

Nebraska City  
**A G E N D A**  
**City Council Meeting**  
June 6, 2016 - 6:00 p.m.  
**Call to Order**

"I am required by law to inform the public that a copy of the Open Meetings Act is posted on the bulletin board to your right. This meeting is being recorded. If you wish to speak, come to the podium, state your name and address and speak directly towards the microphone the entire time you are addressing the governing body. Thank you".

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL**

**CONSENT**

- 3. Approve minutes from the May 16, 2016 City Council Meeting**
- 4. Accepting the report of new claims against the City and approving disposition of claims set for the period of May 17, 2016 to June 6, 2016**
- 5. Approve Tyson Hermann/Bing's Sports Bar SDL and use of the Sunken Parking lot for Applejack Beer Garden on Sep 17, 2016.**
- 6. Approve the City-Wide Garage Sales Event scheduled for June 25, 2016.**
- 7. Approve the MT Hospitality, LLC SDL for June 25, 2016 from 4:30PM – 1:00AM with an alternate date of June 26, 2016 to be held at Larson Motors Inc. 1801 Frontage Road Nebraska City, NE.**
- 8. Approve NCTC use of the Sunken parking lot and use of the public restrooms from 8-10:30pm each Saturday evening from July 11th – August 6th 2016 for the Summer Saturday Film Series.**
- 9. Approve the NCTC date change on a previously approved date for Lemon Days July 9th to move the date of the sidewalk sale only to June 28-30, 2016.**
- 10. Approve the Applejack Car Show parking for the River City Classic Car Club September 18, 2016 as submitted.**

**NEW BUSINESS**

- 11. Discussion/action to approve NCHS Dance Marathon Fundraiser event on July 2, 2016 from 5:00PM – 12:00AM at the high school football field for the Weekend Lunch Program.**
- 12. Discussion/action to approve use of Steinhart Park for a carnival June 30 – July 2, 2016 and use of the parking lot to the East of the public restrooms and the road in front of the restrooms for Jaycee's concession stand.**
- 13. Discussion/action to approve application for Nebraska City Housing Rehabilitation Program.**
- 14. Discussion/action to approve the NCTC Nebraska City IOS/Android App.**
- 15. Discussion/action with Miller/Monroe Ferrell to bid out city insurance.**
- 16. Discussion/action to approve Aquatic Center Insurance Payment.**
- 17. Consider Agreement on ownership and use of ATV for Flower Basket Program.**
- 18. Discuss/approve Resolution 2705-16 for the Supplemental Agreement #1 to BM1119 for the 4th Corso Viaduct.**
- 19. Discuss/approve an EDRLF Administrative Assistance Contract with the Southeast Nebraska Development District.**
- 20. Discussion/Action on 5<sup>th</sup> Rue Survey Costs.**
- 21. Resolution 2706-16 regarding the Otoe County EMS Tax.**
- 22. Discussion regarding Nebraska City's 150<sup>th</sup> Anniversary Committee.**
- 23. A. Closed Session by majority vote for protection of the public interest to discuss negotiations for starting pay and benefits of the new Construction Facility Manager.**  
**B. Discussion/action regarding starting pay and benefits for the new Construction Facility Manager.**

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

Nebraska City  
 CITY OF NEBRASKA CITY, NEBRASKA  
 MINUTES OF CITY COUNCIL REGULAR MEETING  
 May 16, 2016

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the William F. Davis Room at City Hall, 1409 Central Avenue, on March 21, 2016. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes. Availability of the agenda was communicated in advance to the media, Mayor and Commissioners of this proceeding and said meeting was open to the public.

Mayor Bequette called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Bryan Bequette then led in the Pledge of Allegiance. Upon roll call the following answered present: Jim Stark, Jeff Crunk, Vic Johns, Gloria Glover and Mayor Bequette. Absent: None. The following City Officials were present: City Administrator Grayson Path, City Clerk-Treasurer Randy Dunster, City Attorney David Partsch, and Library Director Rasmus Thøgersen.

Mayor Bequette presented the following consent items:

Approve minutes from the May 2, 2016 City Council Meeting

Accepting the report of new claims against the City and approving disposition of claims set for the period of May 3, 2016 to May 16, 2016

<b>CLAIMS LIST</b>					
May 16, 2016					
Allied Insurance	Ins	100.00	League of NE Municip	Training	886.00
American Recycling	Garbage	289.00	Lincoln Journal-Star	Adv	1,292.00
Arbor Mart, Inc	Fuel	1,621.77	Lopez, G.	Rfnd	25.00
AVAC	Contr	681.36	Matheson Tri-Gas, Inc.	Sup	189.03
Berry	Adv	22.80	MD Aquatics, LLP	Chem	1,178.00
Blankenship, C.	Fuel	46.50	Mead Lumber	Sup	53.15
Blunt, J.	Fuel	8.01	Mercer's Do-It-Best	Sup	406.70
Bob's Welding Shop	Rep	419.60	Midcentury Insurance	Rfnd	758.50
Bohl P & H	Rep	110.64	Midwest Farmers Coop	Chem	124.67
Bound Tree Medical LLC	Sup	714.56	MM Champ	Rfnd	25.00
Boyce, D	Rfnd	100.00	Mullenax Auto Supply	Sup	45.94
BSN Sports	Sup	421.37	Napa Auto Parts	Sup	71.76
Callaway Golf Sales	Mrdse	1,094.82	Nationwide Trust	Inv	14,038.22
Capital Business Sys	Contr	244.88	NC Clerk Treasurer	Misc	75.00
Card Services	Misc.	1,284.72	NC NEWS PRESS	Subscript.	528.00
Casey's	Fuel	145.02	Nebraska City Utilities	Util	8,677.82
Channing Bete Company	Training	276.90	NE Dept of Revenue	Sls Tax	1,166.49
Coca-Cola of Lincoln	Bev	206.41	NE Life Magazine	Adv	315.00
CompuTech Computer	Contr	250.00	O'Reilly Auto Parts	Rep	128.85
Concrete Industries, Inc.	Sup	244.13	Omaha World-Herald	Adv	1,364.64
Consolidated Manag	Training	208.03	Path, G.	Mileage	21.07
Coventry Advantra	Rfnd	594.39	Payroll	Payroll	99,001.73

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D & K Products	Polyn Dim	3,410.40	Physio-Control, Inc	Sup	428.41
Data Technologies	Training	1,621.00	Productivity Plus	Rep	99.27
Dell Marketing L.P.	Donation	1,729.33	Purchase Power	Postage	402.50
Douglas Tire Co.	Rep	318.54	Quality Brands of Linc	Bev	280.40
Eakes Office Solutions	Sup	620.56	Rhoades, Vickie	Belt Reim.	10.70
EMS Billing Services, Inc	Contr	3,830.77	Schneider Electric	Donation	75.00
Fareway Stores, Inc.	Concessions	84.91	Shelter Home Service LLC	Rfnd	25.00
Fireguard	Rep	3,615.75	Spiral	LB840	50,000.00
First Wireless	Commun.	393.00	St. Mary's Com Hosp	Med	33.00
Foremost Equipment	Sup	716.00	The Toolkit Group	Training	301.00
Fox Center	LB840	965.88	Tielke's Sandwiches	Concessions	94.07
Galeton Gloves	Sup	209.87	Tree City Tees	Unif	88.00
Grimm's Gardens	Misc.	75.96	Turf Supply	Chem	2,729.00
Henry Motors South, Inc.	Rep	185.50	UHC	HRA-NCU	5,643.60
Hopkins Automotive Inc.	Rep	7.29	UHC	HRA-City	844.36
Ideal Pure Water	Sup	74.45	Unifirst Corporation	Contr	111.85
K & Z Distributing	Bev	201.10	Verizon Wireless	Tele	14.06
Kuhn, J.	Rfnd	200.00	Westlake Ace	Sup	136.92
Landis Engine Company	Rep	86.41	Wilderness Constr	Rfnd	200.00
Larson Motors	Rep	41.69	Windstream, Inc.	Tele	1,577.87
Lawn Barber	Misc.	70.00	Zerofriction	Mrdse	378.55

Approve request to allow parking along the East side of Steinhart Park Road along the High School for the Relay for Life Fundraiser Event held on June 4, 2016 from 8:00 AM through June 5, 2016 at 5:00 PM. Consent items approved by the Council. Upon roll call the following voted YES: Stark, Crunk, Glover, Johns and Mayor Bequette. Voting NO: None. Motion carried

Moved by Mayor Bequette and seconded by Commissioner Johns to re-appoint Myron Hahn and Dan Patton to the Dock Board with a three year term. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Mayor Bequette and seconded by Commissioner Johns to appoint Brent Shanholtz to the Economic Development Loan Fund Review Committee. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Mayor Bequette proclaimed the Week of May 15-21, 2016, as Emergency Medical Services Week. Andrew Snodgrass received the proclamation and spoke on behalf of the EMS Crew.

Treasurer's report was given, as of April 30, 2016, Total Nebraska City funds of \$9,406,487.24. Total Cash and Reserve for Nebraska City Utilities of \$16,162,061.03. Total City of Nebraska City and Utility funds \$25,568,548.27.

Council acknowledged receipt of City Administrator Report. Grayson Path spoke regarding his report.

Council acknowledged receipt of Utility Financial Report for period ending March 31, 2016.

Council acknowledged receipt of Utility Claims for period ending April 30, 2016

NCRA Report on Steinhart Aquatic Center. Commissioner Crunk gave the report.

Report from the 4th Corso Viaduct Safety Committee. Mayor Bequette gave the report.

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## Nebraska City

Moved by Mayor Bequette and seconded by Stark to approve the election of the Nebraska City Volunteer Department Officers as all stated: President; Mike Borns, Secretary; Jeff Kohrs, Treasurer; Steve Recker, Chief; Alan Viox, 1<sup>st</sup> Assistant Chief; Dennis Marshall, 2<sup>nd</sup> Assistant Chief; John Shrader, Captains; Brian Ehmke, David Briley, Rob Schreiner, Training Officer; Kim Kahout, & Safety Officer; Jeff Lollmann. Upon roll call, the following voted YES: Glover, Johns, Crunk, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Johns and seconded by Stark to approve the request of NCTC for Lemon Days event July 9, 2016 to include use of the sidewalks for sidewalk sales and the use of City Parking lots to host a 3 on 3 Basketball Tournament including picnic tables for the spectators. Amy Allgood spoke to describe the event. Upon roll call, the following voted YES: Glover, Johns, Crunk, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Stark and seconded by Glover to approve the request of Pioneer Holdings SDL for the Memorial Building on Saturday, May 28, 2016 for a Beer Garden. Tim Pendrell spoke to describe the request. Upon roll call, the following voted YES: Glover, Crunk, Stark and Mayor Bequette. Voting NO: None. Abstain: Johns. Motion carried.

Andrew Snodgrass, Alan Viox and Grayson Path spoke regarding a discussion of proposed County-wide EMS tax.

Moved by Commissioner Stark and seconded by Johns to approve the Certificate of Participation for refinancing PPGA bond. Jeff Kohrs spoke to explain the request. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Stark and seconded by Crunk to approve the recommendation from the Board of Public Works to purchase the 2016 Case Backhoe/Loader for \$87,606.92. Jeff Kohrs spoke to explain the request. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Stark and seconded by Crunk to approve the recommendation for the purchase of a 2016 Chevy Equinox LT with NG for \$34044.00. Jeff Kohrs spoke to explain the request. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Stark and seconded by Glover to leave it just the way it is, [regarding the lease payment or perpetual easement options for Verizon Wireless Cell Tower on Steinhart Lodge parking lot]. Grayson Path spoke to explain the options. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Stark and seconded by Johns to approve the FHWA National Roadway Functional Classification Map and authorize City Administrator to sign. Grayson Path spoke to explain the options. Upon roll call, the following voted YES: Glover, Crunk, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Commissioner Glover led the discussion to consider consolidating accounting line items. Grayson Path recommended implementing the changes at the end of the fiscal year. The Council was unanimous in their approval to make the listed changes.

Meeting Adjourned at 7:36 P.M.

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Nebraska City

AFFIDAVIT

I, the undersigned City Clerk for the City of Nebraska City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Board of Commissioners, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Randy A. Dunster, City Clerk-Treasurer

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**City of Nebraska City**

1409 Central Avenue  
Nebraska City, NE 68410-2223

**HOME OF ARBOR DAY**

Phone: 402-873-5515 Fax: 402-873-5685

**REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS**

*Your request will be reviewed and possibly scheduled for a future meeting, or forwarded to **City Staff** for appropriate action\**

Name: Tyson Hermann  
Address: 1219 11<sup>th</sup> Ave  
Phone #: (402) 209-2813  
Email Address: Tyhermann@hotmail.com

CC: Police Dept.:  Street Dept.:  Park Dept.:  Other:

**Item Title:** Liquor License

**Explanation of Request:**  
Applejack parade beer garden

**Action Requested of Council:**  
To have SDL Approved

**Will this item require the expenditure of funds? Yes:  No:  Estimate \$** \_\_\_\_\_

Council meetings are held on the 1<sup>st</sup> & 3<sup>rd</sup> Mondays of the month. All requests for inclusion on a Council Meeting Agenda must be submitted by 5 P.M. on the Tuesday preceding the Council meeting. Once a request is received, staff will review it and determine if it requires Mayor/Council action, or if the item can be handled by staff.  
**\*You will be notified as to how your request will be handled as soon as possible.**

**For staff use only: Action Required.**

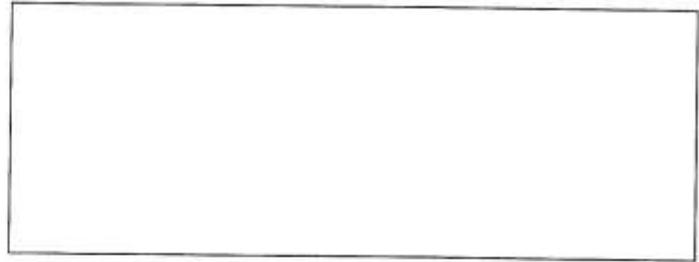
**Examination of Public Records are covered under Neb. Rev. State. §84-712 or other appropriate state statutes.**  
Fees: \$0.25 per page

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## Nebraska City

### APPLICATION FOR SPECIAL DESIGNATED LICENSE

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: [www.lcc.nebraska.gov/](http://www.lcc.nebraska.gov/)  
Email Applications: [michelle.porter@nebraska.gov](mailto:michelle.porter@nebraska.gov)



### Special Designated License (SDL) Application Quick Checklist

#### Requirements:

- Application **MUST** include approval from the local governing body (city, village or county clerk of where the event is to be held). Contact this jurisdiction for further requirements. **EFFECTIVE MAY 1, 2015, applications will no longer be accepted without the local approval attached to the application.**
- Only 501c Non-profit organizations or Retail license holders can apply for a Special Designated License. No SDL will be issued to Retail license holders operating under a Temporary Operating Permit (TOP).
- Include \$40 fee for each day/area. Check is payable to the Nebraska Liquor Control Commission (NLCC). If you have a Catering license, there are no fees required. You may also pay online at <http://www.lcc.nebraska.gov/>
- **Applicant** is responsible for all paperwork and fees being sent to the NLCC office before the 10-day deadline. It is not the responsibility of the local governing body to send the application to the NLCC.
- When requesting alternate date(s) and/or location(s), approval from local governing body must include approval for these alternate date(s) and/or locations(s). If requesting sales on Sunday, attach copy of local ordinance or resolution.
- Application must be received in Nebraska Liquor Control Commission (NLCC) office a **MINIMUM** of ten (10) business days prior to date of event (weekends, holidays & date of event are not included in this count). **NO EXCEPTIONS!**  
\*See the calendar on our website at:  
<https://lcc.nebraska.gov/sites/lcc.nebraska.gov/files/SDL%20Calender%20JAN%202016%20-%20JAN%202017.pdf>
- When requesting an outdoor area, you must include a box-type diagram of the area to be licensed.
- Non Caterer applicants are only allowed six (6) SDLs per calendar year, this includes consecutive days used on one application (i.e. July 4 – 9 = 6 days).
- Only twelve (12) SDLs will be issued at any specific location that could otherwise hold a liquor license.

#### Non Profit Application **MUST:**

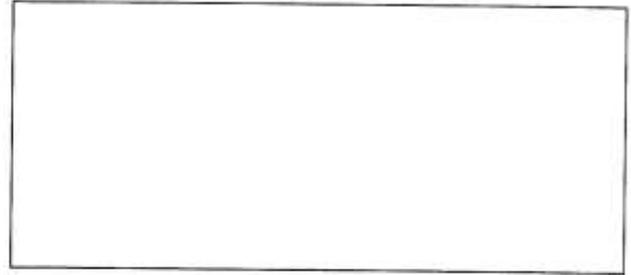
- Include page five (5) of application showing Federal ID number.
- When requesting an exemption from NLCC rules; i.e. waiver of double fencing, request must be received in (NLCC) office a **MINIMUM** of 30 days prior to the date of the event; waiving double fence must complete Form 140.

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**APPLICATION FOR SPECIAL DESIGNATED LICENSE**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: [www.lcc.nebraska.gov/](http://www.lcc.nebraska.gov/)  
Email Applications: michelle.porter@nebraska.gov



DO YOU NEED POSTERS? YES\_\_ NO

**NON PROFIT APPLICANTS**

(Check one that best applies)

Municipal\_\_ Political\_\_ Fine Arts\_\_ Fraternal\_\_ Religious\_\_ Charitable\_\_ Public Service

**LIQUOR LICENSE HOLDERS**

Liquor license number and class (i.e. C-55441)

I-102374

**COMPLETE ALL QUESTIONS**

1. Type of alcohol to be served and/or consumed: Beer  Wine\_\_ Distilled Spirits\_\_

2. Licensee name (last, first,), corporate name or limited liability company (LLC) name  
(As it reads on your liquor license)

NAME: Hermann, Tyson Bing's sports bar

ADDRESS: 704 Central Ave

CITY Nebraska City, NE ZIP 68410

3. Location where event will be held; name, address, city, county, zip code

BUILDING NAME Sunkin Parking Lot

ADDRESS: 710 Central Ave CITY Nebraska City

ZIP 68410 COUNTY and COUNTY # OTOE 11

a. Is this location within the city/village limits? YES\_\_ NO

b. Is this location within the 150' of church, school, hospital or home  
for aged/indigent or for veterans and/or wives? YES\_\_ NO

c. Is this location within 300' of any university or college campus? YES\_\_ NO

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4. Date(s) and Time(s) of event (no more than six (6) **consecutive** days on one application)

Date <u>9-17-16</u>	Date	Date	Date	Date	Date
<b>Hours</b> From <u>11:00 AM</u> To <u>12:00 AM</u>	<b>Hours</b> From	<b>Hours</b> From	<b>Hours</b> From	<b>Hours</b> From	<b>Hours</b> From
	To	To	To	To	To

a. Alternate date: \_\_\_\_\_

b. Alternate location: \_\_\_\_\_  
(Alternate date or location must be specified in local approval)

5. Indicate type of activity to be carried on during event:

Dance \_\_\_ Reception \_\_\_ Fund Raiser \_\_\_ Beer Garden \_\_\_ Sampling/Tasting \_\_\_

Other parade & mechanical bull

6. Description of area to be licensed

Inside building, dimensions of area to be covered **IN FEET** \_\_\_\_\_ x \_\_\_\_\_  
(not square feet or acres)

\*Outdoor area dimensions of area to be covered **IN FEET** 120 x 120

\***SKETCH OF OUTDOOR AREA** (or attach copy of sketch) (sample sketch)

If outdoor area, how will premises be enclosed?

\_\_\_ Fence;  snow fence  chain link  cattle panel  
other \_\_\_\_\_

\_\_\_ Tent

7. How many attendees do you expect at event? 100

8. If over 150 attendees. Indicate the steps that will be taken to prevent underage persons from obtaining alcohol beverages. (Attach separate sheet if needed)

wrist bands

9. Will premises to be covered by license comply with all Nebraska sanitation laws? YES  NO

a. Are there separate toilets for both men and women? YES  NO

Nebraska City

10. Where will you be purchasing your alcohol?

Wholesaler  Retailer \_\_\_ Both \_\_\_ BYO \_\_\_  
(includes wineries)

11. Will there be any games of chance operating during the event? YES \_\_\_ NO \_\_\_

If so, describe activity \_\_\_\_\_

NOTE: Only games of chance approved by the Department of Revenue, Charitable Gaming Division are permitted. All other forms of gambling are prohibited by State Law. There are no exceptions for Non Profit Organizations or any events raising funds for a charity. This is only an application for a Special Designated License under the Liquor Control Act and is not a gambling permit application.

12. Any other information or requests for exemptions: \_\_\_\_\_

13. Name and telephone number/cell phone number of immediate supervisor. This person will be at the location of the event when it occurs, able to answer any questions from Commission and/or law enforcement before and during the event, and who will be responsible for ensuring that any applicable laws, ordinances, rules and regulations are adhered to. PLEASE PRINT LEGIBLY

Print name of Event Supervisor Tony Moyer

Signature of Event Supervisor Tony Moyer

Event Supervisor phone: Before 402-209-3040 During 402-209-3040  
Email address \_\_\_\_\_

Consent of Authorized Representative/Applicant

14. I declare that I am the authorized representative of the above named license applicant and that the statements made on this application are true to the best of my knowledge and belief. I also consent to an investigation of my background including all records of every kind including police records. I agree to waive any rights or causes of action against the Nebraska Liquor Control Commission, the Nebraska State Patrol or any other individual releasing said information to the Liquor Control Commission or the Nebraska State Patrol. I further declare that the license applied for will not be used by any other person, group, organization or corporation for profit or not for profit and that the event will be supervised by persons directly responsible to the holder of this Special Designated License.

sign here

Tyson Hermann owner 5-11-16  
Authorized Representative/Applicant Title Date

Tyson Hermann  
Print Name

This individual must be listed on the application as an officer or stockholder unless a letter has been filed appointing an individual as the catering manager allowing them to sign all SDL applications.

The law requires that no special designated license provided for by this section shall be issued by the Commission without the approval of the local governing body. For the purposes of this section, the local governing body shall be the city or village within which the particular place for which the special designated license is requested is located, or if such place is not within the corporate limits of a city or village, then the local governing body shall be the county within which the place for which the special designated license is requested is located.

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This page is required to be completed by Non Profit applicants only.

Application for Special Designated License  
Under Nebraska Liquor Control Act  
Affidavit of Non-Profit Status

I HEREBY DECLARE THAT THE CORPORATION MAKING APPLICATION FOR A SPECIAL DESIGNATED LICENSE UNDER THE NEBRASKA LIQUOR CONTROL ACT IS EITHER A MUNICIPAL CORPORATION, A FINE ARTS MUSEUM INCORPORATED AS A NONPROFIT CORPORATION, A RELIGIOUS NONPROFIT CORPORATION WHICH HAS BEEN EXEMPTED FROM THE PAYMENT OF FEDERAL INCOME TAXES, A POLITICAL ORGANIZATION WHICH HAS BEEN EXEMPTED FROM THE PAYMENT OF FEDERAL INCOME TAXES, OR ANY OTHER NONPROFIT CORPORATION, THE PURPOSE OF WHICH IS FRATERNAL, CHARITABLE, OR PUBLIC SERVICE AND WHICH HAS BEEN EXEMPTED FROM THE PAYMENT OF FEDERAL INCOME TAXES AS PER §53-124.11(1).

AS SIGNATORY I CONSENT TO THE RELEASE OF ANY DOCUMENTS SUPPORTING THIS DECLARATION AND ANY DOCUMENTS SUPPORTING THIS DECLARATION WILL BE PROVIDED TO THE NEBRASKA LIQUOR CONTROL COMMISSION, THE NEBRASKA STATE PATROL OR ANY AGENT OF THE LIQUOR CONTROL COMMISSION IMMEDIATELY UPON DEMAND. I ALSO CONSENT TO THE INVESTIGATION OF THIS CORPORATE ENTITY TO DETERMINE IT'S NONPROFIT STATUS.

I AGREE TO WAIVE ANY RIGHTS OR CAUSES OF ACTION AGAINST THE NEBRASKA LIQUOR CONTROL COMMISSION, THE NEBRASKA STATE PATROL OR ANY PARTY RELEASING INFORMATION TO THE AFOREMENTIONED PARTIES.

Bing's Sports Bar  
NAME OF CORPORATION

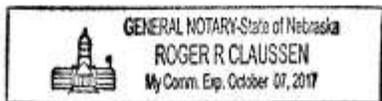
46-2390387  
FEDERAL ID NUMBER

[Signature]  
SIGNATURE OF TITLE OF CORPORATE OFFICERS

THE ABOVE INDIVIDUAL STATES THAT THE STATEMENT ABOVE IS TRUE AND CORRECT. IF ANY FALSE STATEMENT IS MADE ON THIS APPLICATION, THE APPLICANT SHALL BE DEEMED GUILTY OF PERJURY AND SUBJECT TO PENALTIES PROVIDED BY LAW. (SEC. §53-131.01) NEBRASKA LIQUOR CONTROL ACT

SUBSCRIBED IN MY PRESENCE AND SWORN TO BEFORE ME THIS 12<sup>th</sup> DAY OF

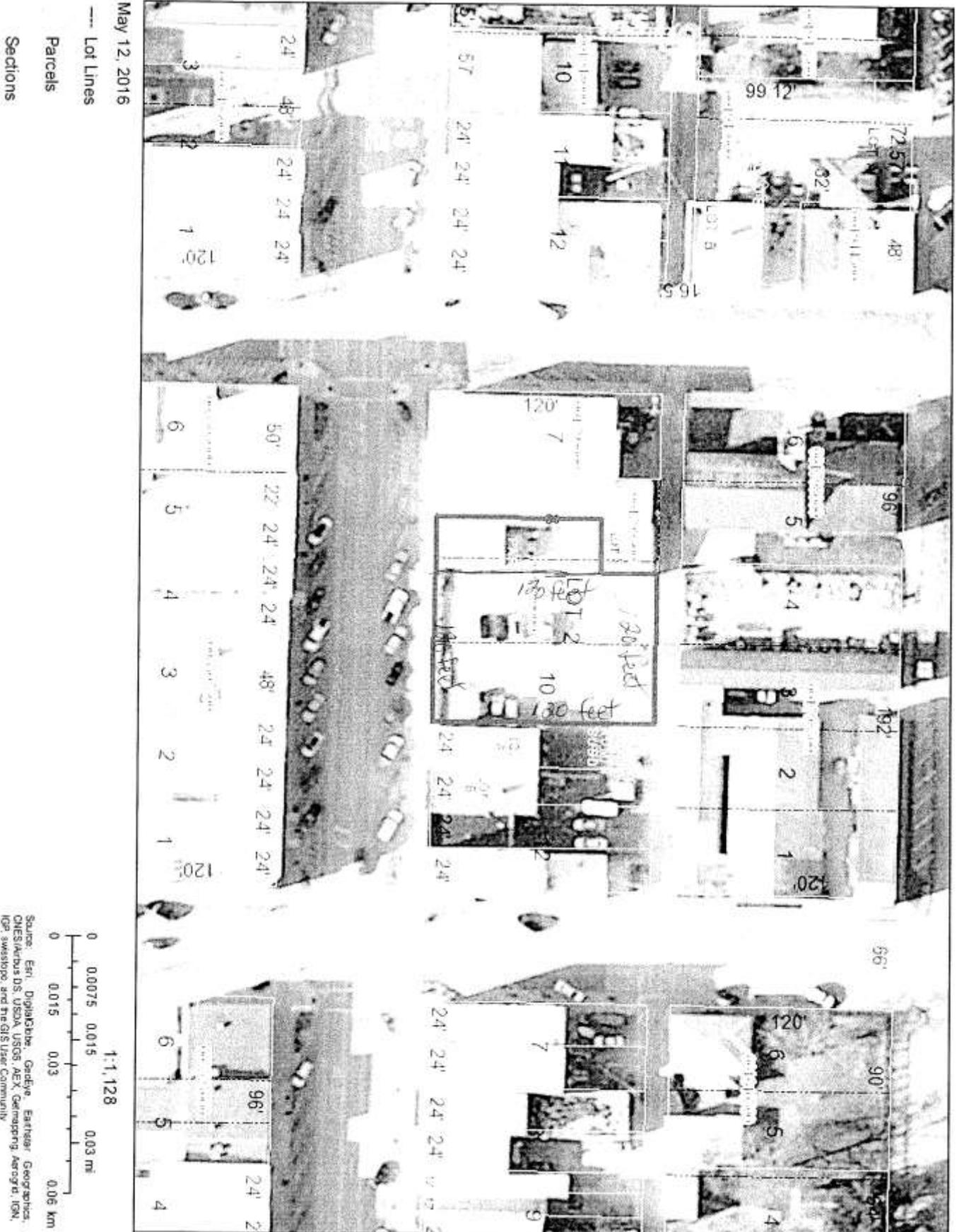
MAY 2016



[Signature]  
NOTARY PUBLIC SIGNATURE & SEAL

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# Nebraska City



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**City of Nebraska City**

1409 Central Avenue  
Nebraska City, NE 68410-2223

**HOME OF ARBOR DAY**

Phone: 402-873-5515 Fax: 402-873-5685

**REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS**

*Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to City Staff for appropriate action\**

Name: Connie Higgins  
Address: 2014 Central Avenue  
Phone #: 402-209-2845  
Email Address: \_\_\_\_\_

CC: Police Dept.:  Street Dept.: \_\_\_\_\_ Park Dept.: \_\_\_\_\_ Other: \_\_\_\_\_

**Item Title:** Nebr. City city-wide garage sales

**Explanation of Request:**  
This is an announcement that the Nebr. City city-wide garage sales is scheduled for June 25, 2016.....

**Action Requested of Council:**  
\_\_\_\_\_

**Will this item require the expenditure of funds? Yes: \_\_\_\_\_ No:  Estimate \$ \_\_\_\_\_**

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**\*You will be notified as to how your request will be handled as soon as possible.**

**For staff use only: Action Required.**  
\_\_\_\_\_

**Examination of Public Records are covered under Neb. Rev. State. §84-712 or other appropriate state statutes.**  
Fees: \$0.25 per page

Nebraska City

**APPLICATION FOR SPECIAL DESIGNATED LICENSE**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: [www.lcc.nebraska.gov/](http://www.lcc.nebraska.gov/)  
Email Applications: michelle.porter@nebraska.gov

DO YOU NEED POSTERS? YES  NO

**NON PROFIT APPLICANTS**

(Check one that best applies)

Municipal  Political  Fine Arts  Fraternal  Religious  Charitable  Public Service

**LIQUOR LICENSE HOLDERS**

Liquor license number and class (i.e. C-055441)

I-097694

**COMPLETE ALL QUESTIONS**

1. Type of alcohol to be served and/or consumed: Beer  Wine  Distilled Spirits

2. Licensee name (last, first,), corporate name or limited liability company (LLC) name  
(As it reads on your liquor license)

NAME: MT Hospitality, LLC

ADDRESS: 1219 Central Avenue

CITY Nebraska City ZIP 68410

3. Location where event will be held; name, address, city, county, zip code

BUILDING NAME Larson Motors Inc.

ADDRESS: 1801 Frontage Road CITY Nebraska City

ZIP 68410 COUNTY and COUNTY # Otoe #11

a. Is this location within the city/village limits? YES  NO

b. Is this location within the 150' of church, school, hospital or home for aged/indigent or for veterans and/or wives? YES  NO

c. Is this location within 300' of any university or college campus? YES  NO

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Nebraska City

4. Date(s) and Time(s) of event (no more than six (6) **consecutive** days on one application)

Date 06-25-2016	Date	Date	Date	Date	Date
<b>Hours</b> From 4:30pm	<b>Hours</b> From	<b>Hours</b> From	<b>Hours</b> From	<b>Hours</b> From	<b>Hours</b> From
To 1:00am	To	To	To	To	To

a. Alternate date: 06-26-2016

b. Alternate location: None  
(Alternate date or location must be specified in local approval)

5. Indicate type of activity to be carried on during event:

Dance \_\_\_ Reception \_\_\_ Fund Raiser \_\_\_ Beer Garden  Sampling/Tasting \_\_\_  
Other \_\_\_\_\_

6. Description of area to be licensed

Inside building, dimensions of area to be covered **IN FEET** \_\_\_\_\_ x \_\_\_\_\_  
(not square feet or acres)

\*Outdoor area dimensions of area to be covered **IN FEET** <sup>200</sup> \_\_\_\_\_ x <sup>290</sup> \_\_\_\_\_

\***SKETCH OF OUTDOOR AREA (or attach copy of sketch) (sample sketch)**

*See attached.*

If outdoor area, how will premises be enclosed?

Fence;  snow fence  chain link \_\_\_ cattle panel  
\_\_\_ other \_\_\_\_\_  
\_\_\_ Tent

7. How many attendees do you expect at event? 1,000

8. If over 150 attendees. Indicate the steps that will be taken to prevent underage persons from obtaining alcohol beverages. (Attach separate sheet if needed)

ID bracelets for individuals 21 and over at the entrance, one bracelet per person only, adequate security.

9. Will premises to be covered by license comply with all Nebraska sanitation laws? YES  NO \_\_\_

a. Are there separate toilets for both men and women? YES  NO \_\_\_

Nebraska City

10. Where will you be purchasing your alcohol?

Wholesaler X Retailer \_\_\_\_\_ Both \_\_\_\_\_ BYO \_\_\_\_\_  
(Includes wineries)

11. Will there be any games of chance operating during the event? YES \_\_\_ NO X

If so, describe activity \_\_\_\_\_

NOTE: Only games of chance approved by the Department of Revenue, Charitable Gaming Division are permitted. All other forms of gambling are prohibited by State Law. There are no exceptions for Non Profit Organizations or any events raising funds for a charity. This is only an application for a Special Designated License under the Liquor Control Act and is not a gambling permit application.

12. Any other information or requests for exemptions: \_\_\_\_\_

13. Name and telephone number/cell phone number of immediate supervisor. This person will be at the location of the event when it occurs, able to answer any questions from Commission and/or law enforcement before and during the event, and who will be responsible for ensuring that any applicable laws, ordinances, rules and regulations are adhered to. PLEASE PRINT LEGIBLY

Print name of Event Supervisor Ronald S. McGinnis

Signature of Event Supervisor 

Event Supervisor phone: Before 402-209-4677 During 402-209-4677

Email address rsmcginnis@gmail.com

Consent of Authorized Representative/Applicant

14. I declare that I am the authorized representative of the above named license applicant and that the statements made on this application are true to the best of my knowledge and belief. I also consent to an investigation of my background including all records of every kind including police records. I agree to waive any rights or causes of action against the Nebraska Liquor Control Commission, the Nebraska State Patrol or any other individual releasing said information to the Liquor Control Commission or the Nebraska State Patrol. I further declare that the license applied for will not be used by any other person, group, organization or corporation for profit or not for profit and that the event will be supervised by persons directly responsible to the holder of this Special Designated License.

sign here 

Authorized Representative/Applicant

President

Title

06-26-2016

Date

Ronald S. McGinnis

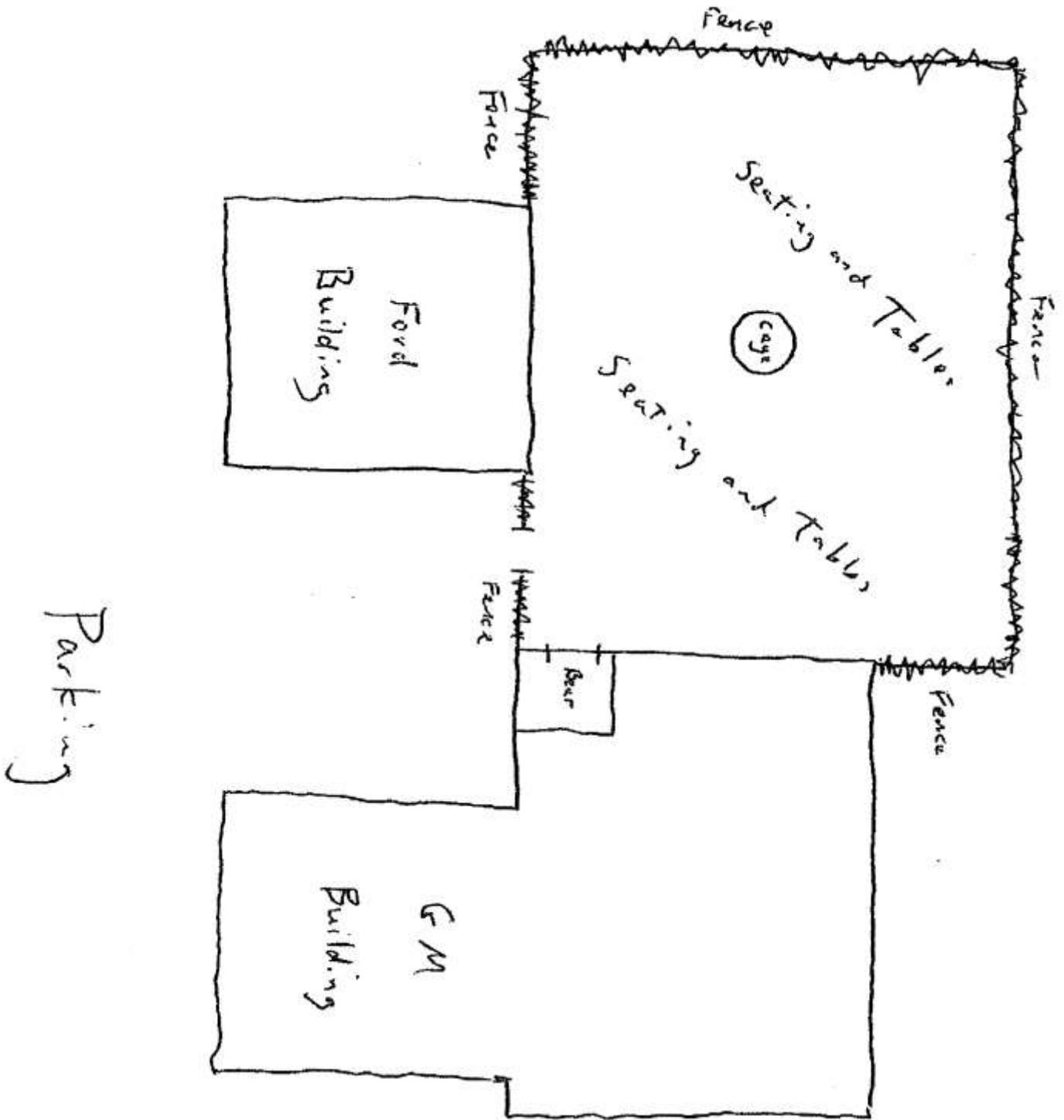
Print Name

This individual must be listed on the application as an officer or stockholder unless a letter has been filed appointing an individual as the catering manager allowing them to sign all SDL applications.

The law requires that no special designated license provided for by this section shall be issued by the Commission without the approval of the local governing body. For the purposes of this section, the local governing body shall be the city or village within which the particular place for which the special designated license is requested is located, or if such place is not within the corporate limits of a city or village, then the local governing body shall be the county within which the place for which the special designated license is requested is located.

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**City of Nebraska City**

1409 Central Avenue  
Nebraska City, NE 68410-2223

**HOME OF ARBOR DAY**

Phone: 402-873-5515 Fax: 402-873-5685

**PUBLIC REQUEST FOR COUNCIL AGENDA OR INFORMATION ITEM**

*Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to City Staff for appropriate action\**

Name: Nebraska City Tourism & Commerce  
Address: 806 1<sup>st</sup> Avenue  
Phone #: 402-873-6654  
Email Address: [amya@nebraskacity.com](mailto:amya@nebraskacity.com)

CC: Police Dept:      Street Dept: X Park Dept:      Other:     

**Item Title:**

**Explanation of Request:**  
NCTC would like to request the use of the sunken parking lot for 7 Saturdays (July 11 – August 6) for the Summer Saturday Film Series. We will need the public restrooms be open to the public from 8 - 10:30 pm on those evenings.  
**June 11 – Inside Out**  
**June 18 – Shaun the Sheep**  
**June 25 – Back to the Future**  
**July 9 – Ninja Turtles**  
**July 16 – Frozen**  
**July 23 – Up**  
**July 30 – Zootopia**

**Action Requested of Council:**

- Parking lot is closed on those Saturday evenings – Barricades
- Restrooms open late.
- Power usage – Organize with NC Utilities
- Street light off – Organize with NC Utilities

**Will this item require the expenditure of funds? Yes:      No: X**

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Nebraska City



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Nebraska City, NE 68410

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or forwarded to City Staff for appropriate action\**

Name: Nebraska City Tourism & Commerce  
Address: 806 1<sup>st</sup> Avenue  
Phone #: 402-873-6654  
Email Address: [amy@nebraskacity.com](mailto:amy@nebraskacity.com)

CC: Police Dept: X Street Dept: X Park Dept: X Other:     

**Item Title:**

**Explanation of Request:**

**Date change on previously approved event.**

NCTC would like to add more events to Lemon Days, July 9<sup>th</sup> 2016. We request the use of the sidewalks for business owners to host sidewalk sales, the use of 3 city parking lots to host a 3 on 3 basketball tournament and picnic tables for spectators.

**3 on 3 basketball tournament and outdoor event July 9<sup>th</sup> – same  
Lemon Days sidewalk sales – June 28-30**

**Action Requested of Council:**

- Request permission for businesses to use the sidewalk in front of their store to place merchandise outside during the event. *(We will ask them to leave 6ft of space from the curb to the merchandise for flow of traffic.)* **Date change for this item... July 28 – 30**
- Request permission to use city parking lots to host a 3 on 3 basketball tournament.
  - Sunken Parking Lot on the north side of Central on the 700 block.
  - Parking lot between Shipley Flooring and Professional Mortgage on the north side of 1<sup>st</sup> Corso on the 700 block - both lots.
- Request the use of picnic tables for spectators at the event.
  - Sunken Parking Lot – 6 tables
  - Shipley/Profession Mortgage Lot – 6 tables

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Nebraska City

- Request that the public restrooms are open and available for the event.

**Will this item require the expenditure of funds? Yes: \_\_\_ No: X**

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**For staff use only: Action Required.**



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**REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS**

*Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to **City Staff** for appropriate action\**

Name: Republic Classic Car Club  
Address: P.O. Box 324  
Phone #: 402-873-2629  
Email Address: Larry.Stephenson24@aol.com

CC: Police Dept.:  Street Dept.:  Park Dept.:  Other:

**Item Title:**

**Explanation of Request:**  
Parking for CARS of AppleJack  
CAR SHOW Sept. 18 - 2016

**Action Requested of Council:**

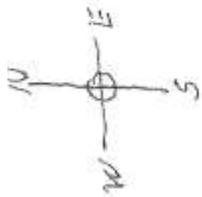
**Will this item require the expenditure of funds? Yes:  No:  Estimate \$**

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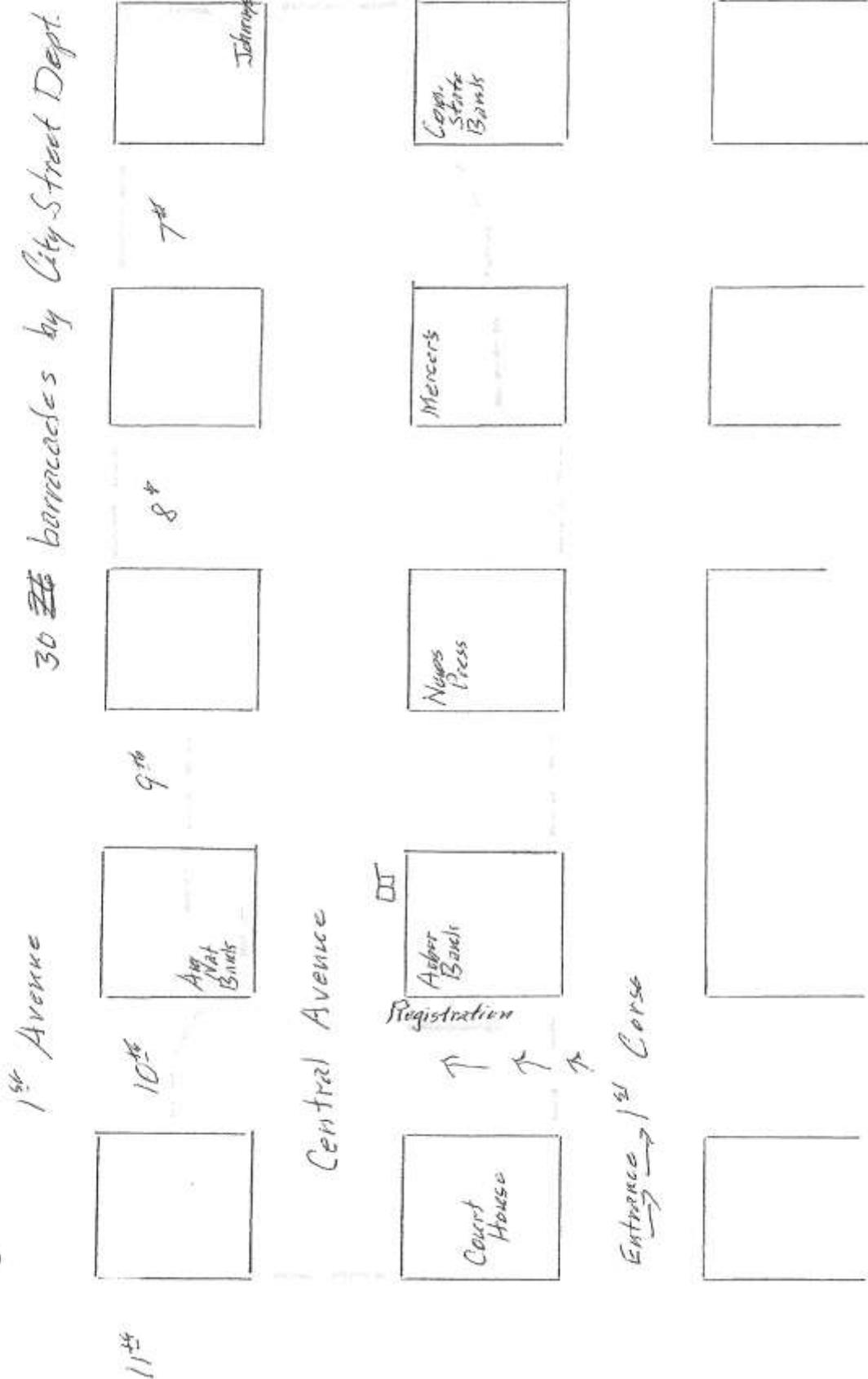
**For staff use only: Action Required.**

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Fees: \$0.25 per page

Nebraska City



Apple Truck Car Show 2016  
 Sunday - 18 Sept 2016



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City of Nebraska City

1409 Central Avenue  
Nebraska City, NE 68410-2223

HOME OF ARBOR DAY

Phone: 402-873-5515 Fax: 402-873-5685

REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS

Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to City Staff for appropriate action\*

Name: Oliver Borchers-Williams  
Address: 1412 1<sup>st</sup> Ave  
Phone #: (718)-443-1097  
Email Address: oliver\_bw@icdnw.com

CC: Police Dept.:      Street Dept.:      Park Dept.:      Other:     

Item Title: Dance Marathon Approval

Explanation of Request: The NCHS Student Council is planning a community dance/dance marathon to raise funds for a weekend lunch program at the high school. It will be held at the High School football field on July 2 from 5:00 PM to midnight. There will be music, lights, and concessions.

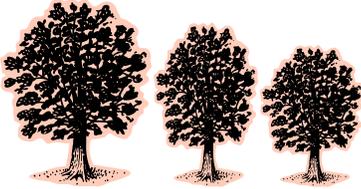
Action Requested of Council: The NCHS student Council is seeking approval for this dance and information on the noise ordinance on the day of the dance.

Will this item require the expenditure of funds? Yes:    No:  Estimate \$     

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**PUBLIC REQUEST FOR COUNCIL AGENDA OR INFORMATION ITEM**

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Name: NCTC  
Address: 806 1<sup>st</sup> Avenue  
Phone #: 402-873-6654  
Email Address: [amy@nebraskacity.com](mailto:amy@nebraskacity.com)

CC: Police Dept:      Street Dept:      Park Dept:      Other:     

**Item Title: 4<sup>th</sup> of July carnival at Steinhart Park**

**Explanation of Request:**  
**Requesting permission for use of the Steinhart Park for a carnival over the 4<sup>th</sup> of July weekend.**  
**June 30 - July 2.**  
**Parking lot to the east of the public restrooms**  
**Road in front of the restrooms to Jaycee concession stand.**

**Action Requested of Council:**

**Will this item require the expenditure of funds? Yes:      No: X**

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Southeast Nebraska Development District

[www.sendd.org](http://www.sendd.org)

Nebraska City

MAIN OFFICE  
2631 "O" Street, Lincoln, NE 68510  
Office: 402-475-2560  
[mchampion@sendd.org](mailto:mchampion@sendd.org)

May 10, 2016

**Nebraska City 14-HO-3S058  
Citywide Housing Rehabilitation Program**

**Re: Narrative outlines for Recommendations of Construction Contract Award  
For Project #08**

---

**Project # 14-TEC-08**

915 5<sup>th</sup> Avenue  
Nebraska City, NE 68410

Construction contract award amount: \$ 24,995.00  
Contractor: NJC Construction

**Description of work:**

Install smoke/Co2 detectors throughout the home  
Replace electrical service panel  
Replace all old light switches and outlets  
Replace almost all windows. Repair a few.  
Replace exterior doors and storm doors  
Replace ½ of roof. Other half recently replaced  
Paint entire house  
Paint walls and ceiling on the interior  
Install drain tile for better drainage from back to front yard  
Replace all gutters and downspouts

May 10, 2016

RE: City Wide, Nebraska City Housing Rehabilitation Program



Hsg. Advisory Committee/  
City Council Members

On May 4<sup>th</sup>, 2016, bid opening was held at 3:00 P.M. in the afternoon for applicant # 08. The following is SENDD's recommendation to the Hsg. Advisory Committee and Members of the City Council on this applicant:

**FOR PROJECT 14-NEB-08**, our Office recommends to award contract to the contractor in the amount of \$ 24,995.00, the total being all from the CDBG Nebraska City, Citywide Housing Rehabilitation Program.

CONTRACTOR	PROJECT AMOUNT
Nate Clarke	Total bid project... \$30,717.50
NJC Contracting	minus Contingency fund..... -\$2,792.50
PO Box 29376	
Lincoln, NE 68507	Base Bid..... \$27,925.00

**Delete the following from the bid:**

1. Contingency	-\$2,792.50
----------------	-------------

New Adjusted Base..... \$ 27,925.00

**Delete the following from the bid:**

2. Homeowner agreed to pay \$2,930.00 out of pocket	-\$2,930.00
---	-------------

**Contracted Amount..... \$ 24,995.00**

NJC Contracting, has successfully completed similar projects over the years in communities in SENDD's District using CDBG & HOME funds. Quality Remodeling, is certified in the "Lead Base Paint Safe Work Practice" and has the proper insurance coverage and manpower to complete these respective projects.

Sincerely,  
Michael A. Champion  
SEND D  
cc: Nebraska City Housing Advisory Committee  
Nebraska City Council Members

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Nebraska City, NE 68410-2223

**HOME OF ARBOR DAY**

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**REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS**

*Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to City Staff for appropriate action\**

Name: Amy Allgood, Kaleb Walker,  
Address: 806 1st Avenue, Nebraska City, NE 68410  
Phone #: 402-873-6654  
Email Address: \_\_\_\_\_

CC: Police Dept.: \_\_\_\_\_ Street Dept.: \_\_\_\_\_ Park Dept.: \_\_\_\_\_ Other: \_\_\_\_\_

Item Title: Nebraska City, IOS/Android App

Explanation of Request: See attached

Action Requested of Council: See Attached

Will this item require the expenditure of funds? Yes: \_\_\_\_\_ No: \_\_\_\_\_ Estimate \$ \_\_\_\_\_

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# Nebraska City

## Nebraska City IOS/Android App

**Purpose of the Project:** To invest in the people of Nebraska City, increase collaboration, engage residents in community and school events, and offer a simple free resource for information. The app will provide a central calendar that pulls the city, schools, & NCTC together, information on events from businesses, schools, city, and community, along with Geolocation provided the potential for directions and future additions of walking tours/integration of historical information.

**Groups involved:** Nebraska City Community Foundation Fund– Youth Advisory Committee, Nebraska City Tourism and Commerce, City of Nebraska City

**Why involve the City:** NCCFF gets tax/IRS compliance guidance from our state organization and cannot grant funds to purchase or develop a capital asset (the app) to a 501c6 organization that could be viewed as benefiting the members rather than the general public. Due to this, we are requesting the City own the app. We propose written agreements between the city, NCTC, and NCCFF that details the following:

- NCCFF YAC will provide the funds for the initial app development
- NCTC will be responsible for all maintenance costs, information maintenance, and running the app
- The City will incur no expense to develop or maintain the app

The project was developed by the Youth Advisory Committee consisting of high school students from the public school and Lourdes. Their vision is for the project to be ran by NCTC so future members of the YAC can focus their time and energy on creating new sustainable projects that impact Nebraska City.

There have been other examples of Cities creating apps, however the Nebraska City app focuses on community engagement. The developer is ready to begin work and we hope to have things up and running by Applejack.

Thank you!

Nebraska City



MILLER • MONROE • FARRELL  
Insurance Agency

[www.mmfins.com](http://www.mmfins.com)

P.O. Box 518  
115 North 10th  
Nebraska City, NE 68410  
Phone: 402-873-3331  
Toll Free: 1-800-247-0326  
Fax: 402-873-7746

Grayson Path  
City Administrator  
City of Nebraska City  
1409 Central Avenue  
Nebraska City, NE

RE: Insurance Renewal 10/1/16

5/12/16

Grayson,

As you know the City's Property & Casualty Insurance renewals come up for renewal on 10/1/16. Miller-Monroe-Farrell has serviced the City's insurance needs since 1992. We are familiar with your existing exposures, loss history and have all the information necessary to obtain renewal bids.

We would like to offer to put this information together and request bids from the various markets available to us in Nebraska. We would request the quotes, receive them back and give you our opinions on each submission. Our intent would be to offer these services with the result of Miller-Monroe-Farrell continuing to service your needs with the company selected to be the best option for the city. We suggest getting this information sent out at least 60 days prior to renewal with a return date for the bids that you recommend? Please let us know if this would be acceptable.

Sincerely,

Joe Miller

Scott Miller

Nebraska City



MILLER • MONROE • FARRELL  
Insurance Agency

www.mmfins.com

P.O. Box 518  
115 North 10th  
Nebraska City, NE 68410  
Phone: 402-873-3331  
Toll Free: 1-800-247-0326  
Fax: 402-873-7746

June 1, 2016

City of Nebraska City  
City Council  
1409 Central Ave  
Nebraska City, NE 68410

Re: Bid for City Insurance

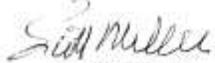
Miller-Monroe-Farrell Insurance would like to offer the City our services as it relates to bidding the Cities Insurance for its upcoming renewal on October 1<sup>st</sup>, 2016. We would request that the City name our agency as broker for this service as it relates to the renewal. We will provide the specifications for the bid process and then take to the various markets for bidding. There are a limited number of carriers that write municipality business in Nebraska, we anticipate contacting the following carriers and more may be added if they are a viable market.

Berkshire Hathaway Homestate Companies – Current Carrier  
EMC – Employers Mutual  
Travelers Insurance  
One Beacon Insurance  
CWG – Continental Western Group

We would have bid specifications and packets prepared by July 9<sup>th</sup> to submit to the carriers for proposed bids. In that packet we will request bids be delivered to City Hall with a bid deadline of September 9<sup>th</sup> at 12:00pm.

We would suggest opening the bids at that time at City Hall and then working with Grayson to review the bids and bringing a recommendation to the council on the September 19<sup>th</sup>, 2016 city council meeting.

Sincerely,

  
Scott Miller  
  
Joe Miller  
Miller-Monroe-Farrell Insurance

Nebraska City

Miller Monroe Farrell  
 PO Box 518  
 Nebraska City, NE 68410  
 Phone: 402-873-3331

City Of Nebraska City  
 1409 Central Avenue  
 Nebraska City, NE 68410

<b>INVOICE NO. 58822</b>		Page 1
ACCOUNT NO.	CSR	DATE
NEBRA-1	EM	06/02/2016
Property		
POLICY #		
04PEM900210-02		
COMPANY		
HomeState Companies		
PRODUCER		
Joe Miller		
EFFECTIVE	EXPIRATION	BALANCE DUE ON
10/01/2015	10/01/2016	06/02/2016

Itm #	Eff Date	Trn	Type	Description	Amount
204185	05/25/16	+EN	PROP	Add the Aquatic Center to Prop	\$2,220.00
204186	05/28/16	+EN	GL-S	Liability for the Slides	\$500.00
<b>Invoice Balance:</b>					<b>\$2,720.00</b>

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: June 6, 2016

Agenda Item: #\_\_\_\_\_ - Consider Agreement on ownership and use of ATV for Flower Basket Program

Submitted By: David Partsch, City Attorney

**A. Synopsis of Issue:**

- a. The Flower Basket Committee has purchased an ATV for watering and maintaining the flower baskets that are within the LB 840 Flower Basket Program; the Agreement would transfer ownership of that ATV to the City, so that it may be insured through the City's carrier and will have an owner when the Program ends.

**B. Options:**

- a. Approve or deny the Agreement.

**C. Fiscal Note:**

- a. None. Current insurance coverages will insure an additional ATV. Ultimately the City could own the ATV without restrictions and at no cost to the City.

**D. Recommendation:**

- a. Approval of the Agreement.
- b. *Recommended Motion:*
  - i. "I move to approve the Agreement on ownership and use of the ATV for the Flower Basket Program and authorize the Mayor to sign the Agreement."

**E. Background:**

- a. The Program has been able to lease an ATV; however, the purchase was deemed to be more fiscally responsible. The Committee is an informal partnership of local merchants, so it has no formal entity to own the ATV and provide insurance on the vehicle. Since it is purchased with private donations to the Program, its use must be limited to the Program so long as the Program is in existence. The Agreement provides a formal entity (the City) that can own and insure the ATV. During the Program's existence, the Program will continue to maintain the ATV as necessary. At termination of the Program, the ATV will be the City's to use without restrictions.

\*\*\*\*\*

**Department Heads: Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

Nebraska City

AGREEMENT

On this \_\_\_\_ day of \_\_\_\_\_, 2016, the Flower Basket Committee, an association of downtown merchants, and the City of Nebraska City, a First Class City in the State of Nebraska, agree as follows:

1. The Flower Basket Committee is an informal association of downtown merchants in the City of Nebraska City which banded together to apply for funding and permission from the City to place hanging flower baskets on light poles in Nebraska City;
2. The Flower Basket Program was approved by the City and began in 2015 with funding through the LB 840 Program to enhance the downtown environment for the benefit of merchants and the City;
3. As part of the Flower Basket Program a local business, Grimm's Gardens, LLC, has been active in overseeing the plantings and maintenance of the flower baskets;
4. Funding has been received from private donors as well as through LB 840; the Committee will use this funding to purchase an ATV as allowed by any funding restrictions, to use in watering and maintaining the flowers as necessary;
5. To assist in seeing the Flower Basket Program continue successfully, the City agrees to accept ownership of the ATV as transferred by the Committee, with the City's use being restricted to benefit the Flower Basket Program, as the same may be amended from time-to-time;
6. The City will provide insurance coverage on the ATV;
7. The Committee shall be solely responsible financially for any and all repairs to the ATV which are not covered by warranty or insurance, as the same may be determined necessary by the Committee;
8. The Committee agrees that upon discontinuance of the Flower Basket Program or at the Program's expiration, all use restrictions on the ATV shall be automatically lifted, and the ATV may be used by the City however it deems fit, at which time the City will become responsible for all future repairs.

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Doug Grimm, Flower Basket Committee

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Bryan Bequette, Mayor  
City of Nebraska City

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



## Agenda Information Support Sheet

**To:** Mayor and Commissioners

**Council Meeting:** June 6, 2016  
**Agenda Item:** # \_\_\_\_\_  
**Submitted By:** Grayson Path, City Administrator  
Dave Partsch, City Attorney

### A. Synopsis of Issue:

- a. NDOR awarded the City with \$4 million in Local Bridge Funds for the 4<sup>th</sup> Corso Viaduct.
- b. With the retirement of Dan Giittinger, the City is without a Responsible Charge (RC) for the 4<sup>th</sup> Corso Viaduct.
- c. The City Council approved in the April 18, 2016 council meeting to have NDOR named as the RC of the project to see the project through the end (handled all negotiations, regulations, Federal guidelines, funding, Railroad, etc.).
- d. The City has been working with NDOR to incorporate both of these changes in to a new Supplemental Agreement #1 to the original agreement (BM1119).
- e. The attached Supplemental Agreement #1 establishes the \$4 million as well as identifies NDOR as the RC of the project. It also updates the agreement language from BM1119 which was approved back in 2011.

### B. Options:

- a. Approve Supplemental Agreement #1 and authorize Mayor to sign.
- b. Recommend changes to the agreement – specify the changes to staff.
- c. Reject the agreement – provide City staff with guidance.

### C. Fiscal Note:

- a. This agreement does not have any immediate financial impacts outside of making the \$4 million funding official. The estimated project cost remains the same as before.
- b. There may be costs prior to construction for NDOR performing RC duties, but either NDOR or a City Employee would have done these duties, thus cost.
- c. Section 14.2 of the agreement is the updated total estimate of the project (includes numbers that have already been spent – Preliminary Engineering, Environmental, etc.).

### D. Recommendation:

- a. Approve Supplemental Agreement #1, Resolution, and authorize Mayor to sign.

### E. Background:

- a. On January 15, 2016, NDOR announced that the 4<sup>th</sup> Corso Viaduct was selected as #1 on the Local Bridge Fund, awarding \$4 million in funding to go towards construction.
- b. The \$4 million will become available as follows: \$2 million in March 2019 and \$2 million in March 2020. Will be used to reduce debt service cost as construction should be complete.
- c. It has taken some time to negotiate contracts with NDOR – they originally wanted to rewrite the entire original agreement, nullifying the original agreement. But with the additional detail of needing to take on RC duties,

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Nebraska City

the City requested that this new agreement include this change instead of coming back with another supplemental agreement. NDOR decided that with making both of these changes, a supplemental agreement would be satisfactory. Either way works.

- d. The City Attorney and City Administrator have each spent many hours reviewing, discussing and negotiating these agreements. NDOR made most all of the changes we requested. At this point, both the City Attorney and City Administrator are pleased with the final product.
- e. This agreement turns control of the project to NDOR who will serve as RC. The City remains responsible for the project, but NDOR will push the project through construction.
- f. On April 18<sup>th</sup>, the City Council identified Grayson Path as the City’s liaison to NDOR for the project.

\*\*\*\*\*

**Department Heads:        Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

Nebraska City

**SUPPLEMENTAL LPA PROGRAM AGREEMENT- FEDERAL-AID FUNDS**  
**INCLUDING NEW PROGRAM AGREEMENT**

CITY OF NEBRASKA CITY, NEBRASKA  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
PROJECT NO. URB-6217(4)  
STATE CONTROL NO. 13159  
4<sup>TH</sup> CORSO VIADUCT

**WHEREAS**, the Parties have been developing a local public agency (LPA) Federal-aid transportation project, and

**WHEREAS**, the Parties previously entered into a Program Agreement in June 2011 (BM1119) (the “Existing Agreement”) that governs the process and requirements for the development of this federal-aid LPA project including the construction of a new viaduct on LPA’s street system, and

**WHEREAS**, the Existing Program Agreement required LPA to have a Responsible Charge (RC) who is required to oversee the day to day work of the project, and

**WHEREAS**, the State has revised its Federal-aid LPA project process and requirements including a revision of the standard Program Agreement language for federal-aid LPA projects (the “New Program Agreement”), and

**WHEREAS**, the New Program Agreement assigns to State, on behalf of LPA, many of the tasks that were required of LPA’s Responsible Charge (“RC”) under the Existing Program Agreement, and

**WHEREAS**, LPA will select a Project Liaison (PL) to represent the LPA under the New Program Agreement; State will assign a Responsible Charge to represent the State under the New Program Agreement, and

**WHEREAS**, the Parties will begin using the New Program Agreement for the upcoming phases of LPA’s Federal-aid project, and

**WHEREAS**, the Existing Agreement will continue to apply to all completed or in-progress phases of the projects until the signing of this supplemental Program Agreement, and

**WHEREAS**, the Parties have completed the Preliminary Engineering phase of the development of LPA’s Project, and

**WHEREAS**, the Parties are working on completing Final Design, and

**WHEREAS**, pursuant to this Supplemental Agreement, the New Program Agreement will apply to future phases of this project beginning with the remainder of Final Design and through Construction, and

**WHEREAS**, the Existing Program Agreement will continue to apply until execution of this supplemental program agreement, and

Nebraska City

**WHEREAS**, the Parties wish to supplement the Existing Program Agreement to clarify the funding obligation for this project.

**NOW THEREFORE**, in consideration of these facts, the LPA and State agree as follows:

**For all phases of the development of this project, up to and including the Preliminary Engineering phase, the Program Agreement signed by State in June of 2011, and any prior Supplemental Agreements, shall govern the rights and responsibilities of the Parties.**

**Beginning with the remaining final design phase of this project and through Construction, the New Program Agreement, and any applicable Supplemental Agreements, shall govern the rights and responsibilities of the Parties.**

Further, the funding obligations of the parties is superseded by the language set out in the following sections, including but not limited to SECTION 14 FINANCIAL RESPONSIBILITY; any previous agreement between the Parties concerning funding for the project is null and void.

The Parties intend that the Existing Program Agreement and the New Program Agreement should be interpreted in harmony to the maximum extent possible, and should be read in a manner that will make the project eligible for Federal-aid funding. For any conflict in the language of the two Agreements that cannot be harmonized concerning upcoming phases or stages of the project, the New Program Agreement language shall govern, so long as the context does not otherwise require.

**The following is the New Program Agreement to which the parties agree will be applicable as set out above:**

**NEW PROGRAM AGREEMENT- FEDERAL-AID FUNDS**

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

**WITNESSETH:**

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

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

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

Nebraska City

**WHEREAS**, LPA desires that this project, the location of which is shown on attached **Exhibit “A”**, be developed and constructed under the designation of Project No. URB-6217(4), as evidenced by the Resolution of the LPA dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016, attached as **Exhibit “B”** and made a part of this agreement, and

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

The project will consist of the replacement of the 4<sup>th</sup> Corso viaduct in Nebraska City. The entire structure will be removed and replaced, and

**WHEREAS**, the Program Agreement specified that at the time Federal-aid funds were available at an **80 percent federal, 20 percent local match only for Preliminary Engineering (PE), Final Design and National Environmental Policy Act (NEPA) document preparation, and**

**WHEREAS**, the Program Agreement contemplated that if and when additional funds became available, the Program Agreement would be supplemented; and

**WHEREAS**, there are no additional federal aid funds available at this time; however, State continues to search for additional federal aid funds, and

**WHEREAS**, LPA’s project has been selected by State as eligible for certain state-managed local funds for major bridge construction (“On System Major Bridge Funds”) that could be used to fund an additional portion of the construction cost of LPA’s project, and

**WHEREAS**, \$2.0 million in On System Major Bridge Funds are expected to be available in or about 2019 (funding will be available in March 2019), and an additional \$2.0 million the following year (funding available March 2020), for a total of approximately \$4.0 million in On System Major Bridge Funds, available for this project, and

**WHEREAS**, if no additional federal aid funds become available for this project, LPA is expected to provide all additional funding above the \$4.0 million of On System Major Bridge Funds for the construction of this project, and

**WHEREAS**, regulations for implementing the provisions of the above mentioned act provide that the Federal share of the cost of those projects will be paid only to the State, and

**WHEREAS**, the regulations further permit the use of funds other than State funds in matching Federal Funds for the improvements of those routes, and

**WHEREAS**, the State is willing to assist LPA to the end of obtaining Federal approval of the proposed work and Federal Funds for the development of the proposed improvement, with the understanding that LPA’s project is not a State project and that no State Funds are to be expended on this project, and

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

Nebraska City

**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 in return for reasonable reimbursement of 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, any consultant related to Right-of-Way appraisal, appraisal review, negotiation and relocation assistance, and any other service providers when specified in subsequent agreements, and

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

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

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

**WHEREAS**, the planning level DR 530 estimate of the cost of the project is \$7,959,058.00, 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 \$3,382,216.00. LPA's required local match for the federal funds is estimated to be \$144,211.00. The remaining \$3,238,005.00 of the project costs not covered with Major Bridge funding will be funded by the LPA. LPA will earmark and will place 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, and

**SECTION 1. DEFINITIONS**

For purposes of this agreement, the following definitions will apply:

“AASHTO” means American Association of State Highway and Transportation Officials.

“ADA” means the Americans with Disabilities Act.

“ASTM” means the American Society for Testing and Materials.

“CFDA” means Catalog of Federal Domestic Assistance.

“CFR” means the Code of Federal Regulations.

“DOT” means the United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

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

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

“LPS” means the Local Projects Section at Nebraska Department of Roads, in Lincoln, Nebraska.

“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. The State is a funding liaison between LPA and the United States Department of Transportation for LPA federally funded transportation projects.

“STATE CERTIFIED CONSULTANT” means a Consultant that has met the certification requirements of the Nebraska Department of Roads to provide professional services in certain work categories for federal and state funded work in Nebraska.

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

**SECTION 2. DURATION OF THE AGREEMENT**

**2.1** *When Effective* --This Agreement is effective immediately on the date it is fully executed by the Parties.

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

- 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***– The Agreement will expire upon completion of the LPA’s Federal-aid project and final financial settlement, except that any terms of this Agreement that contemplate long term activities of the LPA such as environmental, maintenance, and operational commitments, will remain in effect as long as required by law, NEPA document, permit or agreement.
- 2.5 *Termination*** -- Further, State reserves the right to terminate the Agreement as provided herein. If the LPA determines that for any reason it will not continue with the development of this project as a Federal-aid project, the LPA shall notify the State and negotiate any necessary project termination conditions consistent with this Agreement.

### **SECTION 3. PURPOSE OF AGREEMENT**

The LPA wishes to obtain Federal-aid funding for a Federal-aid transportation project on a street, highway, road, trail or other transportation related facility under LPA’s jurisdiction. The Federal Highway Administration (FHWA) will not provide funding directly to LPA for this project, but will provide Federal funding for eligible and participating project costs through the State. The State, pursuant to Neb. Rev. Stat. § 39-1305, will act under this agreement as a steward of Federal Funds and as a liaison between LPA and FHWA. Further, State will act as the RC on behalf of LPA. The purpose of this agreement is to set forth the understanding of the LPA and the State concerning their respective duties to enable the project to be eligible for federal-aid funding. The LPA agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes, but is not limited to, meeting all post-construction commitments, including but not limited to any maintenance and environmental document commitments. The LPA understands that failure of LPA or State to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that FHWA finds that the project is ineligible for Federal funding, the LPA will repay the State all previously paid Federal Funds, as determined by the State, and any costs or expenses the State has incurred for the project, including but not limited to, any costs reimbursed for the time and expenses of the RC. LPA further agrees that LPA shall have no claim or right of action against the State under this agreement if FHWA determines that the project is not eligible, in whole or in part, for federal-aid funding except in the event that an error or omission of State proximately caused the project to be declared ineligible for federal

## Nebraska City

funding in whole or in part, LPA's sole remedy against State is that LPA shall not be required to repay State for State's costs attributable to the part of the project in which the error or omission occurred. The following sections of this agreement include the program requirements and other conditions State believes in good faith that LPA must meet for this project to be eligible for federal funding.

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

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

### **SECTION 4. FEDERAL AID PROJECT REQUIREMENTS**

For any work to be completed by LPA on this project, LPA agrees to comply with all Federal-aid project procedures and requirements applicable to this project, including federal laws, and when applicable, state and local laws, and the LPA Guidelines Manual for Federal-aid Projects.

#### **4.1 The Applicable Legal and Contract Requirements.**

- a. **Title 23 U.S.C., 23 CFR, and 49 CFR** - Title 23, Chapter I, of the United States Code contains most of the federal laws governing this Federal-aid transportation project. Title 23 of the Code of Federal Regulations is a codification of the rules and regulations including provisions governing Federal-aid highway projects administered by the Federal Highway Administration, Department of Transportation. Title 49 of the Code of Federal Regulations, Parts 1-99, also includes regulations applicable to LPA's Federal-aid highway project. The Federal-aid highway program provisions of 49 CFR are found primarily in Parts 18, 19, 24, 26-29, 32, 37 and 38.
- b. **LPA Guidelines Manual** - LPA also agrees to strictly comply with the provisions of the LPA Guidelines Manual for Federal Aid Projects (The Manual), which is incorporated herein by this reference. The Manual is a document drafted in part, and formally approved, by the FHWA as a document setting out requirements for LPA projects funded with Federal-aid funds. A current

## Nebraska City

version of The Manual can be found in its entirety at the following internet address:

<http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html>. In the event the LPA believes that The Manual does not clearly address a particular aspect of the project work, the LPA shall seek guidance or clarification from the State's Local Project Division Section Engineer or Project Coordinator, and shall make its best effort to comply with such guidelines or clarification.

- 4.2 Federal Oversight.** If the project has been designated as full federal oversight, then additional federal oversight and approvals will be required. It is the responsibility of the LPA to understand the additional requirements and ensure that the State and FHWA are provided timely notice for additional oversight and approvals.

### **SECTION 5 – GENERAL PROJECT DUTIES**

#### **5.1 State's Responsibilities.**

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

#### **5.2 LPA's Responsibilities.**

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

### **SECTION 6 – LPA'S PROJECT LIAISON**

LPA shall formally appoint an LPA employee, and provide the State with that employee's name, mailing address, email address and phone number, and shall authorize that employee to act as LPA's Project Liaison (hereinafter known as "LPA's Project Liaison" or "LPA's PL" or "PL"), to take all actions **City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.**

Nebraska City

necessary for the project on behalf of LPA and to serve as a liaison between the State and LPA. LPA's PL shall be certified by a process developed by State to act as a PL for the project.

**SECTION 7 – PROGRAMMING DOCUMENT**

LPA has submitted to State the official project programming document, the DR Form 530 that specified the scope of the project and the estimated cost of the project. The State's Project Scheduling Division has approved the DR530. **LPA shall formally approve the signing of this Program Agreement.**

**SECTION 8 – PROCUREMENT OF PROFESSIONAL SERVICES**

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

**SECTION 9 – PLAN DEVELOPMENT AND PROJECT ENVIRONMENTAL WORK**

**9.1 General**

The plans, specifications and estimates for the construction of LPA's project are expected to be developed by a design consultant, but if State elects to not use a design consultant, State employees will design the project on LPA's behalf. LPA shall authorize its Project Liaison (PL) to carefully

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follow the development of the project plans so that PL will have a thorough understanding of the planned improvement and will ensure that the project design is acceptable to LPA. LPA shall immediately notify State when it has concerns or questions about the development of the plans. It is expressly understood that LPA is responsible for the completed design of this project as if LPA had designed the project itself.

### 9.2 **Plan-in-Hand (PIH)**

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

### 9.3 **Project Environmental Work**

#### A. NEPA

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.

#### B. **MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM.**

If LPA's project is within an area that is subject to the federal Storm Water Phase II Regulatory Requirements of 40 CFR 122.34 (b), then project consultant will design, construct and maintain, as a part of this project, water quality facilities as required by LPA's National Pollutant Discharge Elimination system (NPDES) permitted Municipal Separate Storm Sewer System (MS4) program.

If the LPA does not have an active construction storm water management and post construction

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storm water management program, the project consultant shall follow the State (NDOR) MS4 program.

### **9.4 90% Plans Stage**

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

### **9.5 Coordinating Professional**

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

### **9.6 Professional Performance**

It is understood by the Parties that the LPA is solely responsible for the professional performance and ability of the LPA and the project consultant(s) in the planning, design, construction, operation and maintenance of this project. Any review or examination by the State, or acceptance or use of the work product of the LPA or the project consultant(s) will not be considered to be a full and comprehensive review or examination and will not be considered an approval, for funding or for any other purpose, of the work product of the LPA and the project consultant which would relieve the LPA from any expense or liability that would be connected with the LPA’s sole responsibility for the propriety and integrity of the professional work to be accomplished by the LPA for the project.

### **9.7 Public Involvement**

Early in the planning of the project, the State’s Public Involvement Coordinator will evaluate the project and decide what process is required for Public Involvement. State will coordinate all

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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 representative(s). The State's Public Involvement Coordinator will continue to oversee all project Public Involvement processes.

### **SECTION 10 – RIGHT-OF-WAY (ROW)**

#### **10.1 Governing Documents**

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

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

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

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

#### **10.3 Right-of-Way Cost Estimate**

The State will complete an estimate of the costs of acquiring the additional property rights. The State shall notify LPA of the aggregate estimated right-of-way costs. The parties understand that the estimate is preliminary and used primarily for planning and establishing the Federal ROW obligation. LPA shall review the right-of-way cost estimate and notify State immediately if LPA decides to not proceed with the project because of these costs. Withdrawing the project by LPA

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will require LPA to repay (1) all Federal-aid funds used for the project to date and (2) all costs incurred by State arising out of State's work under this agreement.

### **10.4 Condemnations**

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

### **10.5 Encroachments**

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

### **10.6 Land Corners**

The LPA shall fully cooperate with State and the project Consultants to locate and reference or have located and referenced all section corners, quarter section corners and subdivision lot corners that

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may be affected by the construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

### 10.7 Special Assessments

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

The LPA is required to provide to State documentation for each of the four points noted below.

LPA is also required to follow all the terms of the Uniform Act in the acquisition of right-of-way for this Federal-aid project.

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

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

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

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

### 10.8 Reimbursement of LPA's Right-of-Way

LPA is not expected to incur any reimbursable ROW costs for this project. However eligible ROW expenses include appraisal fees, title research fees, ROW Consultant fees, tract acquisition costs, reasonable relocation assistance costs, condemnation awards and Board of Appraisers fees.

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Additional expenses for condemnation proceeding or District Court Trial may be reimbursed to the LPA on a case-by-case basis.

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

### 10.9 Confidentiality of certain Right-of-Way

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

## **SECTION 11 – RAILROAD PROPERTY ON LPA'S PROJECT**

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

## **SECTION 12 – UTILITY REHABILITATION WORK**

### 12.1 Overview

This Section applies when State determines that LPA's project includes utility facilities that serve the public interest, owned by LPA or by another entity, which may be affected by the Construction of LPA's project. LPA shall assist State in determining what, if any, public or private utility facilities that serve a public interest are located along, over, under or across the project route.

Utility facilities installed, relocated or rehabilitated within the Right-of-Way for this project must be completed in accordance with the provisions of Federal-aid Highway Policy Guide, 23 C.F.R § 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23

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CFR §645B, “Accommodation of Utilities” issued by the U.S. Department of Transportation, Federal Highway Administration, and the State’s “Policy for Accommodating Utilities on State Highway Right-of-Way.” Further, LPA utility work shall be performed in conformance with the Buy America provisions found at 23 U.S.C § 313 and applicable regulations in 23 C.F.R § 635.410. LPA’s project utility work shall also follow the current “Policy for Accommodating Utilities on State Highway Right-of-Way” and the LPA manual.

### **12.2 Eligible Costs**

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

### **12.3 LPA Owned Utilities**

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

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

#### **12.3.2 All other Utility Facilities – Along or crossing the project**

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

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utility rehabilitation, LPA shall submit to State its final invoice for the utility rehabilitation for State's review and reimbursement of actual eligible costs.

### **12.4 Non-LPA Owned Utilities**

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

### **12.5 State Highway Right-of-Way**

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

## **SECTION 13. FINAL PLANS, BID LETTING AND CONSTRUCTION**

### **13.1 General**

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

### **13.2 Plans, Specifications and Estimates (PS&E)**

The State or the project design consultant will complete plans, specifications and estimates (the PS&E Package) for LPA's project. State shall simultaneously submit the PS&E Package to: (1)

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

### 13.3 Bid Letting and Award of Construction Contract

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

### 13.4 Construction Oversight

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

### 13.5 Change Orders

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

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### **13.6 Tentative and Final Acceptance**

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

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

### **13.7 Final Audit**

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

### **13.8 Maintenance and Environmental Commitments**

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

### **13.9 Miscellaneous**

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

**SECTION 14. FINANCIAL RESPONSIBILITY****14.1 General**

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

**14.2 Total Project Costs and Funding Commitments**

The total cost of the project is currently estimated to be \$7,959,058.00 which is detailed in the table below:

<b>ESTIMATED PROJECT FUNDING (Attach supporting documentation for estimates)</b>						
	<b>FFY of TIP/STIP</b>	<b>Federal</b>	<b>Local Match</b>	<b>Nonparticipating</b>	<b>Major Bridge Funds</b>	<b>Total</b>
<b>PE Phase</b>						
PE		\$283,123.00	\$70,781.00			\$353,904.00
NEPA		\$80,000.00	\$20,000.00			\$100,000.00
Final Design		\$213,719.00	\$53,430.00			\$267,149.00
RC						
NDOR						
<b>PE Subtotal</b>		<b>\$576,842.00</b>	<b>\$144,211.00</b>			<b>\$721,053.00</b>
<b>ROW</b>				\$100,000.00		\$100,000.00
<b>Utilities</b>				\$126,000.00		\$126,000.00
<b>Construction</b>				\$2,110,851.00	\$4,000,000.00	\$6,110,851.00
<b>CE Phase</b>						
CE				\$838,744.00		\$838,744.00
RC				\$59,910.00		\$59,910.00
NDOR				\$2,500.00		\$2,500.00
<b>CE Total</b>						
<b>TOTAL</b>		<b>\$576,842.00</b>	<b>\$144,211.00</b>	<b>\$3,238,005.00</b>	<b>\$4,000,000.00</b>	<b>\$7,959,058.00</b>

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

### **14.3 Authority of State**

LPA hereby authorizes State to pay project consultants and the construction contractor directly on LPA's behalf. LPA authorizes State to include State's costs for overseeing the development and construction of the project as a reimbursable cost of the project. Generally, the cost of LPA and its PL will not be eligible for reimbursement with Federal-aid funds for this project. The following costs of LPA will be reimbursable with Federal-aid funds at the applicable percentage when State determines, in its sole discretion that the costs are proper and eligible for reimbursement under Federal and State Law:

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

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

### **14.4 State-Incurred Costs**

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

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

### **14.5 LPA Project Budget and Invoicing by the State**

The LPA will earmark and place in its fiscal budget an amount sufficient to fund LPA's project commitments as shown in subsection 14.1 above.

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

Upon award of the construction contract, the State will send an invoice to the LPA requesting LPA to pay its share of (1) the costs of construction, based on the construction contract, (2)

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contingencies, (3) the costs of construction engineering (includes audit costs), and (4) any unbilled preliminary engineering expenses, unless other arrangement have been agreed upon in writing by the Parties. The LPA shall pay the State within 30 calendar days of receipt of invoice from State.

**14.6 Audit and Final Cost Settlement**

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

The final settlement between the State and the LPA will be made after final funding review and approval by the State and after an audit, if deemed necessary, has been performed to determine eligible actual costs.

**14.7 Project Withdrawal**

If the LPA withdraws the project for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project that have not been reimbursed by LPA.

**SECTION 15. SUSPENSION OR TERMINATION**

**15.1 Suspension**

The State, in its sole discretion, reserves the right to suspend LPA's project when the State determines that there are issues related to responsiveness, quality, project monitoring, eligibility or compliance with the terms of this agreement that must be corrected by LPA. Suspension of the project may include, but is not limited to, the State declaring LPA's continued work on the project ineligible for reimbursement and State discontinuing assistance with and review of LPA's work on the project. The State shall provide LPA with notice of the suspension including (1) a description of the reason(s) for the suspension, (2) a timeframe for LPA to correct the deficiencies, and (3) a description of the actions that must be taken for the State to revoke the suspension.

A suspension may also be imposed by the State for any of the reasons listed in the Termination subsection below. Failure to correct the deficiencies identified in a suspension will be grounds for the loss of eligibility for federal funding for the project and for termination of this agreement.

**15.2 Termination**

This agreement may be terminated as follows:

- a. The State and the LPA, by mutual written agreement, may terminate the agreement at any time.
- b. The State may terminate this agreement for the following reasons:

Nebraska City

1. A decrease or shift in available federal-aid funding that will, in the sole discretion of the State, make it unlikely or impossible for this project to be prioritized to receive federal-aid funding.
2. When LPA's project has not been properly advanced as evidenced by the occurrence of any of the following events:
  - a) LPA has failed to replace the Project Liaison (PL) with a PL approved by the State within 30 days during the design stage or 10 days during the project letting or construction stages, from when the PL leaves, or is removed from the project for any reason.
  - b) LPA either (1) informs the State that it is unwilling to use condemnation to acquire any of the property interests needed to construct the project, or (2) does not move promptly to acquire the needed property rights.
  - c) LPA has failed to take any action deemed necessary by State for the project to be ready for the targeted letting date within the year specified in the STIP.
  - d) LPA has not included the project or project phases within the LPA's one or six year plans or, when applicable, within the LPA's Transportation Improvement Program (TIP), in the correct fiscal year.
3. LPA's failure to meet the requirements for Federal-aid local projects found in federal, state, or local law or policy, or the requirements of the LPA Guidelines Manual.
4. A notice or declaration of FHWA or the State that any part of the project is or has become ineligible for federal funding.
5. LPA's failure to sign any State requested project documents in a timely manner.
6. LPA's failure to pay in full the local share specified in any agreement within 30 days after receipt of an invoice from the State.
7. LPA's breach of a provision of this agreement.
- c. The LPA may terminate the agreement upon sixty (60) days written notice of termination to the State, subject to the LPA meeting the conditions of paragraph (e) below.
- d. Prior to the State terminating this agreement, the State shall provide written notice to the LPA of the basis for termination and, when determined applicable by State, provide the LPA sixty (60) days to properly resolve all issues identified by the State.
- e. Whenever the project is terminated for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated

Nebraska City

with the project that have not been reimbursed under (a). Further, the LPA will thereafter be solely responsible for all costs associated with LPA's project.

**SECTION 16. FEDERAL AUDIT REQUIREMENT**

- 16.1 The funding for the project under this Agreement includes federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 and the implementing regulations contained in 2 CFR, Subtitle A, Chapter 2, Part 200, Subpart F (hereinafter Part 200), the Part 200 Audit is required if the non-federal entity expends \$750,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.
- 16.2 The LPA shall comply with this Single Audit mandate as described in Section 16.1. Any federal funds for LPA projects paid directly to contractors and consultants by State, on behalf of the LPA, will be reported on State's schedule of expenditures of federal awards (SEFA) and need not be reported by LPA (as per FHWA's February 16, 2012 letter and State's February 24, 2012 letter). If a Part 200 audit is necessary, the expenditures related to the federal funds expended under this project should be shown in the report's Schedule of Expenditures of the Federal Awards (SEFA).
- 16.3 If necessary, the Federal award information needed for the SEFA includes:
- Federal Grantor:** U.S. Department of Transportation – Federal Highway Administration
  - Pass-Through Grantor:** Nebraska Department of Roads
  - Program Title:** Highway Planning and Construction (Federal-Aid Highway Program)
  - CFDA Number:** 20.205
  - Project Number:** URB-6217(4)
- 16.4 If a Part 200 Audit is submitted by the LPA, the LPA shall notify the Nebraska Department of Roads, Highway Audits Manager, at P.O. Box 94759, Lincoln, NE 68509-4759 when the audit reporting package and the data collection form have been submitted to the Federal Audit Clearinghouse (FAC) website.

**SECTION 17. COMMITMENT TO CONTINUED USE OF TRANSPORTATION FACILITY**

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

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### **SECTION 18. INDEMNITY**

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

### **SECTION 19. TRAFFIC CONTROL**

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

### **SECTION 20. CONFLICT OF INTEREST LAWS**

The LPA shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions (including applicable State and local provisions) in order for the project to remain fully eligible for Federal funding. LPA should review, understand and follow the instructions provided in the **NDOR CONFLICT OF INTEREST GUIDANCE DOCUMENT FOR LPA OFFICIALS, EMPLOYEES & AGENTS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS** located on the State website at the following location:

<http://www.roads.ne.gov/gov-aff/lpa/chapter-forms/coi/coi-guidance-doc-lpa.pdf>

The LPA must also complete and sign the **NDOR CONFLICT OF INTEREST DISCLOSURE FORM FOR LPAS FOR LOCAL FEDERAL-AID TRANSPORTATION PROJECTS**, for each project. This form is located on the State website at the following location: <http://www.roads.ne.gov/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-lpa.pdf>

<http://www.roads.ne.gov/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-lpa.pdf>

Consultants and Subconsultants providing services for the project, or submitting proposals for services, shall submit a Conflict of Interest Disclosure Form for Consultants. Consultants and Subconsultants shall submit a revised form for any changes in circumstances, or discovery of any additional facts that could result in someone employed by, or who has an ownership, personal, or other interest with Consultant or Subconsultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

### **SECTION 21. DRUG FREE WORKPLACE**

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

Nebraska City

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

**SECTION 22. RECORDS RESPONSIBILITY**

The LPA shall keep a project file for this project and keep and maintain all correspondence, files, books, documents, and papers related to LPA's involvement in the project. LPA shall make such material available at its office at all reasonable times during the contract period and for at least three years from the date of project completion; such records must be available for inspection by the State and the FHWA or any authorized representatives of the Federal government, and the LPA shall furnish copies to those mentioned in this section when requested to do so.

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

**SECTION 23. FAIR EMPLOYMENT PRACTICES**

If the LPA performs any part of the work on this project, the LPA shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb. Rev. Stat. §§ 48-1101 to 48-1126, and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 as set forth in the SECTION 30. TITLE VI NONDISCRIMINATION CLAUSES of this agreement. The reference to "Contractor" in this section also means the "LPA".

**SECTION 24. DISABILITIES ACT**

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

**SECTION 25. LAWFUL PRESENCE IN USA AND WORK ELIGIBILITY STATUS**

**PROVISIONS**

The LPA agrees to comply with the requirements of Neb. Rev. Stat. §§ 4-108 to 4-114 with its Federal-aid project, including, but not limited to, the requirements of § 4-114(2) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

**SECTION 26. DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

**26.1 Policy**

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

## Nebraska City

The LPA shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

### **26.2 Disadvantaged Business Enterprises (DBEs) Obligation**

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

The LPA, acting as a sub-recipient of Federal-aid funds on this project shall adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the LPA enters into on this project.

Failure of the LPA to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the State or such remedy as the State deems appropriate.

## **SECTION 27. TITLE VI NONDISCRIMINATION CLAUSES**

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

### **27.1 Compliance with Regulations:**

The LPA shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.

### **27.2 Nondiscrimination**

The LPA, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited

Nebraska City

by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.

**27.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:**

In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.

**27.4. Information and Reports:**

The LPA shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

**27.5. Sanctions for Noncompliance:**

In the event of the LPA's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to,

- a. Withholding of payments to the LPA under this agreement until the LPA complies, and/or
- b. Cancellation, termination or suspension of this agreement, in whole or in part.

**27.6 Incorporation of Provisions:**

The LPA shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The LPA shall take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the LPA may request the State join in such litigation to protect the interests of the State, and in addition, the LPA may request the United States join in such litigation to protect the interests of the United States.

**SECTION 28. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this Agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

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

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

WITNESS:  
Randy Dunster

CITY OF NEBRASKA CITY  
Bryan Bequette

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

\_\_\_\_\_  
Mayor

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

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

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

Nebraska City  
CITY OF NEBRASKA CITY  
**RESOLUTION NO. 2705-16**  
**SIGNING OF THE LPA PROGRAM AGREEMENT**  
**SUPPLMENTAL #1 – FEDERAL-AID FUNDING**

**Whereas:** City of Nebraska City (City) is proposing to develop and construct a transportation project for which it would like to obtain Federal funds;

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

**Whereas:** City and State of Nebraska, Department of Roads (State) wish to enter into an **LPA Program Agreement Supplemental #1 – Federal-Aid Funds** which will set out the various duties and funding responsibilities for the Federal-aid project; and

**Whereas:** City wishes to designate its representative for this project.

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

The Mayor, Bryan Bequette, is hereby authorized to sign the attached **LPA Program Agreement Supplemental #1 – Federal-Aid Funds** between the City and the State.

City hereby designates **Grayson Path** to serve as City’s representative and Project Liaison (PL) with State for this project.

City of Nebraska City is committed to providing local funds for the project as required by the **LPA Program Agreement Supplemental #1 – Federal-Aid Funds**.

NDOR Project Number: URB-6217(4)

NDOR Control Number: 13159

NDOR Project Name: 4<sup>th</sup> Corso Viaduct

Adopted this 6<sup>th</sup> day of June, 2016, at Nebraska City, Nebraska.

City Council of the City of Nebraska City

Commissioners: Jim Stark, Jeff Crunk, Vic Johns, Gloria Glover, and Mayor Bryan Bequette

Commissioner \_\_\_\_\_

Moved the adoption of said resolution

Commissioner \_\_\_\_\_ Seconded the Motion

Roll Call: \_\_\_\_\_ Yes; \_\_\_\_\_ No; \_\_\_\_\_ Abstained; \_\_\_\_\_ Absent

Resolution adopted, signed and billed as adopted

\_\_\_\_\_  
Bryan Bequette, Mayor

Attest:

\_\_\_\_\_  
Randy Dunster, City Clerk-Treasurer

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

Nebraska City

CITY OF NEBRASKA CITY  
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Commissioner \_\_\_\_\_

Moved the adoption of said resolution

Commissioner \_\_\_\_\_ Seconded the Motion

Roll Call: \_\_\_\_\_ Yes; \_\_\_\_\_ No; \_\_\_\_\_ Abstained; \_\_\_\_\_ Absent

Resolution adopted, signed and billed as adopted

\_\_\_\_\_  
Bryan Bequette, Mayor

Attest:

\_\_\_\_\_  
Randy Dunster, City Clerk-Treasurer

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# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



## Agenda Information Support Sheet

**To: Mayor and Commissioners**

**Council Meeting:** June 6, 2016  
**Agenda Item:** # \_\_\_\_\_  
**Submitted By:** Grayson Path, City Administrator  
Dave Partsch, City Attorney  
Dan Mauk, NCAEDC Director

### A. Synopsis of Issue:

- a. The City currently holds certain funds under the Economic Development Revolving Loan Fund (EDRLF) Reuse Program.
- b. These funds are reuse payments from prior CDBG funds that the City has pooled over the years.
- c. CDBG allows for loan payments to be reused under loan applications through the EDRLF program – guidelines were established years ago by the City and approved by CDBG (Reuse Program).
- d. It is another economic development tool alongside LB840 that the City has amassed and made available to businesses and entities.
- e. There are regulations and State Statutes governing the use of these funds, requiring the use of a CDBG Certified Administrator.
- f. The City has not processed an EDRLF program in several years, but two are currently in the works, prompting the need to develop an Administrative piece of this program to handle all paperwork, processing, application research, working with the EDRLF committee, etc.
- g. The Council has in front of them an Administrative Agreement with the Southeast Nebraska Development District (SENDD) who used to administer the program for the City for nearly two decades up until the late 2000s.

### B. Options:

- a. Approve the agreement making the SENDD the program administrator for the City, authorizing the Mayor to sign.
- b. Edit the agreement and either authorize the City Staff to make the changes and have Mayor sign, or request that changes be brought back to the next council meeting.
- c. Deny the agreement:
  - i. Note that a denial will mean that the program will not be open for use as 1) the City does not have a CDBG Certified Administrator on staff any longer and 2) the agreement with the NCAEDC to administer the agreement has expired.

### C. Fiscal Note:

- a. Agreement is a maximum not-to-exceed annual payment of up to \$10,000.00 depending on whether work is done or not. These funds will be pulled from existing EDRLF funds.
- b. The EDRLF fund balance is currently at about \$380,000.00. It is currently sitting in its own separate bank account.

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Nebraska City

**D. Recommendation:**

- a. Approve the agreement identifying SENDD as the EDRLF Program Administrator and authorize the Mayor to sign.
- b. *Recommended Motion:*
  - i. I make a motion that the City approve the EDRLF Administrative Assistance Contract between the City of Nebraska City and the SENDD and authorize the Mayor to sign.

**E. Background:**

- a. The agreement is a “cradle to grave” contract where SENDD administers the program, guiding the EDRLF committee and City Council from beginning to end of each application.
- b. The City is responsible for
  - i. EDRLF Committee Meeting to review applications
  - ii. City Council review final proposals for approval
  - iii. City Staff managing EDRLF fund accounts
- c. SENDD has administered the EDRLF program in the past. Currently has a lengthy reference list of nearby cities they work with. When reaching out to Erv Portis with Plattsmouth, greatly enjoys working with SENDD and highly recommends them.
- d. Craig Eberle and Dave Taladay will be the primary contacts for the City and administering the program.
- e. The following areas are what City Staff determined needed to be met in any agreement, the section in the Scope of Services covering these areas is in parentheses:
  - i. Manage the Plan and any changes (4.5(1))
  - ii. Market the Plan (4.5(2))
  - iii. Assist prospective candidates (4.5(2))
  - iv. Review applications (4.6(1))
  - v. Process and research applications (4.6(1))
  - vi. Assist EDRLF Committee and City Council with hearings, meetings, notices, etc. (4.6(2))
  - vii. Handle all State reporting (4.3)
  - viii. Follow up with businesses to track compliance with agreement (4.2(1))
  - ix. Assist City with bookkeeping (4.2)
- f. To the best of Staff’s knowledge, this agreement covers the essential areas that an administrative assistance contract would need.
- g. The agreement is an automatic renewal unless terminated.

\*\*\*\*\*

**Department Heads:        Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

Nebraska City



Southeast Nebraska Development District

[www.sendd.org](http://www.sendd.org)

MAIN OFFICE  
2631 "O" Street, Lincoln, NE 68510  
Office: 402-475-2560  
Fax: 402-475-2794  
[drtaladay@sendd.org](mailto:drtaladay@sendd.org)

HUMBOLDT OFFICE  
PO Box 308, Humboldt, NE 68371  
Office: 402-862-2201

May 25, 2016

Grayson Path, City Administrator  
City Hall  
1409 Central Ave.  
Nebraska City, Nebraska 68410



**Re: Nebraska City, Ne  
Economic Development Plan and Economic Development Loan Fund  
Proposal and Contract for Administrative Assistance**

Grayson:

Dan Mauk, NAEDC, and I have discussed your interest in SENDD assisting the City as Administrator of the Nebraska City/Otoe County Regional Reuse Plan for CDBG-Economic Development Program Income.

Enclosed is a Proposal and a draft "**Administrative Assistance Contract**" between SENDD and the City of Nebraska City to work with the Economic Development Plan from CDBG Program Income Reuse.

Note that this contract discusses working with the identified application "Review Committee" in evaluating applications, keeping track of all project/application files and assisting with financial and performance reporting. We typically talk about "cradle-to-grave" kind of services, so we would also assist the Review Committee in setting up meetings, acting as secretary for meeting minutes, coordinating with the City on posting notices of meetings, etc. for a complete program

If approved, we would suggest a first meeting sometime with the Review Committee to talk through the loan application process, criteria for approval/disapproval, set-up of meeting schedules and format, promotion activities, review of guidelines for any needed amendments, etc.

The proposed contract is for a "maximum, not to exceed, \$10,000" of incurred expenses as an annual/renewable contract, but that is for identified work on specific activities as approved. If there is no work, there are no billings.

If you have any questions, just give me a call at our Lincoln office.

Very truly yours,

A handwritten signature in black ink, appearing to read "David R. Taladay", is written over a horizontal line.

David R. Taladay  
Executive Director

Cc: Craig Eberle, SENDD; Dan Mauk, NCAEDC  
Enc.

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.



Southeast Nebraska Development District

[www.sendd.org](http://www.sendd.org)

MAIN OFFICE  
2631 "O" Street, Lincoln, NE 68510  
Office: 402-475-2560  
Fax: 402-475-2794  
[dtaladay@sendd.org](mailto:dtaladay@sendd.org)

HUMBOLDT OFFICE  
PO Box 308, Humboldt, NE 68376  
Office: 402-882-2201

## Proposal for Providing Administration Assistance To Nebraska City, Nebraska For the Nebraska City/Otoe County Regional Reuse Plan

### Technical Expertise

Staff from the Southeast Nebraska Development District has provided CDBG Administration on Economic Development Loan Funds for over 20-years. Craig Eberle, as our present Business Loan Officer, and as a previous professional in a local bank, is skilled in the development and critique of business plans and the analysis of financial documents required for lending proposals.

Mr. Eberle is also a "Certified" CDBG Administrator as identified by the Nebraska Department of Economic Development (NDED). Mr. Eberle has evaluated over 40-loan proposals in the last two years, both in local CDBG-EDLF programs in member communities and in development of loans for the SENDD –Intermediary Relending Program (IRP). This IRP fund (available in our District boundaries) has recently been recapitalized by USDA-Rural Development (USDA-RD) based upon a stringent application identifying the successful loan projects as completed by Mr. Eberle in the last four years.

SEND D also has a Micro-lending program (for eligible businesses with 5-employees or less) and Mr. Eberle manages that fund.

Mr. Eberle provides these technical financial skills in addition to the expertise in the general administration for CDBG programs, both Revolving Loan Funds and newly funded CDBG-Economic Development programs.

David R. Taladay, Executive Director of SEND D, is also a Certified CDBG Administrator and has extensive experience in Administering CDBG funded Economic Development Revolving Loan Funds. Mr. Taladay was the appointed Administrator of the Nebraska City EDRLF from 1987 to 2007.

### Past Record of Performance

SEND D staff now assists the following communities with Administration of CDBG Revolving Loan funds in our District:

#### Contract

The City of Fairbury- EDLF  
The City of Plattsmouth-EDLF  
The City of Seward-EDLF  
The City of Pawnee City-EDLF  
The Pawnee Area Regional EDLF  
The City of Falls City-EDLF  
The City of Auburn-EDLF  
The Village of Elk Creek-EDLF

#### Reference contact

Sharyl Preston; 402.729.2476; [spreston@fairburyne.org](mailto:spreston@fairburyne.org)  
Erv Portis; 402.296.2522; [eportis@plattsmouth.org](mailto:eportis@plattsmouth.org)  
Bonnie Otte; 402.643.2928; [Bonnie.Otte@cityofsewardne.com](mailto:Bonnie.Otte@cityofsewardne.com)  
Tammy Stephens; 402.852.2781; [pcityhall@neb.rr.com](mailto:pcityhall@neb.rr.com)  
Joe Stehlik; 402.852.2973; [joe@stehliklaw.com](mailto:joe@stehliklaw.com)  
Gary Jorn; 402.245.2851; [clerktreasurer@sentco.net](mailto:clerktreasurer@sentco.net)  
Sherry Heskett; 402.274.3420; [sherry@auburn.ne.gov](mailto:sherry@auburn.ne.gov)  
Deb Pfister; 402.877.2735; [Pfister@anbank.com](mailto:Pfister@anbank.com)

## Nebraska City

We have provided these services under contract to provide General CDBG Administration, but our services may also include business plan assistance and review, financial analysis and recommendations of lending potential to EDLF committees and City Councils/Village Boards.

### **Capacity of the Firm**

SEND D will be able to provide assistance to Nebraska City with the services of Mr. Craig Eberle upon execution of a negotiated contract for services. In the event of some time away from work by Mr. Eberle (his wife is expecting their second child later this year), Mr. Taladay may also provide Administrative services, if SEND D has a contract with the City.

### **Familiarity with CDBG Projects of a Similar Nature**

SEND D has existing contracts with eight community or regional Economic Development Loan Funds specifically for administration of the EDLF programs. SEND D has assisted each of these communities in the initial Economic Development-CDBG project, for which the loan funds have been created. Our staff often collaborates with the Nebraska Department of Economic Development (NDED) in administrative requirements for these programs.

### **Proposed Fee**

Enclosed is a sample contract for review. Typically, we propose a contract that is annually renewable and based upon only costs incurred up to a maximum fee. Of special note is the list of Administrative Activities. This identifies a full scope of services, including Project Development, Project Evaluation, Financial Management, Program Compliance, Performance Reports and File Maintenance. The City may, or may not, want this full scope of services, but many of our contracts do include all of these activities.

In the case of Nebraska City, we would propose a maximum fee of \$10,000 on an annual basis, anticipating a full scope of our services. Again, billing for services is based only upon costs incurred on a monthly basis. If no services are rendered and no costs incurred, no billing is submitted.

Thank you for consideration of our proposal to assist the City in Administration of the CDBG Revolving Loan Fund. It is our belief that SEND D staff can provide the appropriate level of guidance to meet compliance with the State and Federal requirements of the Community Development Program (CDBG).

Nebraska City

**ADMINISTRATIVE ASSISTANCE CONTRACT  
with the CITY OF NEBRASKA CITY, NEBRASKA**

**to Administer the Nebraska City Regional Reuse Plan  
(using Program Income from Community Development Block Grant funds)**

**Article 1.0 Identification of Parties.**

This contract is entered into by and between the Southeast Nebraska Development District, (hereinafter referred to as SENDD) and the City of Nebraska City, Nebraska, (hereinafter referred to as the City.)

**Article 2.0 Statement of Purpose.**

WHEREAS, the City has and will continue to receive program income as a result of a Community Development Block Grant award; and,  
WHEREAS, the City wishes to engage SENDD to provide certain technical and professional services; and,  
WHEREAS, SENDD has the authority and professional staff necessary for performing such services; and,  
NOW THEREFORE, the parties hereto agree to the Contract terms stated herein.

**Article 3.0 Area Covered.**

SENDD shall perform all work required under this Contract in connection with and respecting the following activity: **Administration of the "Nebraska City Regional Reuse Plan" of the City.**

**Article 4.0 Scope of Services.**

The Consultant shall complete in a satisfactory and proper manner, as determined by the City, the work activities described in *Attachment "A" – Scope of Services.*

**Article 5.0. Key Personnel.**

The Executive Director of SENDD will assign the duties and responsibilities of Program Administrator to an appropriate staff member for the duration of this Contract. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the City. Any approved work or services subcontracted hereunder shall be specified by written contract and shall be subject to each provision of this Contract.

**Article 6.0 Assignability.**

SENDD shall not assign any interest in this Contract nor transfer any interest in the same without the prior written consent of the City thereto. Provided, however, that claims for money by SENDD from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

**Article 7.0 Time of Performance.**

**7.1. Services Commencing.**

The services of SENDD are to commence as of the date of this Contract, and shall be undertaken in such sequence as to assure the efficient operation of the program. All services required hereunder shall continue until this agreement is canceled, as provided in Article #11, or the City repeals the Nebraska City Regional Reuse Loan Program plan that provided the authority for this Contract. For budgeting and accounting purposes, this contract shall have a fiscal year ending June 30, 2016. Thereafter it shall automatically renew for successive periods of one year (July 1 through June 30) unless either party terminates as provided herein.

**7.2. Automatic Renewal**

If this contract is not terminated in accordance with one of the methods outlined in this Article #11, it is mutually agreed that this contract shall continue in force from year to year (July 1 through June 30). The annual accrual of fees under this contract (as detailed in 8.1) toward the maximum shall be reset to zero "0" at each July 1 during the life of this contract.

**Article 8.0 Conditions of Payments.**

**8.1 Compensation.**

For purposes of this Contract, the cost for performing services outlined in Article 4.0 of this

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

## Nebraska City

Contract shall be provided to the City on an actual cost incurred **basis up to a maximum total of \$10,000.00 per annum**. The City agrees to pay SENDD for costs incurred within a reasonable period of time following presentation of a detailed accounting of incurred expenses.

Actual costs incurred are based on the SENDD Cost Allocation Plan as follows:

- a. *Direct Personnel Costs* – gross costs of all personnel that have direct assignment or responsibilities identifiable to specific projects. These personnel costs include wages and fringe benefits.
- b. *Direct Non-Personnel Costs* – cost of non-personnel items or services clearly incurred by specific projects. These include project related items such as contractual services, project report publishing and reproductions, travel, reference materials, staff development, long-distance telephone calls, postage, memberships, public notices, data processing, and other costs similarly identifiable to specific projects.
- c. *Indirect Personnel Costs* – gross costs of all personnel that are not directly assigned to specific projects, but are rather assigned to support all project activities.
- d. *Indirect Non-Personnel Costs* – costs of all non-personnel items or services not directly attributed to specific projects, but rather attributable to overall operations of the agency including all projects. Indirect non-personnel costs include such administrative items as office rent, equipment rent/maintenance, base telephone and overall long distance calls, public notices, travel, staff development, depreciation, audit, postage, office supplies, agency annual meeting, reproductions/publications, agency memberships, reference materials, data processing, insurance/bonds, and other such costs similarly attributed to total agency and product support.
- e. *In-Kind Services* – direct expenses to those projects directly benefiting from this service. These expenses include personal services, travel, supplies and other. An hourly rate that is consistent with regular rates paid for similar work will be used to determine the value of personal services.

### 8.2 Accountability.

SEND D shall document expenditures of funds in accordance with the purposes and conditions of this contract.

### Article 9.0 Compliance with Local Laws.

SEND D will comply with all applicable laws, ordinances and codes of the State, City and local government.

### Article 10.0 Records.

SEND D agrees to maintain such records and follow such procedures as may be required under OMB Circulars A-102 and A-133 and any such procedures that the City may prescribe. In general, such records will include information pertaining to the Contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate) and performance. All such records pertinent to this Contract shall be retained by SEND D for a period of ten (10) years after completion of this Contract. The City and duly authorized officials of the State and Federal government shall have full access and the right to examine any pertinent documents, papers, records and books of SEND D involving transactions with this Contract.

### Article 11.0 Suspension and Termination.

If SEND D fails to comply with the terms and conditions of this Contract, the City may pursue such remedies as are legally available including, but not limited to, the suspension or termination of this Contract in the manner specified herein:

#### a. Suspension.

If SEND D fails to comply with the terms and conditions of this Contract, or whenever SEND D is unable to substantiate full compliance with provisions of this Contract, the City may suspend the Contract pending corrective actions or investigations, effective not less than seven (7) days following written notification to SEND D or its authorized representative. The suspension will remain in full force and effect until SEND D has taken corrective action to the satisfaction of the City and is able to substantiate its full compliance with the terms and conditions of the Contract. No obligations incurred by SEND D or its authorized representatives during the period of suspension will be allowable under the Contract except:

- (1) Reasonable, proper and otherwise allowable costs which SEND D could not avoid during the period of suspension.
- (2) If, upon investigation, SEND D substantiates complete compliance with the terms and conditions of this Contract, otherwise allowable costs incurred during the period of suspension will be

## Nebraska City

allowed.

- (3) In the event all or any portion of the work prepared by SENDD is suspended, abandoned, or otherwise terminated, the City shall pay SENDD for work performed to the satisfaction of the City, in accordance with the percentage of the work completed.

b. Termination for Cause.

If SENDD fails to comply with the terms and conditions of this Contract and any of the following conditions exist:

- (1) The lack of compliance with the provisions of this Contract are of such scope and nature that the City deems continuation of this Contract to be substantially detrimental to the interests of the City; or,
- (2) SENDD has failed to take satisfactory action as directed by the City or its authorized representative within the time specified by same; or,
- (3) SENDD has failed within the time specified by the City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Contract; then,
- (4) The City may terminate this Contract in whole or in part, and thereupon shall notify SENDD of termination, and the reasons for said termination. The effective date of said termination shall not be prior to notification of SENDD. After this effective date, no charges incurred under any terminated portions of the Contract are allowable.

c. Termination for Other Grounds.

This Contract may also be terminated in whole or in part:

- (1) By the City, with the consent of SENDD, or by SENDD with the consent of the City which in such case the two parties shall devise by mutual agreement, the conditions of termination including effective date and, in case of termination in part, that portion to be terminated;
- (2) If the funds allocated by the City via this Contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services;
- (3) In the event the City should fail to pay SENDD or payment is not made within sixty (60) days after invoices are rendered, the City agrees that SENDD shall have the right to consider said default a breach of this Contract and the duties of SENDD under this Contract terminated. In such event, the City shall then promptly pay SENDD for all services performed and all allowable expenses incurred; or,
- (4) The City may terminate this Contract at any time providing at least ten (10) days written notice is provided to SENDD. If the Contract is terminated for convenience of the City as provided herein, SENDD will be paid for time provided and expenses incurred up to the termination date.

### **Article 12.0 Changes, Amendments, Modifications.**

The City may, from time to time, require changes or modifications in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation therefore, which are mutually agreed upon by the City and SENDD, shall be incorporated as written amendments to this Contract.

### **Article 13.0 Reports and Information.**

SEND D, at such times and in such forms as the parties may agree, shall furnish the City periodic reports pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

### **Article 14.0 Findings Confidential.**

All of the reports, information, data, etc., prepared or assembled by SENDD under this Contract are confidential and SENDD agrees that they shall not be made available to any individual or organization without prior written approval of the City.

### **Article 15.0 Copyright.**

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of SENDD.

### **Article 16.0 Executive Order 11246.**

During the performance of this Contract, SENDD agrees as follows:

- a. Nondiscrimination. SENDD shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. SENDD shall take affirmative action to ensure applicants for employment and employees are treated without regard

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

## Nebraska City

to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- b. Nondiscrimination Notices. SENDD shall post in conspicuous places which are available to employees and applicants for employment, notices setting forth this nondiscrimination clause. SENDD shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- c. Nondiscrimination in Subcontracts. SENDD shall incorporate these requirements in all subcontracts.

### **Article 17.0** **Title VI of the Civil Rights Act of 1964.**

SENDD shall comply with Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

### **Article 18.0** **Section 109 of the Housing and Community Development Act of 1974**

SENDD shall comply with Section 109 of the Housing and Community Development Act of 1974 which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied benefits of, or be subjected to, discrimination under any program or activity funded in whole or in part with funds made available under this title.

### **Article 19.0** **Section 3 Compliance in the Provision of Training, Employment and Business Opportunities.**

- a. Disadvantaged Resident Participation. The work to be performed under this Contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to requirements of Section 3, Housing and Urban Development Act of 1968, as amended, 12 U.S.C., 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns located in, or owned in substantial part by persons residing in, the areas of the project.
- b. Other Signatories Agreement. The parties to this Contract will comply with provisions of Section 3 and do certify and agree that they are under no contract or other liability which would prevent them from complying with these provisions.
- c. Labor Organization Notification. SENDD will deliver to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor or workers' representatives of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. Subcontractor Compliance. The Section 3 Clause will be included by SENDD in subcontracts connected with this project and, at the direction of the City take appropriate action upon finding a subcontractor in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. SENDD will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135 and will not let any subcontract unless the subcontractor has first provided SENDD a preliminary statement of ability to comply with requirements of these regulations.
- e. Failure to Comply. Compliance with the provisions of Section 3, regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the Contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient of such assistance, its successors and assigns. Failure to meet these requirements shall subject the applicant, recipient, consultants and subcontractors, its successors and assigns to sanctions specified by the grant or loan agreement or contract through which federal assistance is provided to sanctions specified by 24 CFR, Part 135.

### **Article 20.0** **Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101 et. seq.)**

SENDD shall comply with the Age Discrimination Act of 1975, as amended, which provides that no person shall be excluded from participation, denied program benefits or be subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

## Nebraska City

### **Article 21.0**     **Section 504 of the Rehabilitation Act of 1974, As Amended (29 U.S.C. 794).**

SENDD shall comply with Section 504 of the Rehabilitation Act of 1974, as amended, which provides that no otherwise qualified individual shall, solely, by reason of his or her handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds

### **Article 22.0**     **Interest of Member of the City.**

No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any function or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract and SENDD shall take appropriate steps to assure compliance.

### **Article 23.0**     **Interest of Other Public Officials.**

No member of the governing body of the City and no other public official of the City, who exercises control over functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract. SENDD shall take appropriate steps to assure compliance.

### **Article 24.0**     **Interest of SENDD and Employees.**

SENDD covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. SENDD further covenants that, in the performance of this Contract, no person having such interest shall be employed.

### **Article 25.0**     **Audits and Inspections.**

The City, the State Auditor and/or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the Economic Development Program and this Contract, by whatever legal and reasonable means deemed expedient by the City, the State Auditor and U.S. Department of Housing and Urban Development.

### **Article 26.0**     **Hold Harmless.**

Each party agrees to identify 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 performance of this Contract. Liability includes any claims, damages, losses, and expenses arising out of 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 there from. Further, each party shall maintain a policy or policies of insurance (or 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 Contract 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.

### **Article 27.0**     **Independent Contractor.**

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of SENDD shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of SENDD. SENDD and the City shall be responsible to their respective employees for all salaries and benefits. Neither SENDD's employees nor the City's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including but not limited to, overtime, vacation, retirement benefits, workers compensation, sick leave or injury leave. SENDD and the City shall be responsible for maintaining Worker's Compensation Insurance and Unemployment Insurance for its employees, and for payment of all Federal, State, local and any other payroll taxed with respect to its employees' compensation. The parties shall further assume full responsibility for payment of any and all expenses or related costs associated with, or arising from, any injury to employees that may arise in the course of performing this Contract.

### **Article 28.0**     **Severability.**

If any provision of this Contract is held invalid, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be in full force and effect.

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

Nebraska City

IN WITNESS THEREOF, SENDD, as Contractor, and the City, have entered into this contract which shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016

**SOUTHEAST NEBRASKA  
DEVELOPMENT DISTRICT**

**CITY OF NEBRASKA CITY, NEBRASKA**

By: \_\_\_\_\_  
David R. Taladay, Executive Director

By: \_\_\_\_\_  
Bryan Bequette, Mayor  
City of Nebraska City

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_



Southeast Nebraska Development District

[www.sendd.org](http://www.sendd.org)

MAIN OFFICE  
2631 "O" Street, Lincoln, NE 68510  
Office: 402-475-2560  
Fax: 402-475-2794  
[djaladay@sendd.org](mailto:djaladay@sendd.org)

HUMBOLDT OFFICE  
PO Box 308, Humboldt, NE 68376  
Office: 402-862-2201

**ADMINISTRATIVE ASSISTANCE CONTRACT  
With the CITY OF NEBRASKA CITY, NEBRASKA**

**to Administer the City of Nebraska City Regional Reuse Plan  
(using Program Income from Community Development Block Grant funds)**

**Article 4.0: Attachment "A"- Scope of Services**

SENDD shall perform administration of the Nebraska City, Nebraska CDBG-funded Economic Development Loan Program ("the Program") in a satisfactory and proper manner, as determined by the City, and consistent with City, Federal and State laws. The primary tasks that SENDD will perform under this administration contract include, but are not limited to, the following:

**4.1 File Maintenance:**

SENDD shall assist the City in establishing and maintaining all program files. SENDD will review each file periodically and assist the City's staff in ensuring that information retained in the files is appropriate and sufficient to meet ongoing Community Development Block Grant (CDBG) grantee requirements. Files shall include, but not necessarily be limited to, the following:

1. Application documents
2. Environmental Review
3. Federal Labor Standards
4. Equal Opportunity/Affirmative Action
5. Procurement Standards/Invitation for Bids
6. Financial Management
7. Performance and Capacity

SENDD shall maintain sufficient records to fully document the following:

1. The loan application and underwriting review, including the front end assessment of CDBG eligibility and appropriateness of the loan
2. The final terms and conditions of the loan, including collateral and other forms of loan security involved
3. Satisfaction of the CDBG National Objective
4. Proper utilization of program income received

**4.2 Financial Management:**

SENDD will assist with bookkeeping duties and responsibilities, and will aid in ensuring that expenditures of funds comply with program requirements. Financial management includes the following

1. *Loan Servicing/Loan Portfolio Management:* SENDD will not be responsible for maintaining any financial accounts associated with the Program. SENDD will assist with developing a consistent method for recording monthly payments, with up-to-date ledgers and timely reconciliation. SENDD will monitor loan recipients to assess their progress in creating jobs for low-moderate income persons.
2. *Management of Program Income:* Any program income generated in connection with the Program, including loan repayment, late payment penalties, recapture, or proceedings from foreclosure, will be utilized consistent with the provisions of 24 CFR 570.500(2), 570.503(2) and (b)(3), and 570.504, and all other applicable CDBG program requirements. This Program Income will be applied toward additional loans and approved expenditures under the Nebraska City Regional Reuse Loan Program, in accordance with Program guidelines.

City Council may close a session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

## Nebraska City

### 4.3 Performance Reports.

SEND D will assist in the preparation of semi-annual "Program Income Reports" and submit the same to the City and the Nebraska Department of Economic Development. The report will include statements addressing:

1. The beginning and ending fund balances and uses of funds for the period covered.
2. A summary of activities to promote the use of the Economic Development Program.
3. Economic Development applications considered pending and approved.

### 4.4 Assurances Requirements.

SEND D will assist the City in meeting the requirements of the following laws, rules and regulations:

1. National Environmental Policy Act of 1969 and 24 CFR Part 58.
2. Title I of the Housing and Community Development Act of 1974 as amended.
3. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 24 CFR Part 42.
4. Section 3 of the Housing and Urban Development Act of 1968.
5. Title VI of Civil Rights Act of 1964 and 24 CFR Part I.
6. Title VII of the Civil Rights Act of 1968.
7. Age Discrimination Act of 1975.
8. Davis-Bacon Fair Labor Standards Act of 1970, as amended.
9. Contract Work Hours and Safety Standards Act of 1970.
10. Section 304 of the Rehabilitation Act of 1973.
11. Title IV of the Lead Based Paint Poisoning Prevention Act and 24 CFR Part 35.
12. Executive Order 11063 as amended by Executive Order 12259 and 24 CFR Part 107.
13. OMB Circular A-102.
14. OMB Circular A-87.
15. 24 CFR 570.488 to 570.499(a).
16. Nebraska Community Development Law.
17. Nebraska Environmental Protection Act.

### 4.5 Project Development.

SEND D will assist the City with the following Project Development activities:

1. *Preparation and modification of the application, program plan, procedures, forms and related documents:* Subject to the review and approval of the City, SEND D will establish, or make any necessary revisions to, the City Economic Development Loan program design, procedures and forms.
2. *Program Outreach/Promotion:* SEND D will market the Program and conduct other forms of outreach. SEND D will assist with the preparation of various forms of marketing materials. Prospective applicants and projects may be referred by the City, or any other development organization including the Nebraska Department of Economic Development.

### 4.6 Project Evaluation.

At the request of the City of Nebraska City Application Review Board, SEND D will assist the City with evaluation of proposed projects. SEND D shall perform the following:

1. *Completion of Loan Applications and Review:* SEND D will assist for-profit businesses in completing loan applications, and will perform an assessment of each loan request to:
  - A. Determine the CDBG eligibility of the loan.
  - B. Evaluate the loan's job creation potential relative to meeting the National Objective
  - C. Ascertain that the loan will minimize, to the extent practical, displacement of existing businesses and jobs in neighborhoods.
  - D. Perform a front-end assessment to determine whether each loan and the financing terms associated with it are appropriate.
  - E. Consider need for financial assistance.
  - F. Determine feasibility of the proposed project.

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

## Nebraska City

- G. Determine available loan collateral or other appropriate forms of loan security, sufficient to reduce the financial risk with each CDBG-funded loan, consistent with the Program intent of providing financing in situations where adequate conventional financing is not available.
  - H. Analyze past business experience of the applicant.
  - I. Determine reasonableness of the proposed costs and return to the applicant
  - J. Determine commitment of other source of funds.
  - K. Determine extent of public benefit that will be derived from the project.
2. *Facilitation of Loan Application once Review is Complete:*
- A. Prepare packet and written loan application proposal for Application Review Board.
  - B. Schedule and facilitate an Application Review Board Meeting, take minutes, etc.
  - C. Follow Nebraska City Loan Approval Process flow-chart based on type of recommendations made on the loan application by the Review Committee. If approved, this will consist of (but not be limited to) publishing and scheduling a public hearing, presenting the project to the City Council of Nebraska City, correspondence with the City office of Nebraska City and City Attorney to facilitate closing of the project.
3. *Loan Closing:* SENDD will assist with certain aspects of the loan closing. However, SENDD will not act as the official loan closing officer. The official loan closing officer will be in charge of facilitating the execution of all necessary loan closing documents. These may include, but are not limited to promissory notes, security agreements, deeds of trust, guarantees, etc. The loan documents executed with applicants will include explicit provisions describing:
- A. The records which loan recipients must maintain to demonstrate eligibility of the CDBG expenditures and the satisfaction of the CDBG National Objective
  - B. The conditions and procedures under which late payment penalties, defaults and foreclosures will occur. The loan closing officer will also be in charge of properly securing all loan collateral in the proper lien position. This will include (but is not limited to) UCC filings and lien searches, filing of real estate mortgages and obtaining title insurance/title searches, fixture filings, title liens, and other methods to secure required business and personal assets. SENDD suggests that these tasks be performed by the designated City Attorney of Nebraska City or other qualified closing attorney.

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: June 6, 2016  
Agenda Item: # \_\_\_\_\_  
Submitted By: Grayson Path, City Administrator  
Alan Viox, Fire Chief  
Andrew Snodgrass, EMS Director

**A. Synopsis of Issue:**

- a. The County has requested from each EMS District a proposed budget that the proposed EMS county-wide levy would be used to fund.
- b. The attached document is designed to give the County Commissioners a scenario budget, but still make it clear that the City Council will determine the best way of accomplishing the intended goal of any contract to provide EMS services.

**B. Options:**

- a. Continue discussions with County using the attached document.
- b. Continue discussions with County using an edited or alternative document.
- c. Discontinue discussions with County regarding the levy.

**C. Fiscal Note:**

- a. The City would potentially receive revenue from the County for the purpose of providing EMS services in the existing EMS district covered by the City EMS. The amount of revenue is to be determined by the County and will be determined in any contract negotiations.

**D. Recommendation:**

- a. Continue discussions with County, using the attached document.
- b. Authorize City staff to continue meeting with County Commissioners to discuss.

**E. Background:**

- a. City Staff met with the County Commissioners on May 24, 2016. Little discussion was held on the subject, but the County Commissioners asked for a budget that shows how the money will be spent.
- b. The attached document is designed to help the County Commissioners understand that this is a contractual arrangement and that the City will determine how the money will be spent for the purpose of providing EMS coverage.

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Department Heads: Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



May 24, 2016

## Potential Budget Proposal – County Wide EMS Tax

To: Otoe County Commissioners

From: Administrative City Staff of City of Nebraska City:  
Grayson Path, City Administrator  
Alan Viox, Fire and Rescue Chief  
Andrew Snodgrass, EMS Director

Dear County Commissioners,

As you are aware, the County and EMS districts have discussed the possibility of implementing a tax levy in line with Neb. Rev. Stat. § 13-303, authorizing the County Board of Commissioners to levy a tax for the creation of an EMS service. This statute is broad enough to allow the County to contract this service out, or in the case of Nebraska City's coverage area, enter into an Interlocal Agreement. The EMS providers in the County would act as contractors for the County, providing the EMS service in their specific and designated districts. The alternative is for the County to create its own EMS service with appropriate licensing, staffing, and equipment. While this is the County's right to create its own service, since there are already established services in the county, we currently believe it is most efficient and economical to contract it out with each district.

Regarding this arrangement viewed as a contractual agreement; each EMS district will act as a traditional independent contractor. We would be responsible for our own payroll, benefits, invoices, bills, rate structure, etc. We would maintain complete ownership of our services. In essence, following the guidelines of the IRS's definition of an independent contractor, the payer controls the result of the work but the contractor controls what will be done and how it will be done. In short, through a contract, the County would provide each district the funds through the levy for the purpose of EMS coverage to all county citizens within their designated district, and each district uses those funds to accomplish the intended goal. Any other method would require the County to take ownership of the employees and equipment, something I do not believe the County is prepared for at this time.

Regardless of this, for all contractual agreements, it is expected that a showing of how the money will be spent is to be provided. Therefore the rest of this report is geared towards providing the County Commissioners with a potential use of the funds. It must be stressed that the Nebraska City EMS is governed by the Nebraska City City Council. At this time, the City Council has only met to discuss this arrangement once, thus no decisions have been made - including what the money produced by the tax levy would be used for. The following information is, therefore, subject and contingent to the City Council's decisions and control.

### Nebraska City Sample Budget:

1. At this time, City Staff have contemplated using additional funds to convert its existing Part Time EMT coverage to Full Time EMT coverage. The following table is a theoretical budget for 4 FT EMTs. Assumptions in pay, benefits, coverage for leave (vacation, sick, etc.), and so forth have been made.

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Nebraska City

		Employee	Shift	Straight Hours	OT	Hourly Rate	OT Rate	Total Pay	Social Security
<b>Total</b>		A	2208	1896	312	\$ 11.75	\$ 17.63	\$36,489.00	\$ 2,262.32
		B	2184	1872	312	\$ 11.75	\$ 17.63	\$36,207.00	\$ 2,244.83
		C	2184	1872	312	\$ 11.75	\$ 17.63	\$36,287.00	\$ 2,249.79
		D	2184	1872	312	\$ 11.75	\$ 17.63	\$36,359.00	\$ 2,254.26

		Assume Family Plan				Added Contingency	
Medicare	Retirement	Health	Dental	Life	Total	for Leave Coverage	Total
\$ 529.09	\$ 2,554.23	\$17,529.72	\$1,080.00	\$ 360.00	\$60,804.36	\$ 7,500.00	\$ 68,304.36
\$ 525.00	\$ 2,534.49	\$17,529.72	\$1,080.00	\$ 360.00	\$60,481.05	\$ 7,500.00	\$ 67,981.05
\$ 526.16	\$ 2,540.09	\$17,529.72	\$1,080.00	\$ 360.00	\$60,572.77	\$ 7,500.00	\$ 68,072.77
\$ 527.21	\$ 2,545.13	\$17,529.72	\$1,080.00	\$ 360.00	\$60,655.31	\$ 7,500.00	\$ 68,155.31

The City currently employees Part Time EMTs that have an estimated annual budget of approximately \$138,000.00 in pay, Social Security, Medicare, and potential OT. Therefore, the difference between moving from the current PT arrangement to FT is approximately \$135,000.00. This is due to benefits, call back pay, etc. Again, please understand that these are budget estimates.

2. In addition to pay and benefits for 4 new FT EMTs, there are ancillary costs such as clothing, equipment, training, etc. that must be budgeted for. Those estimates are as follows:
  - a. Uniforms: \$2000.00
  - b. Training: \$1,500.00
  - c. Communications: \$1,000.00
  
3. Any excess funds beyond these cost estimates would be used to supplement the City’s EMS and Rescue budget and/or develop a capital outlay fund for future large expenses such as equipment and vehicles.

The City Council’s final decision on how to use the revenue will ultimately depend on the amount of revenue levied by the County Commissioners. As seen in the next section, different levies produce different amounts which will be divided amongst the various districts. Lower levy revenue will reduce the City’s ability to implement some of its potential ideas mentioned above.

**Additional Notes:**

It is important for the County Commissioners to consider the intent of this proposal. While the City of Nebraska City is in need of moving to a full-time crew to handle the call load in our district and address scheduling issues we are experiencing, the City is not struggling. The issue driving this proposal is coverage to all county citizens, particularly those in western Otoe County. As this is an all-or-nothing county-wide levy, any levy raised in the western portion of the county would equal the levy rate in the eastern portion of the county. The levy needs to be based on the needs of those districts in the western parts of the County. The City will of course benefit from added revenue and will subsequently improve its services with the added bonus of working even closer with our fellow EMS districts as backup in emergency situations. In addition, as the City Council is unable to levy a tax outside of its corporate limits, the citizens of Nebraska City are currently subsidizing any excess costs beyond revenue for services provided in the districts we serve. A county-wide tax will place the levy on all citizens equally.

We encourage the County Commissioners to distribute the funds based on EMS district. Those funds levied within the areas covered by Nebraska City Rescue should go to Nebraska City Rescue, likewise for Syracuse, Palmyra and so forth. If districts would like to pool their funds together, that is of course a plausible option as well.

A quick look at what an additional levy would cost citizens per year:

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Nebraska City

Total Property Taxes			
	Value of Home:		
Levy:	\$ 100,000.00	\$ 150,000.00	\$ 200,000.00
\$ 0.010	\$ 10.00	\$ 15.00	\$ 20.00
\$ 0.015	\$ 15.00	\$ 22.50	\$ 30.00
\$ 0.020	\$ 20.00	\$ 30.00	\$ 40.00
\$ 0.025	\$ 25.00	\$ 37.50	\$ 50.00
\$ 0.030	\$ 30.00	\$ 45.00	\$ 60.00
\$ 0.035	\$ 35.00	\$ 52.50	\$ 70.00
\$ 0.040	\$ 40.00	\$ 60.00	\$ 80.00

It is important to consider what this tax levy helps provide. As with Sheriff services, all citizens possess the same probability of needing EMS services as any other. Reliable and responsive service requires staff on ready. This has a flat cost. Therefore this tax helps create an at-ready service for all citizens at all times. Each EMS will continue to charge rates subject to their governing body approval to offset costs not covered by tax revenue.

A quick look at what an additional levy would raise in tax revenue:

<b>FY15/16 Evaluation:</b>	\$ 2,281,939,400.000
<b>Levy:</b>	As per APA Website
\$ 0.010	\$ 228,193.94
\$ 0.015	\$ 342,290.91
\$ 0.020	\$ 456,387.88
\$ 0.025	\$ 570,484.85
\$ 0.030	\$ 684,581.82
\$ 0.035	\$ 798,678.79
\$ 0.040	\$ 912,775.76

These values would be divided by EMS district based on their district map and the corresponding real property valuation within that district map.

**Conclusion:**

The City of Nebraska City is interested in continuing this discussion as we do not want to be the hold up for the rest of the county's EMS needs being met through a county-wide EMS tax levy. Nevertheless, the City Council of the City of Nebraska City maintains all rights regarding control of its EMS, EMS budget and will play an active part in any Interlocal Agreement discussions regarding this agreement. If you have any questions, please do not hesitate to ask.

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Nebraska City

RESOLUTION NO. 2706-16

WHEREAS, the City Council of the City of Nebraska City has been made aware of the possibility of the County of Otoe, State of Nebraska, enacting a county-wide EMS tax to provide EMS services using existing providers for the current EMS Districts;

AND WHEREAS, the City finds it to be in the best interests of the citizens of Nebraska City for the county-wide EMS tax and creation of partnerships between the County, the City, and the additional EMS service providers in the County to be explored;

THEREFORE, BE IT RESOLVED that the City Council expresses approval of continuing research and exploration of the creation of partnerships utilizing a potential county-wide EMS tax.

Passed and approved this 6<sup>th</sup> day of June, 2016.

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Bryan Bequette, Mayor

ATTEST:

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Randy Dunster, City Clerk-Treasurer

# Nebraska City

## Sesquicentennial Committee

### Nebraska Statehood Celebration committee-Nebraska City

Members- Erv Friesen, Jim Kuhn, Amy Allgood, Rasmus Theorgenson, Kelly Bequette

The goal of the committee is to plan, collaborate and promote Nebraska City's 2017 150-initiatives and communicate with the Nebraska 150 Commission, Nebraska City leaders, organizations, citizens and other communities.

Nebraska City can submit initiatives to NE 150 Commission for state level recognition. The NE 150 Commission will classify each initiative as an official, signature or legacy event. The NE 150 Commission currently has initiatives which, as a committee, we would wish to plug into. Some funding is available. NE 150 Commission has an established network and marketing strategy for events including an established website and collaboration with Nebraska newspapers, Facebook and other networks.

Current proposed Nebraska City initiatives include:

1. Hopeful site for Traveling Children's museum
2. Nebraska City Port of the West-Missouri River Excursion
3. Volkside-Trail Project Nebraska City to Brownsville (energize Nebraska)
4. Quilt Show- Applejack
5. Painting the Legacy - Southeast Nebraska (prints not originals)

More opportunity to plug into other initiatives possible as long as funding and support are available. This committee hopes to help organize this process.

## ADJOURNMENT

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