

## TRAIL AGREEMENT

STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION  
CITY OF GRAND ISLAND  
PONDEROSA TRAIL CONNECTION

**THIS AGREEMENT** is between City of Grand Island, a municipal corporation of the State of Nebraska ("Municipality"), and State of Nebraska, Department of Transportation ("State"), collectively referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, Municipality plans to construct a hike-bike trail underneath Highway US-34, which will be constructed on State's right-of-way, at the location shown on Exhibit "A"; and

**WHEREAS**, the hike-bike trail is described generally as follows:

The work for the proposed Ponderosa Trail Connection will include grading and surfacing of a new trail that will be located under existing bridges located along Highway US-34 at State R.P. 230+55, at the location shown on the attached Exhibit "A". References in this Agreement to "Trail" or "Trail Project" include the trail and all associated appurtenances.

**WHEREAS**, Neb. Rev. Stat. § 39-1359 requires State's right-of-way be held inviolate for highway purposes and that written permission of State is required to occupy the State's right-of-way, and because Trail will be located underneath US-34 within the right-of-way, therefore Municipality is required to obtain a permit to occupy the right-of-way for Trail; and

**WHEREAS**, pursuant to Neb. Rev. Stat. § 39-1339 Municipality shall be responsible for the maintenance of the Trail; and

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

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

**WHEREAS**, Parties intend that this Agreement describe certain roles and responsibilities applicable to this project; and

**WHEREAS**, Municipality is agreeable to being solely responsible for all costs and liability for the design, construction, maintenance, operation, reconstruction, or removal of the Trail, and

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

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

**WHEREAS**, City Council has authorized the Mayor to sign this Agreement, as evidenced by the Resolution of City Council, as shown on Exhibit "B".

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

**SECTION 1. DURATION OF THE AGREEMENT**

- 1.1 *Effective Date*** -This Agreement is effective immediately on the date it is fully executed by the Parties. The Mayor is authorized by the City Council to execute this Agreement, as evidenced by the Resolution of City Council, attached as Exhibit "B" and incorporated herein by this reference
- 1.2 *Renewal, Extension or Amendment*** -This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.
- 1.3 *Identifying Date*** - For convenience, this Agreement's identifying date will be the date the State signed the Agreement.
- 1.4 *Duration*** – The duration of this Agreement and the State's Permit to Occupy the State's right-of-way shall be twenty five years from the date of execution of the Agreement. At the completion of the twenty five year term, renewal for an additional twenty five year term shall be automatic unless the State notifies the Municipality one calendar year in advance of the end of the initial twenty five year term. The renewal shall not be unreasonably denied by State. At the end of the second twenty five year term, this Agreement will terminate unless extended by supplemental agreement. The duration of

this agreement is subject to the State's right to reconstruct US-34 as described elsewhere in this Agreement.

**1.5 Termination** - Further, State reserves the right to terminate the Agreement as provided herein.

## **SECTION 2. DESCRIPTION OF THE PROJECT**

Municipality plans to construct a hike-bike trail, a part of which will be constructed on State's right-of-way, at the location shown on Exhibit "A", attached and incorporated herein by this reference. The project includes grading and surfacing of a new trail that will be located under existing bridges located along Highway US-34 at State R.P. 230+55. References in this Agreement to "Trail" or "Trail Project" include the trail and all associated appurtenances.

## **SECTION 3. NO COST TO STATE**

Parties expressly agree that this Agreement is executed for the benefit of Municipality and that the parties intend that all costs and liability for the design, construction, inspection, maintenance, operation, repair, reconstruction, and for the removal of the Trail and restoration of State property will be the sole responsibility of Municipality; and, except as expressly provided herein; shall be accomplished at no cost to State.

## **SECTION 4. FUNDING FOR TRAIL**

Parties agree Municipality may seek Federal funding for the Trail. Nothing in this Agreement is intended to make the Municipality ineligible for such funding.

## **SECTION 5. PLANS PREPARATION**

Municipality will prepare, or cause plans to be prepared for Municipality's Trail project. Municipality will design Trail to accommodate the existing highway drainage patterns and construct drainage facilities that are consistent with and will not adversely affect the operation of State's highway drainage facilities. Municipality will, at Municipality's sole expense, design, construct and inspect the construction of Trail. Further, Municipality will design, construct, operate, inspect, repair and maintain Trail to conform to federal and state law and rule and regulation concerning accommodation of the disabled. Municipality will, at Municipality's sole cost, maintain in good repair, operate, reconstruct, and, if necessary, remove Trail and restore State's property. When the plans for Trail are completed, Municipality will submit final plans and specifications to State for State's review. These plans shall include, but not be limited to, work zone traffic control, grading, structures, surfacing, drainage and erosion control work.

#### **SECTION 6. PERMIT TO OCCUPY STATE'S RIGHT-OF-WAY**

Municipality will submit to State an application for a permit to perform work on State's right-of-way and to occupy State's right-of-way including final plans for the Trail to State for review through State's right-of-way permit process prior to work occurring on State's right of way. Municipality will conduct no construction work on State's right-of-way prior to State issuing a permit to Work on and Occupy State's right-of-way. In the event provisions of this Agreement conflict with provisions of State's permit to occupy the State's right-of-way, the provisions of this Agreement shall govern. Terms of the permit(s) that are not affected by the terms of this Agreement will remain in full force and effect.

#### **SECTION 7. CONTRACT LETTING AND CONTRACTOR INSURANCE**

The Municipality will use a competitive bidding process to let to contract the work contemplated under this Agreement. Municipality shall require a performance and payment bond of its contractor in the amount of the bid and in the form set out on Exhibit "C" attached and hereby incorporated in this Agreement. The construction contract will be between Municipality and its selected construction contractor. State requires that Municipality contractor obtain and maintain in force for the life of Municipality contract insurance coverage meeting the requirements of Exhibit "D" attached and hereby incorporated in this Agreement. Contract bids from contractors who do not provide evidence of meeting the requirements of Exhibit "D" shall not be considered.

#### **SECTION 8. CONSTRUCTION**

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

#### **SECTION 9. PROFESSIONAL SERVICES**

The professional **design** services for work to be constructed on State's right-of-way under this Agreement shall be completed by, or under the direct supervision of, a Professional Civil Engineer licensed to practice in State of Nebraska. Review by State of the plans and specifications and the issuing of a permit to construct the Trail does not constitute a waiver of liability. In the event the

professional **construction engineering** services for work to be constructed on State's right-of-way under this Agreement are not completed by State on behalf of Municipality, Municipality shall ensure such services will be completed by, or under the direct supervision of, a Professional Civil Engineer licensed to practice in State of Nebraska. Review by State of the construction of the Trail does not constitute a waiver of liability.

#### **SECTION 10. PROFESSIONAL PERFORMANCE**

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

#### **SECTION 11. FUTURE HIGHWAY CONSTRUCTION INCLUDING NEPA**

The Parties understand that portions of the Trail will be located on State's highway right-of-way and that the highways are subject to future roadway work which may adversely impact Trail. This Agreement is entered into expressly subject to any future highway operation, maintenance, resurfacing, rehabilitation, or reconstruction deemed necessary by State.

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

required to satisfy the requirements of NEPA related to Trail on State's right-of-way will be accomplished at the sole financial responsibility of Municipality.

## **SECTION 12. INDEMNIFICATION AND MUNICIPALITY INSURANCE**

### **12.1 INDEMNIFICATION**

- 12.1.1 Municipality shall indemnify and hold harmless, to the fullest extent allowed by law, State, its agents, employees and representatives, from all claims, demands, suits, actions, payments, liability, judgments and expenses (including attorney's fees) arising out of or by reason of the work of Municipality under this Agreement.
- 12.1.2 State shall not be liable in any manner to any person or entity for any claim, demand, suit, action, payments, liability, judgments and expenses (including attorney's fees) arising out of or by reason of the work of Municipality under this Agreement, or the design, planning, performance, or completion of the work that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of property, including the loss of use resulting therefrom, that is caused in whole or in part, either directly or indirectly, by Municipality or any Municipality agents or representatives.
- 12.1.3 Municipality further agrees to defend at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising out of or as a result of work performed by Municipality or its agent, or anyone contracting with Municipality for such hereunder. State shall not be liable in any manner to any person or entity for any claim, demand, suit, action, payments, liability, judgments and expenses (including attorney's fees) arising out of use of Trail or the security of persons using the Trail and highway undercrossing that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of property, including the loss of use resulting there from, that is caused in whole or in part, either directly or indirectly, by LPA or any LPA agents or representatives.

### **12.2 MUNICIPALITY INSURANCE**

For the duration of this Agreement, Municipality shall carry at least the insurance required on Exhibit "E", attached and incorporated herein by this reference.

Municipality's insurance must specifically provide coverage for the Trail and the area of State property occupied by the Trail.

### **SECTION 13. TRAIL OWNERSHIP AND OPERATION RESPONSIBILITIES**

- 13.1 Municipality shall be the owner of the part of the Trail that is located on State's property. State grants to Municipality, upon the issuance of a State permit, the right to construct, occupy, operate, inspect, repair, reconstruct (when necessary) and maintain its' Trail on State's property. Municipality agrees, at no cost to the State, to be solely responsible for the operation (including security of Trail users), inspection, maintenance, repair, restoration, or when necessary, reconstruction of the Trail to its as-constructed condition.
- 13.2 Municipality is also responsible for damage to Trail caused by vehicle crashes, vandalism, or other acts or omissions. Municipality further agrees that State has no duty to inspect, report, or remedy observed conditions (even if State has notice of said condition) on the Trail. Municipality shall be responsible for collecting any and all damages from the person(s) or entities that caused damage to the Trail. Permission to use State's right-of-way to perform maintenance of the Trail is covered under the permit issued by State including periodic maintenance access to the site from State's highway. Additional modification to the State's property must be reviewed by State and permission of State granted in writing, ordinarily in the form of a right-of-way permit.

### **SECTION 14. PROTECTION OF UTILITIES**

Municipality will protect or cause to be protected the utilities within the highway right-of-way, and repair or replace such when damaged during the performance of work of Municipality under this Agreement.

### **SECTION 15. NOTICE TO STATE**

The Municipality will notify the Office of State's Highway District Engineer at the specific milestones in the construction as detailed below.

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

## **SECTION 16. ADDITIONAL MUNICIPALITY DUTIES**

The Municipality further agrees:

- 16.1 To complete the construction of the Trail according to the plans and specifications reviewed by State.
- 16.2 To present for review by State any changes to the reviewed construction plans prior to initiating the change.
- 16.3 To install prior to construction and maintain during construction traffic control devices in accordance with the traffic control plans reviewed by State. To present for the review of State changes in the reviewed traffic control plans prior to accomplishing the change.
- 16.4 To notify in writing State's Highway District Engineer or his designee of the completion of the construction. This notice of completion shall be accompanied by a certification stamped and sealed by the Professional Engineer supervising the construction that the work was accomplished in accordance with the reviewed plans and specifications.
- 16.5 That State retains the authority to make future changes to State's highway including changes to Municipality's Trail as necessary to address the needs of the highway system or public safety. In the event State, as a part of its duties to maintain and operate State's highway, must change the Trail, Municipality shall be solely responsible for the design, modification or reconstruction of Municipality's Trail, or the cost thereof, to accommodate State's highway changes and for temporary construction to allow the State's work to progress. The Municipality will be responsible for any damages to State resulting from the delay in completing a highway improvement, including but not limited to:
  - (i) further deterioration of the roadway or its appurtenances, and
  - (ii) inflation in the cost of a highway improvement, and
  - (iii) liability for crashes arising out of the delayed completion of the highway improvement.

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



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

#### **SECTION 17. ADDITIONAL STATE DUTIES**

State agrees:

- 17.1 To retain responsibility for the future design, construction, reconstruction, maintenance and operation of the State's highway.
- 17.2 To review the plans and permit application and, if appropriate, to issue a permit to construct, operate, repair, maintain, reconstruct and, if necessary, remove the Trail along State's highway.
- 17.3 To respond in a timely manner to requests for review of plan changes and reviews of the work.
- 17.4 To notify Municipality one year in advance of construction of a project that may require reconstruction of a part or whole of Trail.

#### **SECTION 18. TERMINATION OF AGREEMENT**

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

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

period, and Municipality commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.

- 18.1.4 Municipality fails to maintain, operate, repair, or restore Trail and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and Municipality commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
- 18.1.5 Municipality fails to, if necessary, reconstruct Trail within three (3) years following the removal of the Trail or a portion thereof for highway activities and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and Municipality commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
- 18.1.6 Other than specifically provided in this section, Municipality fails to cure to the reasonable satisfaction of State, any non-performance or non-compliance with any of the terms, provisions, covenants or conditions contained in this Agreement within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure non-compliance shall be deemed to have occurred if State concludes that non-performance or non-compliance cannot be cured within such ninety (90) day period, and Municipality commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.
- 18.1.7 Municipality fails to make adjustments to Trail as necessary to provide for State's design, operation, maintenance, repair, resurfacing, restoration, rehabilitation, or reconstruction of State's highway and fails to cure non-compliance to the reasonable satisfaction of State, within ninety (90) days after receipt of notice to cure in writing from State; however, no Event of Default related to such failure to cure shall be deemed to have occurred if State concludes that non-performance

or non-compliance cannot be cured within such ninety (90) day period, and Municipality commences cure within said ninety (90) day notice period and diligently pursues cure to full compliance.

- 18.2 Municipality's Trail adversely affects State's ability to design, construct, maintain, repair, resurface, rehabilitate, restore or reconstruct State's highway including all right-of-way and appurtenances thereto.
- 18.3 Municipality fails to construct Trail in accordance with the approved plans and State's permit.
- 18.4 Municipality fails to follow the contracting provisions required by this Agreement.
- 18.5 State or Federal law, rule or regulation effects a change in the statutory environment which renders this Agreement or parts thereof void.
- 18.6 State or Federal law, rule or regulation effects a change in the statutory environment which creates duties or responsibilities as a result of this Agreement that are considered, in State's sole discretion, too onerous for State.

Upon the occurrence of an Event of Default, as stated above, State may terminate the Agreement by delivering to Municipality a written notice of termination ("State Notice of Termination") specifying the effective date of termination, which may be immediate. Upon receipt of the State Notice of Termination, Municipality will within 180 days perform the duties and responsibilities under SECTION 20, RESTORATION OF STATE'S RIGHT-OF-WAY, of this Agreement and peaceably surrender the premises to State.

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

Notwithstanding any provision in this Agreement to the contrary, Municipality may terminate this Agreement at any time during the Term upon not less than sixty (60) days written notice to State specifying the effective date of termination and Municipality will within 180 days perform the

duties and responsibilities under SECTION 20, RESTORATION OF STATE'S RIGHT-OF-WAY, of this Agreement and then peaceably surrender the premises to State.

**SECTION 19. COMPLIANCE WITH LAW**

The cost of complying with applicable future laws, rules, regulations or policies of the federal or state government or its representatives not in force at the time of this Agreement or not disclosed or addressed in this Agreement shall be the responsibility of the Municipality and such compliance shall be accomplished at no cost to the State.

**SECTION 20. NOT A JOINT VENTURE**

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

**SECTION 21. RESTORATION OF STATE'S RIGHT-OF-WAY**

Municipality shall remove Trail and restore State's right-of-way to its pre-existing condition (1) at the end of the term of the Agreement, (2) in the event the Trail is abandoned by Municipality or, (3) State or Municipality terminates this Agreement. In the event Municipality fails to accomplish the work under this Section in the time frame stipulated, State may complete the work at Municipality's sole expense. Municipality shall reimburse State for all costs associated with the performance of this work.

**SECTION 22. NOT A WAIVER OF IMMUNITY.**

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

**SECTION 23. FAIR EMPLOYMENT PRACTICES ACT**

Municipality agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. § 48-1101 through § 48-1126.

**SECTION 24, ENTIRE AGREEMENT**

This Agreement, supplements hereto, and any permit to occupy State's right-of-way constitutes the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained in these instruments, and these instruments 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 Municipality this 30<sup>th</sup> day of April, 2020.

WITNESS:

CITY OF GRAND ISLAND

Rae Edwards  
City Clerk

Robert H. Steele  
Mayor

EXECUTED by State this 27 day of July, 2020.

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

Michael H. Owen  
Jul 27 2020  
Roadway Design Engineer

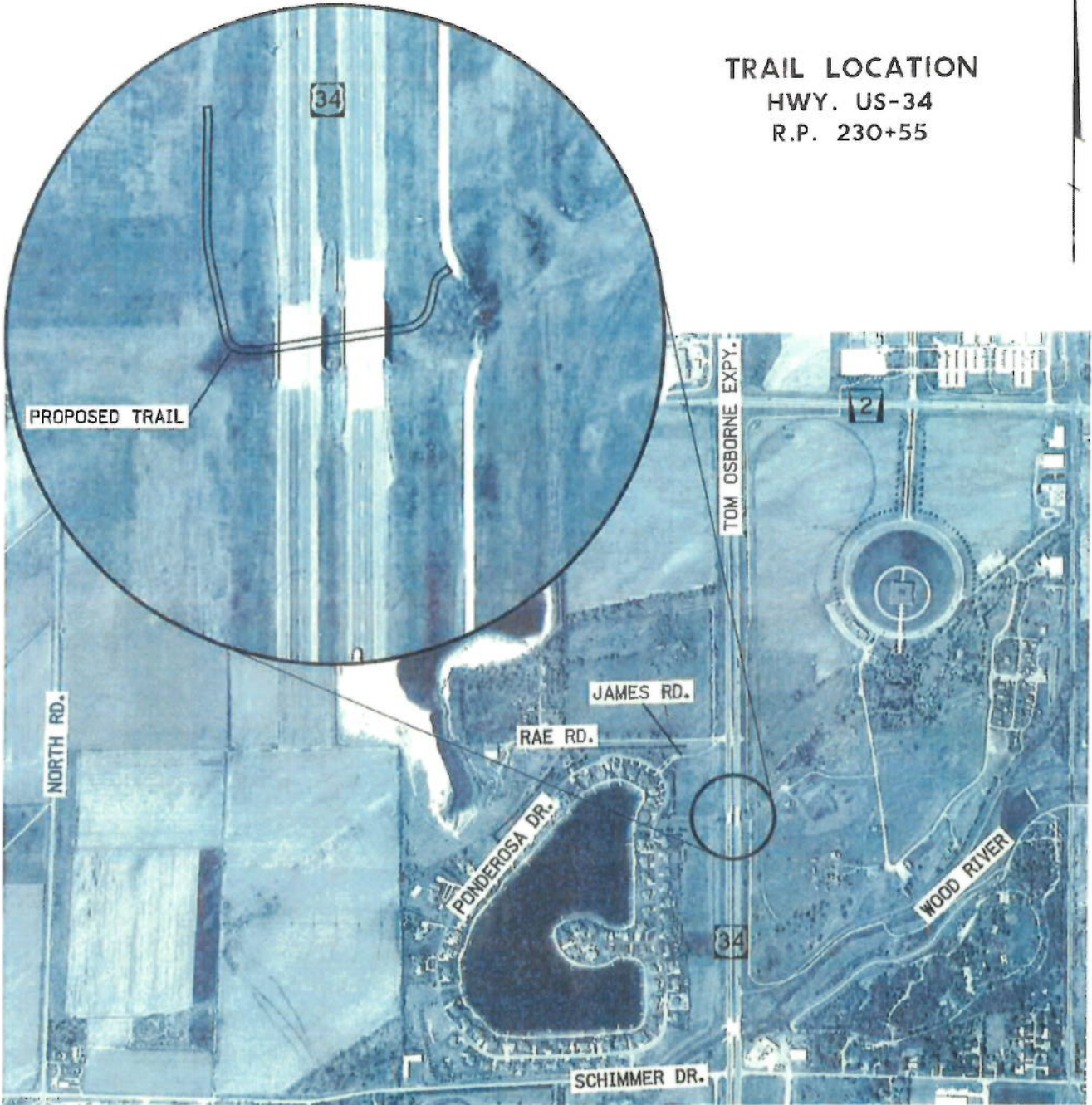
RECOMMENDED:  
Wesley Wahlgren, P.E.

Wesley Wahlgren 6-2-2020  
District 4 Engineer Date

Gregory R. Winkler  
Interim City Attorney

# PONDEROSA TRAIL CONNECTION

HALL COUNTY  
NEBRASKA



TRAIL LOCATION  
HWY. US-34  
R.P. 230+55

GRAND ISLAND, NE  
UNDERCROSS FOR HIKE/BIKE TRAIL

EXHIBIT "A"

Letting:  
Call:  
Contract ID:

Project No.:

**CONTRACT BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we \_\_\_\_\_ as principal,

and \_\_\_\_\_ as sureties, are held and firmly bound unto the Department of Transportation of the State of Nebraska, in the penal sum of \$ \_\_\_\_\_ dollars and for the payment of which we do hereby bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly by these presents.

Date \_\_\_\_\_, A.D. 20 \_\_\_\_\_

The condition of the obligations is such that whereas, the above bounden \_\_\_\_\_ of \_\_\_\_\_, has been awarded by the Department of Transportation of the State of Nebraska, the various groups of work, including all items contained in each specified group of work being groups numbered: \_\_\_\_\_ on Project No. \_\_\_\_\_ in \_\_\_\_\_ County(ies), Nebraska copy of which contract together with all of its terms, covenants, conditions and stipulations is incorporated herein and made a part hereof as fully and amply as if said contract were recited at length herein.

NOW THEREFORE, if said \_\_\_\_\_ as principal shall in all respects fulfill this said contract according to the terms and the tenor thereof, and shall faithfully discharge the duties and obligations therein assumed, then the above obligation is to be void and of no effect; otherwise to be and remain in full force and virtue in law.

It is expressly understood and agreed that this bond is given to secure and does secure not only the faithful performance by the principal herein named of said contract for the construction work as specified in said contract and in strict accordance with the terms of said contract and the plans, specifications and all special provisions made a part thereof; but that it is given to secure and does secure also the payment by the said bounden \_\_\_\_\_ of all overpayments made to said principal by the Department of Transportation, and of all just claims to all laborers and mechanics for labor that shall be performed, and for the payment of all material, supplies and equipment which is used or rented in performing the contract, and for the payment of all taxes, including contributions and interest due under the Nebraska Employment Security Law, on wages paid to individuals employed in the performance of the contract including those performing under subcontract which may accrue, to the State of Nebraska and the political subdivisions thereof on account of the execution and performance of this contract, and if such payments be made then this obligation shall be null and void; otherwise it shall remain in full force and effect.

No contract shall be valid which seeks to limit the time to less than one year in which an action may be brought upon the bond covering the construction work, and this bond is made, executed and delivered with such understanding.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
*Surety*

\_\_\_\_\_  
*Attorney-in-Fact (Signature)*

\_\_\_\_\_  
*Principal (Signature)*

\_\_\_\_\_  
*Attorney-in-Fact (Printed Name)*

\_\_\_\_\_  
*Principal (Printed Name)*

\_\_\_\_\_  
*Agency Business Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency Business Address*

\_\_\_\_\_  
*Phone Number*

## 107.15 -- Liability Insurance

1. Prior to execution of the contract, the Contractor shall obtain insurance coverage to fully protect it from loss associated with the work, and have at a minimum the insurance described below:

- a. General Liability:

- (1) Limits of at least:
  - (i) \$ 1,000,000 per Occurrence
  - (ii) \$ 2,000,000 General Aggregate
  - (iii) \$ 2,000,000 Completed Operations Aggregate
  - (iv) \$ 1,000,000 Personal and Advertising Injury
- (2) Contractor shall be responsible for the payment of any deductibles.
- (3) Coverage shall be provided by a standard form Commercial General Liability Policy (CG0001 or equivalent) covering bodily injury, property damage including loss of use, and personal injury.
- (4) The General Aggregate shall apply on a Per Project Basis.
- (5) The State of Nebraska, Department of Transportation, shall be named as an Additional Insured on a primary and non-contributory basis including completed operations for three (3) years after final acceptance and payment.
- (6) Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation shall be added to the policy.
- (7) Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.
- (8) If work is being performed near a railroad track, the 50' railroad right-of-way exclusion must be deleted.
- (9) Products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be further maintained for a minimum period of three years after final acceptance and payment.
- (10) Coverage shall be included for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below surface of ground (XCU coverage).
- (11) Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from



products and completed operations as per standard CG0001 Pollution Exclusion or equivalent. If the standard pollution exclusion as provided by CG0001 has been amended, coverage must be substituted with a separate Pollution Liability policy of \$1.0 million per occurrence and \$2.0 million aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Contractor.

b. Automobile Liability:

- (1) Limits of at least:
  - (i) \$ 1,000,000 CSL per Accident
- (2) Coverage shall apply to all Owned, Hired, and Non Owned Autos.
- (3) If work is being performed near a railroad track, the 50-foot railroad right-of-way exclusion must be deleted.
- (4) Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation, shall be added to the policy.
- (5) Automobile liability coverage shall be obtained from an insurance carrier who is licensed in Nebraska and any other State in which the project is located.

c. Workers' Compensation:

- (1) Limit: Statutory coverage for Nebraska and for any other State in which the project is located.
- (2) Employer's Liability limits:
  - (i) \$500,000 Each Accident
  - (ii) \$500,000 Disease – Per Person
  - (iii) \$500,000 Disease – Policy Limit
- (3) Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation shall be added to the policy.
- (4) Workers' compensation coverage shall be obtained from an insurance carrier who is licensed in Nebraska and any other State in which the project is located.
- (5) Where applicable, the Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy.

- d. Umbrella/Excess:
- (1) Limits of at least:
    - (i) \$1,000,000 per Occurrence
  - (2) Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Automobile Liability.
  - (3) The State of Nebraska, Department of Transportation, shall be an "Additional Insured."
  - (4) Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation shall be provided.
- e. Pollution Liability:
- (1) When "hazardous wastes" or contaminated or polluted materials must be handled and/or moved, the Contractor shall obtain Pollution Liability Coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
  - (2) If, during the course of construction, hazardous wastes, contaminated or polluted material are discovered on the project, the Contractor shall immediately cease any operation that may disturb these materials, and shall immediately notify the Engineer of all facts related to the discovery of these materials.
  - (3) Unforeseen work related to the discovery of hazardous, contaminated or polluted materials on the project, and the extra cost, if any, of pollution liability coverage will be handled as "extra work."
- f. Additional Requirements:
- (1) The Contractor shall provide and carry any additional insurance required by the Special Provisions.
  - (2) Except as otherwise provided herein, all insurance shall be kept in full force and effect until after the State releases the Contractor from all obligations under the contract.
  - (3)
    - (i) If any of the work is sublet, equivalent insurance shall be provided by or on behalf of the subcontractor or subcontractors (at any tier) to cover all operations.
    - (ii) Approved trucking subcontractors (at any tier) who are being utilized only for the purpose of hauling materials shall be exempt from the requirements of Paragraphs 1.a., 1.d. and 1.e. of Subsection 107.15.

- (iii)
    - (a) When a Contractor or subcontractor chooses to employ a trucker by carrying the driver on his or her payroll and entering into a lease agreement for the truck, the owner-operator of the truck shall be required to comply with the Automobile Liability provisions of Paragraph 1.b. of Subsection 107.15
    - (b) Furthermore, it shall be the duty of the Prime Contractor to ensure that the owner-operator of the truck has such insurance in effect. The Prime Contractor shall maintain evidence that any truckers so utilized (at any tier) are insured to the minimum limits specified and be able to furnish documentation of the same on demand.
    - (c) Failure to ensure that insurance coverage exists and failure to maintain evidence thereof shall be considered a breach of the contract.
- (4) Any insurance policy shall be written by an insurance company with a Best's Insurance Guide Rating of A – VII or better.
- (5) Prior to execution of the contract, Contractor shall provide the State of Nebraska, Department of Transportation evidence of such insurance coverage in effect in the form of an ACORD<sup>®</sup> (or equivalent) certificate of insurance executed by a licensed representative of the participating insurer(s). Certificates of insurance shall show the Nebraska Department of Transportation as the certificate holders.
- (6) Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this agreement.
- (7) The limits of coverage set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the Contractor or any of its subcontractors/tier subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the Contractor, subcontractor, or tier subcontractors of any responsibility or liability under the contract.
- (8) If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement shall prevail.

- (9) For so long as insurance coverage is required under this agreement, the Contractor shall have a duty to notify the State of Nebraska Department of Transportation (State) when the Contractor knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be cancelled or terminated. The Contractor must forward any pertinent notice of cancellation or termination to the State by mail (return receipt requested), hand-delivery, email, or facsimile transmission within 2 business days of receipt by Contractor of any such notice by an insurance carrier. Notice shall be sent to the State at the following address:

Nebraska Department of Transportation  
Construction Division -- Insurance Section  
1500 Highway 2, P.O. Box 94759  
Lincoln, NE 68509-4759  
Facsimile No. 402-479-4854  
[NDOT\\_ConstructionInsurance@nebraska.gov](mailto:NDOT_ConstructionInsurance@nebraska.gov)

## INSURANCE REQUIREMENTS FOR TRAILS ON STATE PROPERTY

**Trail Owner agrees to:**

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

**General Liability –**

Limits of at least:

- \$ 2,000,000 Per Occurrence
- \$ 4,000,000 General Aggregate
- \$ 2,000,000 Completed Operations Aggregate (if applicable)
- \$ 1,000,000 Personal/Advertising Injury

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

be further maintained for a minimum period of five years after final acceptance and payment.

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

**Automobile Liability –**

Limits of at least: \$ 1,000,000 CSL Per Accident

- Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

**Workers' Compensation –**

Limits: Statutory coverage for the State where the project is

located. Employer's Liability Limits: \$100,000 Each Accident

\$100,000 Disease – Per Person

\$500,000 Disease – Policy Limit

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

**Umbrella/Excess –**

- Limits of at least: \$1,000,000 Per Occurrence and Annual Aggregate
- Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.

- The State of Nebraska, Department of Roads shall be an 'Additional Insured'
- Trail Owner agrees to waive its rights of recovery against the State. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation shall be provided

**Additional Requirements --**

- Any insurance policy shall be written by a reputable insurance company acceptable to the State or with a current Best's Insurance Guide Rating of A – and Class VII or better, and authorized to do business in Nebraska
- Evidence of such insurance coverage in effect shall be provided to the State in the form of an Accord certificate of insurance executed by a licensed representative of the participating insurer(s), to be issued at least annually.
- For so long as insurance coverage is required under this agreement, the Trail Owner shall have a duty to notify the State when the Trail Owner knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be canceled or terminated. The Trail Owner must forward any pertinent notice of cancellation or termination to the State, at the address listed below by mail (return receipt requested) hand-delivery or facsimile transmission within 2 business days of receipt by Trail Owner of any such notice from an insurance carrier. Notice shall be sent to:

Nebraska Department of Transportation  
 Construction Division – Insurance Section  
 1500 Highway 2, P. O. Box 94759  
 Lincoln, NE 68509-4759  
 Facsimile No. 402-479-4854

- Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this agreement
- The Limits of Coverage's set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the Trail Owner or any of its subcontractors/tier subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the Trail Owner or its subcontractors, or tier subcontractors of any responsibility or liability under the contract.
- If there is a discrepancy of coverage between this document and any other insurance specification applicable to this work or contract, the greater limit or coverage requirement shall prevail.