

**INTERLOCAL AGREEMENT
FOR
PROJECT NO. 542702 – EAST BELTWAY**

THIS AGREEMENT is entered into and executed by and between the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as “the County” and the city of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as “the City.”

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-1801 et seq. (Reissue 1997), permits units of local government 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; and

WHEREAS, the City has been designated as being eligible for Federal High Priority Discretionary Demonstration (DPS) Funds by the Department of Transportation, Federal Highway Administration, in compliance with Federal laws pertaining thereto; and

WHEREAS, the Federal share payable on any portion of a DPS funded project will be a maximum of 80 percent of the eligible costs; and

WHEREAS, the County and the City agree that it is mutually beneficial to obtain preliminary design and Corridor Protection plans for the East Beltway as it is generally shown in Attachment “A”, attached hereto and incorporated by this reference; and

WHEREAS, the County and the City have agreed to share the cost of the local matching funds; and

WHEREAS, the County and the City desire to have a consulting engineering firm, hereinafter referred to as “the Firm” prepare the plans for the East Beltway; and

WHEREAS, the County and the City wish to clarify their respective obligations for the division of costs and other matters pertaining to the preliminary design and Corridor Protection for the East Beltway.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

1. Duration: The duration of this Agreement shall be from the date of execution until the completion of the above described preliminary design and Corridor Protection project. This Agreement may be terminated by either party if the City does not receive the federal DPS funds, or any portion thereof. This Agreement will terminate if the selection and negotiating committees fail to reach a unanimous decision on the engineering firm and project fee.

2. Purpose: The purpose of this Agreement is to provide for the preliminary design for the East Beltway and for establishing Corridor Protection along the East Beltway alignment. The East Beltway is generally located along the 127th Street alignment and is bounded to the north by Interstate 80 and to the south by Nebraska Highway 2 and is located entirely outside of the city limits but within the three mile jurisdiction of the City of Lincoln and entirely within Lancaster County.

3. Funding: This project will be funded 80% by federal funds up to \$500,000 and 20% by local matching funds up to \$125,000. Should the project cost exceed the \$625,000 of the combined federal funds and local matching funds, the additional costs above the \$625,000 will be split equally between the County and the City. The City and the County agree to contribute up to \$300,000 each to the project, which includes the local matching funds of up to \$125,000. The City and the County further agree that any unencumbered funds not utilized for this project will be appropriated for future right-of-way acquisition and design of the East Beltway.

4. Responsibilities: The responsibilities of the City and County shall be as follows:

A. The County will have the following responsibilities:

i) The County will contribute one tenth (1/10) of the total project cost as its share of the 20% local matching funds. the one tenth (1/10) fraction represents one half (1/2) share of the 20% local matching funds. At such time as the federal funds are withdrawn or exhausted, the County will contribute one half (1/2) of the remaining total project cost. The County's share will not exceed \$300,000, including the local matching funds of up to \$125,000.

ii) The County will provide review comments of the project design as plans are submitted.

B. The City will have the following responsibilities:

i) The City will contribute one tenth (1/10) of the total project cost as its share of the 20% local matching funds. The one tenth (1/10) fraction represents one half (1/2) share of the 20% local matching funds. At such time as the federal funds are withdrawn or exhausted, the City will contribute one half (1/2) of the remaining total project cost. The City's share will not exceed \$300,000, including the local matching funds of up to \$125,000.

ii) The City will request project proposals from consulting engineering firms. A selection committee comprised of representative from the City and County will select the firm deemed most qualified to

complete the project objectives. The request for proposals and the selection process will be in accordance with Section 50 of the NDOR “Guidelines for Transportation Program Funds for Eligible Local Projects.” A negotiation committee comprised of representatives from the City and the County will negotiate with the selected firm to obtain an acceptable fee for the project. The final decisions of both the selection committee and the negotiation committee shall be unanimous.

iii) The City will enter into a contract with the selected firm and be the administrator of said contract. The City shall receive written approval from the County Engineer prior to entering into any change orders or amendments to the contract that have a fiscal impact on the County or an impact on the design of the project.

iv) The City will bill the County, on not less than a monthly basis, for all project costs incurred, in accordance with Paragraph 4(A)(i) of this Agreement. The County shall initially pay the City for 95 percent of any billing from the City under this project. The County shall pay for the remaining 5 percent after a final audit has been performed to verify the actual eligible costs. All billings to the County shall be to the attention of the County Engineer and the County Finance Director.

5. Independent Contractor: It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the City. The City and County shall be responsible to their respective employees for all salaries and benefits. Neither the City’s employees nor the County’s employees shall be entitled to any salary or wages from the other party or to any benefits made to its employees, including but not limited to, overtime, vacation, retirement benefits, workers compensation, sick leave or injury leave. The City and the County shall be responsible for maintaining Workers’ Compensation Insurance and Unemployment Insurance for its employees, and for payment of all Federal, State, local and any other payroll taxes with respect to its employees’ compensation.

6. Assignment: Neither the County nor the City shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this Agreement.

7. Hold Harmless: Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys’ fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil

rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.

8. Administration: The terms and conditions of this Agreement shall be administered by the Director of Public Works and Utilities in cooperation with the County Engineer. This Agreement does not create any separate legal or administrative entity.

9. Severability: If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

10. Equal Employment Opportunity: Each party agrees that in providing services pursuant to this Agreement, it shall not discriminate against any employee, applicant for employment, or any other person on the basis of race, color, religion, sex, disability, national origin, age, marital status, receipt of public assistance, or any other basis prohibited by applicable state or federal law.

11. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

EXECUTED this ____ day of _____, 2006, by Lancaster County.

County of Lancaster, Nebraska

By: _____
Deb Schorr, Chair
Lancaster County Board of Commissioners

Approved as to form:
This ____ day of _____, 2006

Deputy County Attorney
for Gary E. Lacey
County Attorney

EXECUTED this ____ day of _____, 2006, by the City of Lincoln.

City of Lincoln, Nebraska

By: _____
Coleen J. Seng
Mayor

Approved as to form:

This ____ day of _____, 2006

Dana W. Roper
City Attorney