission of State is required to occupy the State's right-of-way, and because Pathway will be located on and over the ROW of the State Highways, LPA is required to obtain a permit to occupy the right-of-way for Pathway; and

**WHEREAS**, pursuant to Neb. Rev. Stat. § 39-1339, LPA shall be solely responsible for the Pathway; and

**WHEREAS**, LPA is willing to obtain and maintain in force insurance in the amounts required herein by State, or at least prove to State that Pathway has been added to the areas covered by LPA's existing liability insurance coverage, for at least the part of the Pathway located on or over the State highways; and

**WHEREAS**, LPA is agreeable to being solely responsible for all costs and liability for the design, construction, inspection, maintenance, operation, repair, replacement, reconstruction, or removal of the Pathway; and

**WHEREAS**, State is willing to permit the LPA's work on and occupation of State's property so long as that work is completed and the facilities operated and managed at no cost or liability to State; and

**WHEREAS**, LPA concurs that the future State roadway improvements and maintenance activities may adversely impact Pathway and that all work to design, remove, relocate, construct, reconstruct, inspect, operate, repair or maintain Pathway to accommodate State's work shall be accomplished solely at LPA's cost; and

**WHEREAS**, LPA has authorized the Mayor of the LPA to execute this agreement as evidenced by the resolution of the City Council, attached hereto as Exhibit "B" and made a part of this agreement.

NOW THEREFORE, in consideration of these facts and mutual promises, the Parties hereto agree as follows:

**SECTION 1. DURATION OF THE AGREEMENT** This agreement becomes effective upon the proper execution of the agreement by both parties. The duration of this agreement and the State's Permit to Occupy the State's Right of Way shall be twenty five years from the date of execution of the agreement. At the completion of the twenty five year term, renewal for an additional twenty five year term shall be automatic unless the State notifies the LPA one calendar year in advance of the end of the initial twenty five year term. The renewal shall not be unreasonably denied by State. At the end of the second twenty five year term, this agreement will terminate unless extended by supplemental agreement. The duration of this agreement is subject to the State's right to reconstruct S-79H and US-26, as described elsewhere in this agreement.

**SECTION 2. NO COST TO STATE** The Parties expressly agree that this agreement is executed for the benefit of LPA and that the parties intend that all costs and liability for Pathway design, construction, inspection, maintenance, operation, repair, reconstruction, and for the removal of the Pathway and restoration of State property, will be the sole responsibility of LPA, and, except as expressly provided herein, shall be accomplished at no cost to State.

**SECTION 3. FUNDING FOR PATHWAY** The Parties agree LPA is in the process of seeking Federal-aid funding for the Pathway. This agreement is to allow LPA to occupy State property with portions of the Pathway and is separate from LPA's program agreement with State seeking Federal-aid funding for LPA's Pathway project.

**SECTION 4. PLANS PREPARATION** The LPA will prepare, or cause plans to be prepared for LPA's pathway project LPA will design Pathway to accommodate the existing highway drainage patterns and construct drainage facilities that are consistent with and will not adversely affect the operation of State's highway drainage facilities. LPA will, at LPA's sole expense, design, construct, and inspect the construction of Pathway. Further, LPA will design, construct, operate, inspect, repair and maintain Pathway to conform to federal and state law and rule and regulation concerning accommodation of the disabled. LPA will, at LPA's sole cost, maintain in good repair, operate, reconstruct, and, if necessary, remove Pathway and restore State's property. When the plans for Pathway are completed, the Parties will enter into a supplemental agreement which incorporates into this agreement the State's Permit to Occupy State right-of-way including LPA's final plans and specifications for Trail Pathway. These plans shall include, but not be limited to, work zone traffic control, grading, pedestrian bridge, surfacing, drainage and erosion control work.

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**SECTION 5. PERMIT TO OCCUPY STATE'S RIGHT-OF-WAY** LPA will submit to State an application for a permit to perform work on State's right-of-way and to occupy State's right-of-way including final plans for the Pathway to State for review through State's right-of-way permit process prior to work occurring on State's right of way. LPA will conduct no construction work on State's right-of-way prior to State issuing a permit to Work on and Occupy State's right-of-way. In the event provisions of this agreement conflict with provisions of State's permit to occupy the State's Right of Way, the provisions of this agreement shall govern. Terms of the permit(s) that are not affected by the terms of this agreement will remain in full force and effect.

**SECTION 6. CONTRACT LETTING** LPA's project will be let for bids through State's standard LPA Federal-aid project letting process. The construction contract will be between LPA and its selected construction contractor.

**SECTION 7. CONSTRUCTION** The LPA will complete all aspects of Pathway construction at its sole cost. Under this agreement, State has a right but not a duty to inspect the completed work or phases of the work located on State right-of-way. Any State inspection shall be conducted at State's cost. A decision on the part of State to inspect or not to inspect LPA's work during the course of construction does not relieve LPA of the responsibility to complete the work in accordance with the agreements of the Parties. LPA shall blend the Pathway project into State's existing highway projects, as shown in the final plans. LPA shall require its contractor to finish, restore, seed and properly finish the project so that the disturbed areas are restored consistent with the rest of the State's property.

**SECTION 8. PROFESSIONAL SERVICES** The professional design services for work to be constructed on State's right-of-way under this agreement shall be completed by, or under the direct supervision of, a Professional Civil Engineer licensed to practice in State of Nebraska. Review by State of the plans and specifications and the issuing of a permit to construct the Pathway does not constitute a waiver of liability. In the event the professional construction engineering services for work to be constructed on State's right-of-way under this agreement are not completed by State on behalf of LPA, LPA shall ensure such services will be completed by, or under the direct supervision of, a Professional Civil Engineer licensed to practice in State of Nebraska. Review by State of the construction of the Pathway does not constitute a waiver of liability.

**SECTION 9. PROFESSIONAL PERFORMANCE** State will rely on the professional performance and ability of LPA. Examination by State, or any acceptance or use of the work product, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product which would relieve LPA from any liability or expense that would be connected with LPA's sole responsibility for the propriety and integrity of the professional work to be accomplished by the LPA pursuant to this agreement. That further, acceptance or approval of any of the work by State will not constitute a waiver of any rights of State to recover from LPA, damages that are caused by the LPA due to error, omission, or negligence of the Consultant in its work. That further, if due to error, omission, or negligence of the LPA the plans, specifications, and estimates are found to be in error or there are omissions therein revealed during the construction of the project and revision or reworking of the plans is necessary, LPA shall make such revisions without expense to State. The LPA's legal liability for all damages incurred by State caused by error, omission, or negligent acts of the LPA will be borne by LPA without liability or expense to State.

**SECTION 10. FUTURE HIGHWAY CONSTRUCTION INCLUDING NEPA** The Parties understand that Pathway will over cross State's highway and that S79H and/or US 26 is subject to future roadway work

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which may adversely impact Pathway. This agreement is entered into expressly subject to any future highway operation, maintenance, resurfacing, rehabilitation, or reconstruction deemed necessary by State.

- a. The Parties further agree that all Pathway work necessary to facilitate the operation, maintenance, resurfacing, rehabilitation, or reconstruction of S79H and/or US 26 will be accomplished at LPA's sole expense. LPA is hereby notified that, in order to satisfy the requirements of the National Environmental Policy Act (NEPA), State has been required to perpetuate or provide alternate routes when trails located on the right-of-way are impacted by a federal aid highway project. LPA agrees that any work required to satisfy the requirements of NEPA related to Pathway on State's right-of-way will be accomplished at the sole financial responsibility of LPA.

#### **SECTION 11. INDEMNIFICATION AND LPA INSURANCE**

- a) **INDEMNIFICATION** LPA shall indemnify and hold harmless, to the fullest extent allowed by law, State, its agents, employees and representatives, from all claims, demands, suits, actions, payments, liability, judgments and expenses (including attorney's fees) arising out of or by reason of the work of LPA under this Agreement. State shall not be liable in any manner to any person or entity for any claim, demand, suit, action, payments, liability, judgments and expenses (including attorney's fees) arising out of or by reason of the work of LPA under this Agreement, or the design, planning, performance, or completion of the work that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of property, including the loss of use resulting therefrom, that is caused in whole or in part, either directly or indirectly, by LPA or any LPA agents or representatives. State shall not be liable in any manner to any person or entity for any claim, demand, suit, action, payments, liability, judgments and expenses (including attorney's fees) arising out of use of Pathway or the security of persons using the Pathway and highway undercrossing that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of property, including the loss of use resulting therefrom, that is caused in whole or in part, either directly or indirectly, by LPA or any LPA agents or representatives. LPA further agrees to defend at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising out of or as a result of work performed by LPA or its agent, or anyone contracting with LPA for such hereunder.
- b. **LPA INSURANCE** For the duration of this agreement, LPA shall carry at least the insurance required on Exhibit "C" covering the Pathway and the area of State property occupied by the Pathway, the terms of which are hereby included in this agreement by reference.

**SECTION 12. PATHWAY OWNERSHIP AND OPERATION RESPONSIBILITIES** LPA shall be the owner of the part of the Pathway that is not located on State's property. State grants to LPA, upon the issuance of a State permit, the right to construct, occupy, operate, inspect, repair, reconstruct (when necessary) and maintain its Pathway on State's property. LPA agrees, at no cost to the State, to be solely responsible for the operation (including security of Pathway users), inspection, maintenance, repair, restoration, or when necessary, reconstruction of the Pathway to its as-constructed condition.

LPA shall, without any cost to State properly illuminate the Pathway on the pedestrian bridge without the lights being directly visible from the highway below.

LPA is also responsible for damage to Pathway and LPA's pedestrian bridge caused by vehicle crashes, vandalism, or other acts or omissions. LPA further agrees that State has no duty to inspect, report, or remedy observed conditions (even if State has notice of said condition) on the Pathway or pedestrian bridge. LPA shall be responsible for collecting any and all damages from the person(s) or entities that caused damage to the Pathway or pedestrian bridge. Permission to use State's right-of-way to perform maintenance of the Pathway or pedestrian bridge is covered under the permit issued by State including periodic maintenance access to the site from State's highway. Additional modification to the State's property must be reviewed by State and permission of State granted in writing, ordinarily in the form of a right-of-way permit.

**SECTION 13. PROTECTION OF UTILITIES** LPA will protect or cause to be protected the utilities within the highway right-of-way, and repair or replace such when damaged during the performance of work of LPA under this Agreement.

**SECTION 14. NOTICE TO STATE** The LPA will notify the Office of State's Highway District Engineer at the specific milestones in the construction as detailed below.

- a. Forty eight hours prior to commencing construction for the purpose of coordinating the work and establishing contact information.
- b. Immediately following the installation of the traffic control devices and prior to commencing construction activities.
- c. Upon completion of the construction.

**SECTION 15. ADDITIONAL LPA DUTIES** The LPA further agrees:

- a. To complete the construction of the Pathway according to the plans and specifications reviewed by State.
- b. To present for review by State any changes to the reviewed construction plans prior to initiating the change.
- c. To install prior to construction and maintain during construction traffic control devices in accordance with the traffic control plans reviewed by State. To present for the review of State changes in the reviewed traffic control plans prior to accomplishing the change.
- d. To notify in writing State's Highway District Engineer or his designee of the completion of the construction. This notice of completion shall be accompanied by a certification stamped and sealed by the Professional Engineer supervising the construction that the work was accomplished in accordance with the reviewed plans and specifications.
- e. That State retains the authority to make future changes to S79H and/or US 26 including changes to LPA's Pathway as necessary to address the needs of the highway system or public safety. In the event State, as a part of its duties to maintain and operate S79H and/or US 26, must change the Pathway, LPA shall be solely responsible for the design, modification or reconstruction of LPA's Pathway, or the cost thereof, to accommodate State's highway changes and for temporary construction to allow the State's work to progress. The LPA will be responsible for any damages to State resulting from the delay in completing a highway improvement, including but not limited to:

- (i) further deterioration of the roadway or its appurtenances, and

(ii) inflation in the cost of a highway improvement, and

(iii) liability for crashes arising out of the delayed completion of the highway improvement.

In the event State determines that required construction, reconstruction, modification or maintenance of the roadways cannot wait for LPA to relocate Pathway, LPA will be responsible for any and all damages associated with State accomplishing the contemplated construction, reconstruction, modification or maintenance of S79H and/or US 26. The LPA will hold the State harmless for damages due to the delay in letting or constructing a project in this location of the highway system due to the coordination for the Pathway.

- g. To be solely responsible for any claims, damages, or lawsuits related to the operation of the Pathway constructed as a part of LPA's project.
- h. LPA shall be responsible for the part of the Pathway crossing at grade, over and along the Highway as if LPA owned the land on which Pathway is located.

**SECTION 16. ADDITIONAL STATE DUTIES** State agrees:

- a. To review the completed plans and permit application and, if appropriate, to issue a permit to construct, operate, inspect, repair, maintain, reconstruct and, if necessary, remove the Pathway from S79H and/or US 26.
- b. To respond in a timely manner to requests for review of plan changes and reviews of the work.
- c. To notify LPA one year in advance of construction of a project that may require reconstruction of a part or whole of Pathway.

**SECTION 17. TERMINATION OF AGREEMENT**

This Agreement may be terminated upon the occurrence of any of the following events, each an "Event of Default":

- a. LPA abandons Pathway. For the purpose of this Agreement, "Abandon" shall be considered to occur in the event of any of the following:
  - i. LPA notifies State that it is abandoning Pathway.
  - ii. LPA fails to maintain in effect the insurance required by this agreement and fails to cure by acquiring or reactivating the required insurance within fourteen (14) calendar days after receipt of notice to cure in writing from State.
  - iii. LPA fails to design and construct Pathway within three (3) years of the execution of this agreement and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and LPA commences cure within said ninety (90) day notice period and diligently pursues

cure to full compliance.

- iv. LPA fails to maintain, operate, inspect, repair, or restore Pathway and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and LPA commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
  - v. LPA fails to, if necessary, reconstruct Pathway within three (3) years following the removal of the Pathway or a portion thereof for highway activities and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and LPA commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
  - vi. Other than specifically provided in this section, LPA fails to cure to the reasonable satisfaction of State, any non-performance or non-compliance with any of the terms, provisions, covenants or conditions contained in this Agreement within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and LPA commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
  - vii. LPA fails to make adjustments to Pathway as necessary to provide for State's design, operation, inspection, maintenance, repair, resurfacing, restoration, rehabilitation, or reconstruction of State's highway and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and LPA commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
- b. LPA's Pathway adversely affects State's ability to design, construct, maintain, repair, resurface, rehabilitate, restore or reconstruct State's highway including all right-of-way and



appurtenances thereto.

- c. LPA fails to construct Pathway in accordance with the approved plans and State's permit.
- d. State or Federal law, rule or regulation effects a change in the statutory environment which renders this agreement or parts thereof void.
- e. State or Federal law, rule or regulation effects a change in the statutory environment which creates duties or responsibilities as a result of this agreement that are considered, in State's sole discretion, too onerous for State.

Upon the occurrence of an Event of Default, as stated above, State may terminate the Agreement by delivering to LPA a written notice of termination ("State Notice of Termination") specifying the effective date of termination, which may be immediate. Upon receipt of the State Notice of Termination, LPA will within 180 days perform the duties and responsibilities under Section 20 of this agreement and peaceably surrender the premises to State.

In the event LPA does not so surrender the premises, State may enter upon the same by due process of law and expel LPA and repossess and enjoy the premises as though the Term had expired; provided, however, that nothing in this Agreement shall preclude LPA from challenging whether there has occurred an Event of Default in an action or proceeding that may be brought in any court of competent jurisdiction, in which event, LPA shall have the right to continue to occupy and use the premises until any such action or proceeding has become final and not subject to an appeal. The immediately preceding proviso shall not apply and State will be entitled to the possession of the premises when the reconstruction of S79H and/or US 26 requires that the premises be vacated for such construction, at the sole discretion of State.

Notwithstanding any provision in this Agreement to the contrary, LPA may terminate this Agreement at any time during the Term upon not less than sixty (60) days written notice to State specifying the effective date of termination and LPA will within 180 days perform the duties and responsibilities under the restoration of State's property as specified below and then peaceably surrender the premises to State.

**SECTION 18. COMPLIANCE WITH LAW** The cost of complying with applicable future laws, rules, regulations or policies of the federal or state government or its representatives not in force at the time of this agreement or not disclosed or addressed in this agreement shall be the responsibility of the LPA and such compliance shall be accomplished at no cost to the State.

**SECTION 19. NOT A JOINT VENTURE** The parties acknowledge and agree that this Agreement does not create, nor is it intended to create, an agency relationship, a partnership or joint venture, or any other form of entity or relationship between the Parties where one party may be legally responsible for the other party's actions.

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**SECTION 20. RESTORATION OF STATE'S RIGHT-OF-WAY** LPA shall remove Pathway (including the pedestrian structure) and restore State's right-of-way to its pre-existing condition (1) at the end of the term of the agreement, (2) in the event the Pathway is abandoned by LPA or, (3) State or LPA terminates this agreement. In the event LPA fails to accomplish the work under this Section in the time frame stipulated, State may complete the work at LPA's sole cost. LPA shall reimburse State for all costs associated with the performance of this work.

**SECTION 21. NOT A WAIVER OF IMMUNITY.** The parties intend that, to the maximum extent permitted by law, this agreement shall not be interpreted as a waiver of the defense of governmental immunity, including those exceptions listed in the Political Subdivisions Tort Claims Act (Neb. Rev. Stat. §13-910) or the State Tort Claims Act (Neb. Rev. Stat. §81-8,219).

**SECTION 22. ENTIRE AGREEMENT** This Agreement, the Federal Aid Project Program Agreement and Supplements thereto, and any permit to occupy State Right-of-Way constitutes the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained in these instruments, and these instruments supersede all other communications, representations, or other agreements or contracts, either oral or written hereto.

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IN WITNESS WHEREOF, the parties hereby execute this agreement pursuant to lawful authority as of the dates signed by each party.

EXECUTED by LPA this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESS:  
Cindy Dickinson

CITY OF SCOTTSBLUFF  
Randy Meininger

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Michael H. Owen, P.E.

\_\_\_\_\_  
Roadway Design Engineer

RECOMMENDED:

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

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SCOTTSBLUFF MONUMENT  
VALLEY PATHWAY NORTH  
SCOTTSBLUFF  
SCOTTS BLUFF COUNTY

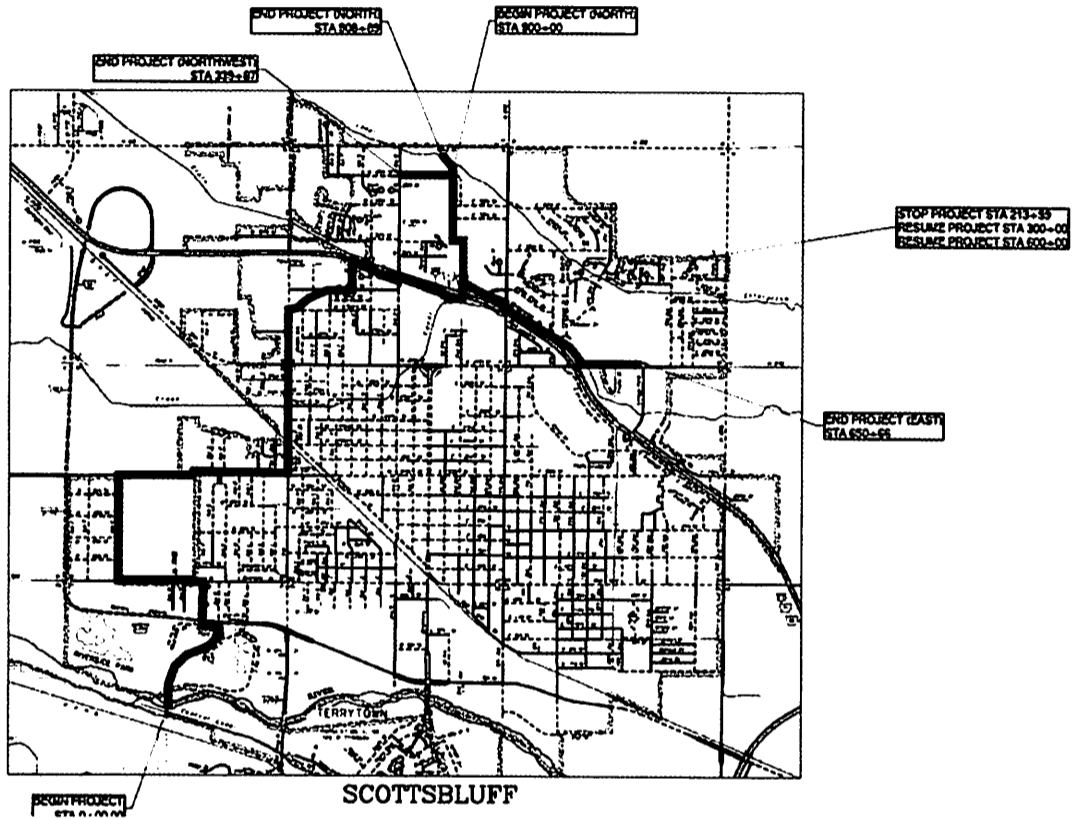


EXHIBIT "A"

## **INSURANCE REQUIREMENTS FOR TRAILS ON STATE PROPERTY**

**Trail Owner agrees to:**

- (1) Make a detailed review of its existing insurance coverage,
- (2) Compare that coverage to Trail Owner's duties under this Agreement to construct, operate, maintain, inspect, repair and reconstruct a trail on State highway right-of-way,
- (3) Obtain the insurance coverage that it deems necessary to fully protect Trail Owner from loss associated with the Trail Owner's duties. Also, Trail Owner shall have at a minimum the insurance described below:

**General Liability –**

**Limits of at least:**

**\$ 2,000,000 Per Occurrence**

**\$ 4,000,000 General Aggregate**

**\$ 2,000,000 Completed Operations Aggregate (if applicable)**

**\$ 1,000,000 Personal/Advertising Injury**

- Trail Owner shall be responsible for the payment of any deductibles.
- Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- General Aggregate to apply only to the subject trail.
- The State of Nebraska, Department of Roads, shall be named as Additional Insured on a primary and non-contributory basis including completed operations (the completed work/product) for three (3) years after the work/product is complete.
- Trail Owner agrees to waive its rights of recovery against the State. Waiver of Subrogation in favor of the State shall be added to, or included in, the policy.
- Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.
- If any part of Trail is located near a railroad track, the 50' railroad right of way exclusion must be deleted.
- In the event that this contract provides for Trail Owner to construct, reconstruct or produce a completed product, products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be

EXHIBIT "C"

- further maintained for a minimum period of five years after final acceptance and payment.
- Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended, please refer to the following section entitled "Pollution Coverage.")
- Pollution Coverage –
  - In the event that the standard pollution exclusion as provided by CG0001 has been amended, coverage may be substituted with a separate Pollution Liability policy that includes pollution coverage in the amount of \$1.0 million per occurrence or claim and \$1.0 million aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Trail Owner.

**Automobile Liability –**

- Limits of at least: \$ 1,000,000 CSL Per Accident
- Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

**Workers' Compensation –**

Limits: Statutory coverage for the State where the project is located.

Employer's Liability limits: \$100,000 Each Accident

\$100,000 Disease – Per Person

\$500,000 Disease – Policy Limit

- Trail Owner agrees to waive its rights of recovery against the State. Waiver of Subrogation in favor of the State of Nebraska, Department of Roads shall be added to, or included in, the policy

**Umbrella/Excess –**

- Limits of at least: \$1,000,000 Per Occurrence and Annual Aggregate
- Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
- The State of Nebraska, Department of Roads, shall be an "Additional Insured".
- Trail Owner agrees to waive its rights of recovery against the State. Waiver of subrogation in favor of the State of Nebraska, Department of Roads shall be provided.

- Any insurance policy shall be written by a reputable insurance company acceptable to the State or with a current Best's Insurance Guide Rating of A – and Class VII or better, and authorized to do business in Nebraska.
- Evidence of such insurance coverage in effect shall be provided to the State in the form of an Accord certificate of insurance executed by a licensed representative of the participating insurer(s), to be issued at least annually.
- For so long as insurance coverage is required under this agreement, the Trail Owner shall have a duty to notify the State when the Trail Owner knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be canceled or terminated. The Trail Owner must forward any pertinent notice of cancellation or termination to the State, at the address listed below by mail (return receipt requested), hand-delivery or facsimile transmission within 2 business days of receipt by Trail Owner of any such notice from an insurance carrier. Notice shall be sent to:  
 Nebraska Department of Roads  
 Construction Division – Insurance Section  
 1500 Highway 2, P. O. Box 94759  
 Lincoln, NE 68509-4759  
 Facsimile No. 402-479-4854
- Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this agreement.
- The Limits of Coverage's set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the Trail Owner or any of its subcontractors/ter subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the Trail Owner or its subcontractors, or tier subcontractors, of any responsibility or liability under the contract.
- If there is a discrepancy of coverage between this document and any other insurance specification applicable to this work or contract, the greater limit or coverage requirement shall prevail.

**RESOLUTION**  
**SIGNING OF THE PROJECT TRAIL AGREEMENT**

City of Scottsbluff

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

**Whereas:** City of Scottsbluff is developing a transportation project for which it would like to obtain Federal funds;

**Whereas:** City of Scottsbluff 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; and

**Whereas:** City of Scottsbluff and Nebraska Department of Roads (NDOR) wish to enter into a new Project Trail Agreement setting out the various duties and funding responsibilities for the Federal-aid project.

**Be It Resolved:** by the City Council of the City of Scottsbluff that:

Randy Meininger, Mayor of the City of Scottsbluff, is hereby authorized to sign the attached Project Trail Agreement between the City of Scottsbluff and the NDOR.

City of Scottsbluff is committed to providing local funds for the project as required by the Project Program Agreement.

NDOR Project Number: ENH-79(42)

NDOR Control Number: 51512

NDOR Project Name: Scottsbluff Valley Pathway North

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016 at \_\_\_\_\_ Nebraska.  
(Month) (Year)

The City Council of the City of Scottsbluff

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

Board/Council 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 City Clerk

EXHIBIT "B"