

**PROGRAMMATIC AGREEMENT  
AMONG THE  
FEDERAL HIGHWAY ADMINISTRATION, THE  
NEBRASKA DEPARTMENT OF ROADS, THE  
NEBRASKA STATE HISTORIC PRESERVATION OFFICER,  
DOUGLAS COUNTY  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING 180<sup>th</sup> Street, N HWS CLEVELAND BLVD TO WEST MAPLE RD  
IN DOUGLAS COUNTY, NEBRASKA**

**WHEREAS**, the Federal Highway Administration (FHWA) plans to fund the 180<sup>th</sup> Street, N HWS Cleveland Blvd to West Maple Rd (undertaking) pursuant to the Federal-Aid Highway Act of 1956, Public Law 627; and

WHEREAS, Douglas County would become the recipient of this funding to complete the undertaking;

WHEREAS, the Nebraska Department of Roads (NDOR) would provide construction administration for the undertaking;

**WHEREAS**, the undertaking consists of constructing grade-separated bridges over the historic Lincoln Highway, a listed historic transportation property;

**WHEREAS**, FHWA has defined the undertaking's area of potential effects (APE) as described in Attachment A; and

**WHEREAS**, the FHWA, working in consultation with the Nebraska State Historic Preservation Officer (NESHPO), the Advisory Council on Historic Preservation (ACHP), Douglas County and the NDOR, has developed conditions to prevent adverse effects to the historic Lincoln Highway during construction activity and in particular during construction equipment crossing of the historic Lincoln Highway; and

**WHEREAS**, 36 CFR § 800.14(b) allows federal agencies to efficiently fulfill their obligations under Section 106 of the National Historic Preservation Act through the development and implementation of programmatic agreements; and

**WHEREAS**, FHWA has consulted with the Ponca Tribe of Nebraska and the Iowa Tribe of Kansas and Nebraska; and

**WHEREAS**, FHWA has consulted with Douglas County and NDOR regarding the effects of the undertaking on historic properties and has invited them to sign this Programmatic Agreement (PA) as invited signatories; and

**WHEREAS**, FHWA has consulted with the Lincoln Highway Association Nebraska Chapter regarding the effects of the undertaking on historic properties and has invited them to sign this PA as a concurring party;

**WHEREAS**, a public hearing was held on the undertaking on December 8, 2015 to disclose the potential effects to the historic Lincoln Highway; and

**WHEREAS**, Douglas County has shown an ongoing commitment to maintaining the historic Lincoln Highway according to the Secretary of the Interior's Standards for Rehabilitation and will continue to do so throughout the life of the project and beyond, and

**NOW THEREFORE**, FHWA, NESHPO, ACHP, Douglas County and NDOR agree that the undertaking, if advanced, shall be implemented in accordance with the following stipulations in order to prevent adverse effects to the historic Lincoln Highway.

### **STIPULATIONS**

FHWA, with the assistance of NDOR and Douglas County, will ensure that the following stipulations are carried out:

- I. NDOR and Douglas County shall afford NESHPO an opportunity to review the design of the grade-separated crossing structure at the Preliminary Design, Plan-in-Hand Design, and Final Design stages.
  
- II. The contractor shall cover that portion of the historic Lincoln Highway that is to be crossed during construction activity before construction activity begins. The crossing will be a temporary crossing consisting of placing geotextile and then plywood on top of the historic Lincoln Highway. The plywood will then be covered with two feet of earth fill and then 8' x 20' x 1" steel plates will be placed on top of the fill. The fill will be placed so that the equipment is not climbing during the crossing and creating uneven axle loads as they cross. A minimum of 20 inches of fill material shall be maintained during construction activity. Upon completion of the construction activity, the fill material and geotextile will be removed and the area restored to a condition as good or better than when it was covered. A similar approach was successfully used by Douglas County for a crossing used by heavy construction equipment for two weeks in April 2006. That crossing was located 3,280 feet east of the 180th Street intersection with historic Lincoln Highway. Upon removal there was no noticeable effect on the road and there is still no noticeable effect today. The contractor shall clearly mark the remainder of the historic Lincoln Highway as off limits to all construction vehicles.
  
- III. Prior to covering the historic Lincoln Highway as described above, a qualified architectural historian meeting the Department of Interior's professional qualifications standards shall photograph and document the area proposed for crossing.
  
- IV. After removal of the geotextile and fill material at the conclusion of the project, a qualified architectural historian meeting the Department of Interior's professional qualifications standards shall again photograph and document the historic Lincoln Highway. FHWA, NESHPO, and NDOR shall review and concur on any proposed repairs to the historic Lincoln Highway. Douglas County will repair or replace any damaged highway brick in-kind from Douglas County's inventory of historic Lincoln Highway brick.

#### **V. Duration**

This PA will expire if its terms are not carried out within five (5) years from the date of execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation IX.

## **VII. Monitoring and Reporting**

Every six months following the execution of this PA until it expires or is terminated, Douglas County shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Douglas County's efforts to carry out the terms of this PA.

## **VIII. Dispute Resolution**

Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, [FHWA] will:

A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

A. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

B. Douglas County's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

## **IX. Amendments**

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## **X. Termination**

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

## VI. Post Review Discoveries

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, Douglas County shall stop work immediately in accordance with NDOR Standard Specification 107.10. Douglas County shall implement the Post-Review Discovery Procedures outlined below.

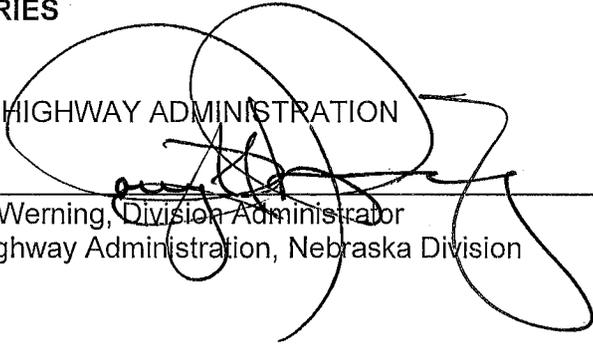
1. The NDOR Construction Project Manager will immediately contact the NDOR Technical Documents Unit Program Manager who will notify FHWA within 24 hours of the discovery.
2. FHWA will notify the NESHPO, any Indian tribe that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery.
3. No further work in the area of discovery will proceed until FHWA determines that the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional religious and cultural significance to the discovered property and any consulting parties that are signatories to this PA.
4. Douglas County will consult with FHWA, NDOR, and NESHPO, as appropriate, to record, document, and evaluate NRHP eligibility of the property and to determine project effect. The unanticipated discovery shall be processed under the *Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Roads* (July 31, 2015) as a Tier II or Tier III project. If the project's effect on the historic property will be no adverse effect or adverse effect, it will be processed as a Tier III project. FHWA will initiate consultation with Tribes as appropriate.
5. If the project's effect is determined to be adverse, Douglas County shall design a plan for avoiding, minimizing, or mitigating adverse effects on the NRHP eligible property. FHWA shall consult on the proposed plan with the signatories and concurring parties to this PA as a Tier III project under the *Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Roads* (July 31, 2015).
6. If any signatory to this PA does not file an objection within 48 hours to Douglas County's plan for addressing the discovery or resolving adverse effects, NDOR shall implement actions stipulated in the plan.
7. Douglas County shall provide FHWA a report on avoiding, minimizing, or mitigating adverse effects on the NRHP eligible property. FHWA shall provide copies of this report to the signatories and concurring parties to this PA.

Once the PA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute a PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this PA by the FHWA and NESHPO and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

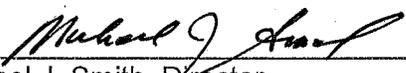
**SIGNATORIES**

FEDERAL HIGHWAY ADMINISTRATION

  
\_\_\_\_\_  
Joseph A. Werning, Division Administrator  
Federal Highway Administration, Nebraska Division

Date: 5-26-2016

NEBRASKA STATE HISTORIC PRESERVATION OFFICER

  
\_\_\_\_\_  
Michael J. Smith, Director  
Nebraska State Historical Society

Date: 05-25-2016

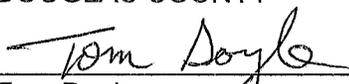
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

  
\_\_\_\_\_  
John M. Fowler, Executive Director  
Advisory Council on Historic Preservation

Date: 6/28/16

**INVITED SIGNATORIES**

DOUGLAS COUNTY

  
\_\_\_\_\_  
Tom Doyle  
Douglas County Engineer

Date: 7/20/16

NEBRASKA DEPARTMENT OF ROADS

  
\_\_\_\_\_  
Kyle Schneweis, P.E. Director  
Nebraska Department of Roads

Date: 5/2/11

**CONCURRING PARTIES**

LINCOLN HIGHWAY ASSOCIATION NEBRASKA CHAPTER

*Sarah Focke*

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Sarah Focke, Director  
Lincoln Highway Association

Date: 5/20/16

## Attachment A

Project No. MAPA-5147(1) CN 22224 – Phase I  
Project No. MAPA-5147(2) CN 22224A – Phase 2  
180<sup>th</sup> Street, N HWS Cleveland Blvd to West Maple Rd  
Douglas County

### Area of Potential Effect (APE)

The area of potential effect (APE) for Section 106 purposes is defined at Sec. 800.16(d) in the regulations as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effect is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

#### Archeological Resources APE

The APE for archeological resources was chosen to adequately identify any historic properties that may potentially be altered by this undertaking. The APE for direct effects includes the area of construction activities described in the preceding Project Description and is roughly 1.90 miles in length along 180<sup>th</sup> Street, from just south of N. HWS Cleveland Boulevard to 0.40 miles north of W. Maple Road. At the intersection of 180<sup>th</sup> Street and Blondo Street, the APE was expanded to encompass landforms associated with West Papillion Creek. The APE includes areas proposed for wetland mitigation. A vertical APE of 15 feet below the current ground surface has been defined and evaluated.

#### Above Ground Resources APE

The APE for the built environment included an area 0.50 mile corridor centered on the 180<sup>th</sup> Street alignment, and extending from West Maple Road to the Old Lincoln Highway in 2006. This APE was re-evaluated in 2014 as was 100 feet on either side of the proposed detour route.