

Nebraska Department of Transportation
Operating Instruction 45-01
December 8, 2017

UTILITY REHABILITATION NEGOTIATIONS

1. **Purpose:** To provide policy for negotiating the relocation and adjustment of utility facilities concerning the basis of payment to the utility and for requesting federal participation in the non-betterment costs. The office of primary responsibility for this DOT-OI is the Roadway Design Division. This DOT-OI supersedes DOT-OI 45-1 dated February 15, 2000.
2. Highway construction projects frequently require the revision and relocation of utilities. Reimbursable costs represent the eligible non-betterment expenditures of the utility required to accomplish these revisions and relocations. These expenditures may be paid on a lump sum or actual cost basis and with state funds only or, under certain conditions, federal participation may be requested. See Federal-Aid Policy Guides 23 CFR 645A, "Utility Relocations, Adjustments, and Reimbursement, and 23 CFR 645B, "Accommodation of Utilities."
3. Federal participation in utility agreements normally will be requested only under the following conditions, where:
 - A. Federal funds available to Nebraska would increase substantially. Generally, this would be the case if the federal appropriations type is one of the following: Interstate, Emergency Relief, Discretionary Bridge Replacement, Demonstration, or Defense Access.
 - B. Federal funds available to Nebraska are in danger of lapsing if not obligated.
 - C. A need exists to accelerate the obligation of federal funds to utilize obligation authority by administratively imposed deadlines.
 - D. Local contributors specifically request federal participation and would be required to provide a greater share of project costs if federal participation was not approved.
4. Subject to the approval of the Roadway Design Division Engineer, the Utilities Engineer or Assistant Roadway Design Division Engineer may recommend the following actions:
 - A. Designation of various utility items as non-participating for federal funds on any project, regardless of appropriation type, when technical engineering and administrative difficulties indicate it would be impractical and uneconomical to request approval of federal participation, except when the use of state or local funds is illegal.

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- B. Negotiation of lump-sum agreements with utility companies when the non-betterment portion of the utility rehabilitation estimate is \$25,000 or less and federal participation is not to be requested.
- C. Negotiation of lump-sum agreements with utility companies in accordance with Federal-Aid Policy Guide 23 CFR 645.113 when the non-betterment portion of the utility rehabilitation estimate is \$25,000 or less and federal participation is to be requested.
- D. Processing actual cost agreement final billings of \$25,000 or less as lump sum payments when federal participation is not to be requested (not requiring a contract audit).

Khalil Jaber, P.E.
Deputy Director-Engineering

Nebraska Department of Transportation
Operating Instruction 45-2
January 31, 2018

UTILITY AND RAILROAD PAYMENTS

SECTION 1: UTILITY PAYMENTS – Roadway Design Division

1. **Purpose:** To provide policy for expediting payments to utility and railroad companies. The office of primary responsibility for SECTION 1 is the Roadway Design Division. The office of primary responsibility for SECTION 2 is the Local Assistance Division. This DOT-OI supersedes DOT-OI 45-2 dated July 5, 2005.

2. Highway construction projects frequently require the installation, revision, and relocation of utility facilities. Costs incurred are borne entirely by the companies until reimbursed by the state or other governmental subdivisions. This instruction is intended to minimize the time that company funds are tied-up in work related to department activities. Prompt partial and progress payments to utility companies will be made upon receipt of detailed company billings. Retained amounts due on final billings will be paid promptly upon completion of applicable department or FHWA audit procedures.

3. The Controller Division will:

- A. Make up to a 95 percent partial payment to utility companies upon receipt of progress or final billing and a written request from the Roadway Design Division Engineer or the Utilities Engineer.
- B. Make immediate and full payment to utility companies of "lump sum" type billings that are submitted in accordance with previously executed agreements or as recommended for payment by the Roadway Design Division Engineer or the Utilities Engineer.

4. The Roadway Design Division will:

- A. Advise the utility companies of their option of submitting periodic progress billings to avoid unnecessary tie-up of their funds pending submission of one final and complete detailed bill to include any applicable cost shares.
- B. Municipal utility facility reimbursement policy is set forth in DOT-OI 60-11, Municipal Cost Sharing, 3, F, (1)(2)(3).

SECTION 2: RAILROAD PAYMENTS – Local Assistance Division

1. Highway construction projects frequently require the installation, revision, and relocation of railroad facilities. Costs incurred are borne entirely by the companies until reimbursed by the state or other governmental subdivisions. This instruction is intended to minimize the time that company funds are tied-up in work related to department activities. Prompt partial and progress payments to railroad companies will be made upon receipt of detailed company billings. Retained amounts due on final billings will be paid promptly upon completion of applicable department or FHWA audit procedures.

2. The Controller Division will:

- A. Make 100 percent partial payment to railroad companies upon receipt of progress or final billing and a request from the Highway Liaison Manager in the Local Assistance Division.
- B. Make immediate and full payment to railroad companies of "lump sum" type billings that are submitted in accordance with previously executed agreements or as recommended for payment by the Highway Liaison Manager in the Local Assistance Division.
- C. Forward a copy of each railroad payment accounting coding document to the Local Assistance Division.

3. The Local Assistance Division will:

- A. Advise the railroad companies, but not necessarily as part of agreements, of their option of submitting progress bills to avoid unnecessary tie-up of their funds pending submission of final billings.

Khalil Jaber, P.E.
Deputy Director-Engineering

Nebraska Department of Transportation
Operating Instruction 45-5
March 31, 2021

AGREEMENTS

1. **Purpose:** To provide policy for the preparation, distribution, and disposition of agreements between the department and an outside party. The office of primary responsibility is the Project Development Division. This DOT-OI supersedes DOT-OI 45-5 dated January 17, 2001.
2. Due to the extensive number of agreements, the variable nature of technical performance, and the governmental requirements originating in many different areas, the Project Development Division (PDD) will prepare, coordinate, distribute, monitor, and maintain departmental agreements, excluding those agreements associated with bid lettings, right-of-way acquisition, purchasing, and the contracts and bonds for highway construction. Those divisions which normally prepare their own agreements, or use a standard form of agreement, will submit prepared agreements to the PDD for review prior to execution by outside parties.
3. When necessary, managers will request that agreements be prepared by the PDD and will submit a NDOT Form 65, "Request for Agreement."
4. Agreements will be reviewed "in-house" by the Controller Division and PDD prior to execution by any party.
5. Except for standard agreements which have had prior review, all agreements prepared outside the PDD should be submitted to the PDD for review before negotiations are begun. When a standard agreement is revised, it should also be submitted for review.
6. The originating office is responsible for obtaining the signatures of parties outside the department. Following execution by an outside party, agreements will be **hand-carried** to the PDD for internal coordination.
7. Internal coordination will be accomplished by using a RDP Form 656-A, "Agreement Monitoring System - Agreement File Update." The originating office will complete the description and coordination portion of the form. The computer portion will be completed by the PDD.
8. Individuals to whom agreements are routed for coordination will promptly coordinate and have the agreement hand-carried to the next office indicated on the coordination sheet and immediately advise the PDD, via telephone, if he/she disagrees with the contents of the agreement or believes that further coordination with other offices is required.
9. Signatory responsibility for agreements is defined by DOT-OI 45-6.

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10. Following execution by the department and approval (when necessary) of the FHWA, the PDD will coordinate with the originating office for the distribution of the agreements. The department's original, or a copy if the department is not a party to the agreement, will be retained in the PDD files. The PDD will then enter the basic data into the computerized agreement monitoring system.
 11. Agreements retained in the PDD files will be microfilmed after ten years from the execution date. At that time, most originals will be destroyed. Agreement microfilm cards and a reader are available in the PDD for use by others.
 12. The agreement number, which is a descriptive number indicating the originating office, agreement type, year, and sequence will be used by the PDD for filing purposes. Cross-reference listing by the agreement number, control number, and project number will be available in the PDD.
- 13. Requirements for Agreement Preparation and Review:**
- A. **Offer, acceptance, and a "meeting of the minds":**
 - (1) The preliminary definition of performance specifications is normally established through personal contact and written proposals.
 - (2) Where federal financing is involved, it is imperative to caution against beginning work before receiving notice to proceed, since work performed before federal authorization is ineligible for federal reimbursement.
 - (3) Failure of the contracting parties to interpret and understand all contract provisions identically tends to generate misunderstandings, disagreements, and legal problems. Accordingly, check each contract or agreement carefully for clarity and complete coverage of performance requirements as it affects each party to the contract.
 - (4) A "closing conference" with all parties is highly recommended on agreements containing complex performance details to assure complete understanding before contract execution.
 - B. **Cost Principles:** Managers will establish cost principles for use in determining the allowability of individual items of cost. These cost principles will be appropriately identified or referenced in each contractual document. If federal-aid is involved, cost principles will be those established by the applicable provisions of the governing Federal-Aid Highway Program Manual, grant agreement, Office of Management & Budget circular, other directives, and the contract cost principles and procedures set forth in the Federal Acquisition Regulations System (48 CFR, 1.31), as appropriate.

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C. Consideration:

- (1) Check each agreement to see if the following are clearly answered. What are the pay items? When will payment be made? How will the amount to be paid be determined? Who is to be paid and who pays? Form of payment, i.e., cash offset against cost sharing, etc.?
- (2) In some cases, the requirement of consideration may be satisfied without monetary payment for work performance. An example of this would be obtaining covenants from counties, cities, and other political subdivisions to cause certain restrictions and to perform certain acts in consideration of the department making certain highway revisions either on its own behalf, or as an agent for the FHWA.

D. Performance:

- (1) Extra care and attention in defining and describing the detailed work to be done will do much toward eliminating misunderstanding, extra correspondence, and the need for supplemental agreements. Check each agreement carefully to see if the following are clearly answered. What is to be done? When will it be done? Where will it be done? Who will do it? How will it be done?
- (2) Attention should be directed to provisions in event of nonperformance.
- (3) Where applicable, attention should be directed to provisions concerning the handling of credits for materials recovered.

E. Authority: Contracts and agreements should be thoroughly checked for accurate inclusion, reference, and compliance with applicable laws, rules, and regulations.

F. Cost Sharing: Contracts and agreements should be reviewed for clear definition of the participants, sharing formula, when participants contribute, and how participants contribute.

G. Covenants: Contracts and agreements should be reviewed for clear definition of stewardship, liability, inspection, audit permission, retention of records, Disadvantaged Business Enterprises, and nondiscrimination.

H. Guidelines for Requesting Contract and Agreement Reviews from the Legal Counsel:

- (1) Agreements covering simple work performance and nominal amounts of consideration -- no review necessary.
- (2) Standard agreements and contracts -- request a review once for form and legal sufficiency unless changed and after each state legislative session or issue/revision of applicable FHWA publications.

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- (3) Agreements and contracts involving complex provisions – review regardless of consideration amount.
- (4) Formulation of policy is not a responsibility of the Legal Counsel. Questions involving policy will be taken to the applicable deputy director.

I. Guidelines for Requesting Contract and Agreement Reviews by the Operational Analysis & Audit Division (OAAD):

- (1) Contracts exceeding \$50,000 must be sent to the OAAD for a pre-award audit.
- (2) Contracts not based on a firm, fixed price must go to the OAAD for a post-audit to determine the total allowable contract costs.

J. General Guidelines:

- (1) Avoid indefinite or ambiguous language and be explicit. The terms "and/or" should never be used.
- (2) Insure that each agreement includes all of the proper parties, but not more parties than necessary to perform the subject of the agreement.
- (3) Do not automatically make the state a party to every agreement -- only when necessary.
- (4) FHWA publications will be included by reference, as applicable.

Khalil Jaber, P.E.
Deputy Director-Engineering

Nebraska Department of Transportation
Operating Instruction 45-06
March 31, 2021

DELEGATION OF AUTHORITY

1. **Purpose:** To provide policy, delegate authority, and establish accountability for selected financial obligations and activities. The office of primary responsibility is the Controller Division. This DOT-OI supersedes DOT-OI 45-06 dated December 8, 2017.

2. Annual Operating Budget:

- A. Division Heads and District Engineers, or their designee, are responsible for the preparation and management of their annual operating budget.
- B. Deputy Directors are responsible for reviewing and approving the annual operating budgets for their respective areas of responsibility.
- C. The Director will review and approve the Department's annual operating budget.
- D. Any adjustments to the Division/District operating budgets must be approved by the Division Head/District Engineer and will be submitted to the Controller Division on an Allotment Change form BF-9. The Controller Division will request the approval of the Resource Manager, Deputy or Director for any adjustments deemed necessary.

3. Six-Year Plan for Highway Construction:

- A. The Deputy Director-Engineering, in consultation with the State Highway Commissioners, District Engineers, and appropriate Division Heads, is responsible for annually updating the Nebraska Surface Transportation Program.
- B. The Nebraska Surface Transportation Program and changes thereto must be submitted to the Director for approval.

4. Computer Development Projects:

Computer technology project ideas and proposals must be submitted to the Business Technology Support Division (BTSD) Project Management Officer (PMO) using the Business Technology Project Proposal form provided by BTSD. The PMO will assign a Project Manager and they will work with the submitter to fully understand the desired outcome of the project and develop preliminary estimates of time, cost and resources to complete the project. The project proposal will be forwarded to the Information Technology Management Team (ITMT) for their approval. The project sponsor(s) may be invited to a meeting to review the project proposal with the ITMT. The ITMT will then decide to either approve or reject the project proposal.

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If the project proposal is approved, a BTSD Project Manager will begin working with the submitter to establish the project team, develop the project charter and begin collecting business requirements. Once the project charter has been completed, it must be approved by the project sponsor(s). If the project charter includes a major change or addition to the project scope as determined by the BTSD Management Team, it will be forwarded to the ITMT for their approval. The project sponsor(s) may be invited to a meeting to review the project charter with the ITMT. The ITMT will then decide to continue with the project, or go back to the original project scope or reject the project.

The ITMT consists of the Deputies, Director and BTSD Manager.

The BTSD Management Team consists of the BTSD Manager, Project Management Officer and Technical Services Officer.

The BTSD Project Manager will be the person to manage the project based off of the BTSD Project Management Methodology and will be assigned by the BTSD Management Team.

5. Contracts and Agreements:

- A. Agreements related to state highway projects with cities, counties, utilities, and irrigation districts shall be executed by the Division Head responsible for administering the agreement. District Engineers shall provide their concurrence for these agreements. Unusual or complicated agreements may be referred to the appropriate Deputy for signing. Relinquishment agreements will be executed by a Deputy Director in accordance with DOT-OI 60-13.
- B. Agreements related to state highway projects with federal agencies, state agencies, and other states must be submitted to the Director, or appropriate Deputy Director in the Director's absence, for execution. **Exception:** A Deputy Director or the appropriate Division Head, responsible for administering the agreement, may execute routine agreements.
- C. Other agreements (such as service, research, registered land surveying, underground fuel leak investigations, and consultant agreements) will be executed by the Division Head or District Engineer responsible for administering the agreement.
- D. Construction contracts awarded through the letting process will be executed by the Deputy Director-Engineering, Construction Engineer or Contract Lettings Engineer.
- E. Construction contract progress estimates, final payments, tentative acceptance and as-built plans shall be approved by the District Engineer, the District Construction Engineer or Assistant District Construction Engineer in the absence of the District Engineer.

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- F. The below individuals shall have approval to execute construction project change orders and supplemental agreements for the following limited amounts:
- (1) District Engineer or District Construction Engineer: \$0.00 - \$100,000
 - (2) Construction Engineer: \$100,000 - \$250,000
 - (3) Deputy Director – Operations or Deputy Director – Engineering: over \$250,000
- G. District Engineers, District Construction Engineers or District Operations and Maintenance Managers shall approve all NDOT let capital facilities project pay estimates, change orders and supplemental agreements.
- H. The Local Projects Engineer shall approve the following requests, agreements and supplemental agreements:
- (1) All Local Public Agency (LPA) Project Programming Requests, NDOT Form 530.
 - (2) All LPA project program agreements and supplemental project program agreements.
 - (3) Consultant agreements and supplemental agreements as to form, for preliminary engineering and NEPA services for LPA Federal-aid projects and for Recreation Road projects. Local Projects Section Sections Heads may approve these agreements in lieu of the Division Head.
 - (4) All NE-LTAP agreements with NDOT and FHWA. Design exceptions for LPA's and public interest letters (ROW conditional certifications, force account work, sole source purchases) for LPA's shall have final approval by the Deputy Director – Engineering.
- I. The Construction Division Head or designee shall approve as to form consultant professional services agreement and supplemental agreements for construction engineering and design services during construction for LPA Federal-aid projects and for Recreation Road projects.
- J. State Highway Improvement Programming Requests, NDOT Form 73, shall be approved by the Deputy Director – Engineering and the Program Management Engineer. Approval by the Deputy Director – Engineering may be delegated to specific Division Heads, as shown below, when the improvement request involves their functional areas.
- (1) Resurfacing, Restoration and Rehabilitation (3R), new and reconstruction – Roadway Design Engineer.
 - (2) Maintenance – Materials and Research Engineer.
 - (3) Traffic Signals/Sign Projects – Traffic Engineer.

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- (4) Bridge Only Projects – Bridge Engineer.
 - (5) Railroad Upgrade/Circuitry/Warning Devices – Intermodal Planning Engineer.
 - (6) Right-of-Way Only Projects – Right of Way Manager.
 - (7) Intermodal Transportation System Projects – Operations Manager.
- K. All State Transportation Improvement Program requests (STIP) shall be approved by the Program Management Engineer or the Highway Projects Funds Manager.
- L. The following documents shall be approved by the Right-of-Way Manager or to a specific Section Head in the Right-of-Way Division such as the Right-of-Way Design Engineer, Chief Appraiser, Chief Negotiator/Relocation Supervisor, Highway Beautification Supervisor or Property Management Supervisor.
- (1) Consultant Service Contracts
 - [a] Right-of-Way Design
 - [b] Title Search
 - [c] Appraisal and/or Appraisal Review
 - [d] Relocation Assistance
 - (2) Acquisition contracts for the purchase of right-of-way.
 - (3) Demolition contracts for the demolition of buildings/improvements in the right-of-way.
 - (4) Clearing/grubbing contracts let through the Right-of-Way Division for tree removal.
 - (5) Agreements for state services. (*Right-of-Way Division only*)
 - (6) Right-of-Way certificates
- M. Approval authority for various Local Public Agency documentation shall be delegated to section heads in the Right-of-Way Division as follows, with one exception. Local Public Agency Right-of-Way certificates shall be approved by the Right-of-Way Division Manager.
- (1) Right-of-Way Plan approval delegated to the Right-of-Way Design Engineer.
 - (2) Preliminary Right-of-Way Estimate approval delegated to the Chief Appraiser.
 - (3) Appraisal/Appraisal Review approval delegated to the Chief Appraiser.

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- (4) Relocation Assistance delegated to the Chief Appraiser/Relocation Supervisor.
 - (5) Acquisition approval delegated to the Chief Negotiator/Relocation Supervisor.
 - (6) Project Review delegated to the Right-of-Way Local Public Agency Coordinator.
6. **Miscellaneous:** The Project Concept Review (engineering review) for each state highway construction project must be approved by the District Engineer, the Roadway Design Engineer and the Deputy Director-Engineering.

Khalil Jaber, P.E.
Deputy Director-Engineering

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Nebraska Department of Transportation
Operating Instruction 60-09
December 18, 2017

CORRIDOR PROTECTION

1. **Purpose:** To provide policy for establishing corridor protection on state highways and notifying the public that corridor protection has been filed. The office of primary responsibility for this DOT-OI is the Right-of-Way Division. This DOT-OI supersedes DOT-OI 60-9 dated April 24, 2012.
2. Highways in areas having the potential to develop prior to a planned highway improvement will be reviewed for corridor protection as defined in Sections 39-1311 through 39-1311.05, Nebraska Statutes. If there is a need for corridor protection, a recommendation will be made by the Project Development Division, Roadway Design Division, Right-of-Way Division, or District Engineer.
3. The following are required before initiating corridor protection for a project on a **new alignment**: (a) a location public hearing, (b) if applicable, FHWA approval of the draft environmental impact statement, (c) a State Highway Commission recommendation, and (d) approval by the Governor. For a project on an **existing alignment**, the above requirements are unnecessary in order to initiate corridor protection.
4. The Project Development Division, Roadway Design Division, or Property Management Section of the Right-of-Way Division will write a letter to the Right-of-Way Division Manager, through the Deputy Director - Engineering, requesting that corridor protection procedures be initiated on the proposed project (See Attachment). Copies of the letter will be sent to the Project Development Division, Roadway Design Division, District Engineer, Property Management Section, and Right-of-Way Design Section of the Right-of-Way Division.
5. For projects using an existing alignment for which it is deemed necessary to file corridor protection, a strip 300 feet wide will be designated on both sides of the existing right-of-way. In the case of projects on a new alignment, a strip 400 feet wide on both sides of the proposed centerline will be designated for corridor protection. These widths are guidelines and may vary depending on the terrain and design. Projects will have corridor protection procedures initiated after the project concept and alignment has been defined.
6. The Right-of-Way Design Section will begin title research and prepare corridor protection maps after the corridor centerline, length, and width have been established by joint action of the Project Development Division, Roadway Design Division, and Right-of-Way Division. After a corridor protection plan is completed by the Right-of-Way Design Section, said plan will be sent to the Property Management Section.
7. The Property Management Section will file the corridor protection plan with the appropriate city and/or county officials as outlined in Sections 39-1311 through 39-1311.05, Nebraska Statutes. A signed receipt will be obtained from the appropriate governmental official receiving the corridor protection plan, acknowledging that such plan has been received.

Operating Instruction 60-09

8. The Property Management Section shall send an annual notice to each zoning authority and all utility companies as listed with the Utilities Unit of the Roadway Design Division, where corridor protection is currently filed. This notice shall be prepared in April of each year.
9. After corridor protection has been filed, functional plans will be prepared to determine the right-of-way requirements. After the functional plans are completed, they will be reviewed to determine if an amended corridor protection plan should be filed. An amended corridor protection plan is filed in the same manner as an original filing.
10. The Property Management Section will forward copies of the corridor protection map and the signed filing receipt to the Project Development Division, Roadway Design Division, District Engineer, and Highway District Right of Way Permits Officer.
11. At appropriate locations along the proposed highway project, the District Engineer will erect signs which are visible to the public and which state that corridor protection has been filed.
12. The Property Management Section shall obtain approvals for the release of a corridor protection project from the District Engineer, Roadway Design Engineer and the Project Development Engineer on an annual basis. Such requests for release shall be routed in January of each year.
13. The Property Management Section will promptly notify the appropriate city and/or county official of corridor protection release after receiving approval from the District Engineer, Roadway Design Engineer and the Project Development Engineer.

Attachment #1 of 1

Khalil Jaber, P.E.
Deputy Director-Engineering

Operating Instruction 60-09

DATE

TO Right-of-Way Division Manager

FROM Location Studies Section Engineer _____

THRU Project Development Division Engineer _____
Deputy Director-Engineering _____

SUBJECT Request for Corridor Protection
Project No.
Location:
C.N.

The design of the project (_____) will be along
1) the existing highway alignment, 2) on new alignment. Corridor protection is needed for the
area annotated on the attached map. Notes: (that corridor protection has already been
established along US-75 south of the N-2 junction.)

After concurrence by the Deputy Director, please initiate the process to provide corridor
protection at this location. The Project Development Division will supply additional information
as may be necessary.

Attachment

xc: Project Development Division
Roadway Design Division
District Engineer
Property Management Section
Right-of-Way Design Section

DOT-OI 60-09
Attachment #1

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Nebraska Department of Transportation
Operating Instruction 60-10
December 29, 2017

ADA ACCESSIBILITY REQUIREMENTS IN TRANSPORTATION PROJECTS

1. **Purpose:** The State of Nebraska, Department of Roads, (NDOT), will include accessibility features in applicable construction and maintenance projects or activities on the transportation systems for which it has jurisdictional responsibility as required by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA) and as further defined and clarified in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) <https://www.access-board.gov/adaag-1991-2002.html>. The office of primary responsibility is the Roadway Design Division. This DOT-OI supersedes DOT-OI 60-10 dated May 13, 2009.
2. **Scope:** This DOT-OI establishes policy for accessibility of pedestrian facilities on street or highway projects on the State Highway System, the National Highway System (NHS), and for local projects funded in whole or in part with state or federal highway funds. This DOT-OI shall be considered in conjunction with DOT-OI 60-11 which details the financial responsibilities of project participants.

A. Projects or Activities Subject to the Requirements of this Policy:

- (1) New Construction projects (Section 3A)
- (2) Reconstruction projects (Section 3B)
- (3) Other construction projects that meet any of the following criteria (Section 3C):
 - (a) Pavement overlays with a design thickness of 1.5 inches or greater
 - (b) Pavement repair or patching that requires replacement of curb within a crosswalk that does not currently have a curb ramp
- (4) Traffic signal installation or reconstruction (Section 3D)
- (5) Construction Projects on Local Roads and Streets (Section 3E)
- (6) Roadway Maintenance Activities (Section 3F)
- (7) Construction Authorized by Right-of-Way Permits (Section 3G)

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B. Projects or Activities Excluded From the Requirements of this Policy: The following projects or activities are excluded from the requirements of this policy provided that the work does not create an elevation difference greater than 0.5 inches at the gutter line in a crosswalk.

- (1) Constructing chip seals, sand seals, microsurfacing, fog seals or armor coats
- (2) Patching or repairing potholes
- (3) Striping or re-striping roadways including crosswalks
- (4) Maintaining, repairing, replacing or upgrading roadside safety devices such as guardrail or median barrier
- (5) Maintaining and repairing traffic signals as further identified in Section 3D
- (6) Maintaining, repairing, replacing or upgrading permanent traffic control signs and devices
- (7) Constructing overlays by milling and resurfacing with a design thickness of less than 1.5 inches
- (8) Placing overlays with a design thickness of less than 1.5 inches
- (9) Pavement repair or patching that does not require replacement of curb within a crosswalk
- (10) Maintaining or repairing roadside shoulders
- (11) Sealing pavement joints and cracks
- (12) Grinding or profiling pavement surface
- (13) Patching or repairing of utility pavement cuts
- (14) Constructing, maintaining, repairing, replacing or upgrading of roadway lighting
- (15) Maintaining or repairing drainage systems
- (16) Retrofitting pavement with dowel bars
- (17) Repairing or replacing sidewalk panels
- (18) Other work not specifically covered by Section 3

Although the above listed Projects or Activities are exempt from the requirements of this Policy, any Project or Activity that requires the closure of a sidewalk shall conform to the requirements of Section 4.

Operating Instruction 60-10

3. **Accessibility Policy for Applicable Projects or Activities:** The following shall apply to projects or segments of projects.
- A. **New Construction Projects** – New construction projects are constructed in a new location and are designed to meet the new and reconstructed requirements of the Nebraska Minimum Design Standards. Accessibility features will be included to the extent required by the AADAG.
 - B. **Reconstruction Projects** – Reconstruction projects are projects designed to conform to the new and reconstructed requirements of the Nebraska Minimum Design Standards in an existing location of a roadway. Accessibility features will be included to the extent technically feasible as provided by the AADAG.
 - C. **Other Pavement Projects** – Other pavement projects include:
 - Pavement overlays with a design thickness of 1.5 inches or greater
 - Pavement repair or patching that requires replacement of curb within a crosswalk that does not currently have a curb ramp

The following subsections apply to other pavement projects:

- (1) **Curb Ramps** – Curb ramps will be constructed within project limits. Curb ramps should be constructed, or reconstructed when necessary, whenever an activity listed in Section 2.A. alters the pavement in a crosswalk. When an activity causes a differential in elevation in gutter line at a crosswalk with a curb ramp in excess of 0.5 inches, the differential must be eliminated.
- (2) **Landing Area of the Curb Ramp** – Whenever a new curb ramp is installed as a part of a project, the landing area on the sidewalk side of the curb ramp will be evaluated to identify and implement, if reasonable, other improvements to provide an open and useable landing area. For example, reasonable steps should be taken to relocate signs and other objects to a location outside of the landing area.
- (3) **Sidewalk** – New sidewalks will not ordinarily be installed and existing sidewalks will not ordinarily be replaced except as necessary to create a transition from the new curb or landing area to the adjacent sidewalk. Based on Neb. Rev. Stat. §§ 39-2105 and 39-1339, generally, cities and villages have the duty to construct, operate, and maintain sidewalks and curb ramps along the state highway system within the corporate limits.
- (4) **Driveways** – Ordinarily, driveways will not be replaced or reconstructed as a part of this policy.

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D. Installation or Reconstruction of Traffic or Pedestrian Signals – The following shall apply when a traffic signal is installed or rebuilt and pedestrian or bicycle traffic is expected to be present within the next five years:

- (1) Assess the need and install accessible pedestrian signals with the work when necessary.
- (2) Install curb ramps necessary for the proper functioning of the traffic signal.
- (3) Install sidewalks to connect the curb ramps to the existing pedestrian routes. If no connecting sidewalks currently exist within the limits of the project, the NDOT shall build sufficient sidewalk to access the pedestrian push button and enter into an agreement for the local entity to complete the sidewalks at a later time.

The following shall apply when a pedestrian or school crossing traffic signal is installed or reconstructed:

- (1) Assess the need and install accessible pedestrian signals with the work when necessary.
- (2) Install curb ramps necessary for the proper functioning of the traffic signal.
- (3) Install sidewalks to connect the curb ramps to the existing pedestrian routes. If no connecting sidewalks currently exist within the limits of the project, NDOT shall enter into an agreement for the local entity to complete the sidewalks.

Traffic signal, pedestrian signal or school crossing signal installation or reconstruction completed by a municipality or as part of a right-of-way permit or agreement shall meet the requirements of this section. In addition, work that is performed by a developer as a part of a right-of-way permit shall include the construction of all necessary connecting sidewalks or trails.

When a signal is installed, or reconstructed, the need for accessible pedestrian signals shall be studied and if warranted integrated into the pedestrian push button to the extent required in Public Rights-of-Way Accessibility Guidelines (PROWAG).

For the purposes of this policy, reconstruction of a traffic signal shall not include routine maintenance, repair of the traffic signal, replacement of signal heads, replacement of any cabinet components, or replacement of poles, mast arms, signal components or controller cabinet.

Traffic signal installations at locations where pedestrians are not allowed to cross should have signs indicating no crosswalk. Traffic signal installations at locations where pedestrians are not expected within the next five years should not include the installation of pedestrian signals unless there is an engineering basis for such installation.

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- E. Construction Projects on Roads and Streets Off the State Highway System –**
Local street or road projects funded in whole or in part with federal or state funds or activities on the NHS regardless of funding must be designed and constructed in compliance with this policy.

- (1) The local entity has a duty to ensure that the project plans and specifications comply with the applicable requirements. NDOT is authorized, but not required, to confirm the local entity's completion of its duty under this paragraph.

If the local entity declares it is not technically feasible to comply with a particular accessibility requirement, the local entity shall submit to the NDOT Local Projects Engineer documentation from a professional engineer licensed to practice in the State of Nebraska that describes how meeting the specific requirement is technically infeasible and a design plan showing how the local entity intends to make the facility accessible to the maximum extent feasible.

The Local Projects Engineer shall review and approve or deny the proposed design plan. Any deviations from the ADAAG must meet the test of technically infeasible.

- (2) The NDOT will apply the requirements of this document in the following manner:

- (a) Each agreement between NDOT and a local entity shall contain the following language:

"The local entity shall comply with the requirements of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (ADA), and applicable federal regulations and standards to the extent required by the policy "ADA Accessibility Requirements in Transportation Projects."

- (b) The local entity shall not submit a project for letting unless it or its consultant has confirmed that the project is in compliance with the ADA and ADAAG.

- (c) The local entity shall certify to NDOT that the project has been constructed in substantial compliance with the plans and specifications and that the completed construction complies with the requirements of Title II of the ADA, applicable federal regulations, and the ADAAG to the extent required by this policy.

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F. **Roadway Maintenance Activities** – Generally, maintenance activities (Section 2B) are not alterations and are not subject to the requirements of this policy except to the extent specifically identified below.

- (1) Curb ramps shall be installed when pavement repair or patching requires the replacement of a curb within a crosswalk that does not have existing curb ramps.
- (2) The accessibility of a crosswalk will be restored to pre-activity conditions whenever surface maintenance of the highway causes a 0.5 inch differential in the surfacing within the crosswalk. The 0.5 inch differential will need to be eliminated either by tapering or grinding.

G. **Construction Authorized by Right-of-Way Permits** – Right-of-way permits issued or agreements entered into by NDOT including the construction or modification of pedestrian facilities shall contain the condition that the permittee will comply with the requirements of this policy, applicable federal regulations, and the ADAAG. Permits shall not be issued for work until an engineer, licensed to practice in the State of Nebraska, has certified to NDOT that the plans comply with this policy. NDOT is authorized, but not required to review the plans to confirm compliance with this policy. Traffic Impact Studies will be required to determine whether pedestrians are expected to be present at the site of the permitted construction and if so, what accessible pedestrian facilities are required. If the project is within the corporate limits of a municipality or its extra-territorial jurisdiction, the applicant should coordinate the need for constructing pedestrian facilities with the municipality. When accessible sidewalks or other pedestrian facilities are not constructed as part of a permitted project within the corporate limits of a municipality or its extra-territorial jurisdiction, the applicant shall enter into an agreement with the municipality stipulating the responsibility for completion of the accessible pedestrian facilities when required by this policy. The NDOT District Engineer or their designee has the right, but not the duty to verify through on-site inspection that the ADA facilities as constructed meet the requirements of the ADAAG and Public Rights-of-Way Accessibility Guidelines (PROWAG).

4. **Temporary Accessible Pedestrian Facilities:** Temporary accessible pedestrian facilities should be constructed when any primary accessible route or crossing will be blocked.

The person or entity in charge of the project or activity shall determine whether any of the pedestrian facilities within the limits of the project are used as a primary accessible route across the project or to an adjoining commercial, retail, medical or governmental property.

A primary accessible route or crossing is (a) a moderate to heavily used accessible crosswalk that serves as a connector between businesses with regular pedestrian traffic, or between parking areas and business, medical or governmental buildings dependent on such parking or (b) a public sidewalk used as a part of an accessible route to a business, when there is no reasonable alternate accessible route for customers traveling to that business.

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In a business district, provision for one primary accessible crossing through the work zone shall be made at least every two blocks.

Temporary accessible pedestrian facilities should include accessibility features as practicable and reasonably consistent with the features present in the existing pedestrian facility.

Blocked sidewalks and re-designated accessible routes shall be marked in accordance with Section 6.D. of the MUTCD.

5. **Design Standards:** NDOT adopts the ADAAG as the design standard to be used when facilities are designed pursuant to this policy. NDOT will design to the standards of the Public Rights-of-Way Accessibility Guidelines (PROWAG) whenever the requirements of the PROWAG exceed the requirements of ADAAG. NDOT and FHWA anticipate that the PROWAG will be published as a final rule and be incorporated into the Federal Regulations. In the event the Federal Regulations are revised to establish PROWAG as a design standard, NDOT shall meet its requirements. FHWA has indicated in a memo dated January 23, 2006 that the PROWAG is the state of the practice and shall be used for design except when the ADAAG is more restrictive.
6. **Resolving Accessibility Complaints:** It is the District Engineer's responsibility to resolve complaints concerning the accessibility of pedestrian facilities on highway right-of-way. Complaints shall be handled in an expeditious manner to ensure the timely resolution of all complaints. Complaints received in offices outside the District Office will be sent to the attention of the District Engineer for investigation and resolution. When received in the District, a copy of the complaint will be forwarded to the State of Nebraska ADA Contact, 301 Centennial Mall South, Mall Level, P.O. Box 94905, Lincoln, NE 68509-4905, the NDOT Civil Rights Coordinator in the Human Resources Division and to the Roadway Design Engineer. The DAS Statewide Civil Rights Coordinator is responsible for monitoring the resolution of these complaints. The Roadway Design Division will function as a resource during resolution of the complaints. The NDOT Civil Rights Coordinator shall develop and update forms for the Pedestrian Accessibility Complaint Process and Request for Modification Process. These documents along with the State's ADA Complaint Procedure are available on the Department's web site or from the NDOT Civil Rights Coordinator.
7. **Technically Infeasible:** The ADA provides a limited exception to meeting the accessibility requirements for projects and activities altering an existing facility when it is technically infeasible to meet those requirements. Section 4.1.6 (1) (j) of the ADAAG states as follows:

EXCEPTION: In alteration work, if compliance with Section 4.1.6 is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any elements or features of the building or facility that are being altered and can be made accessible shall be made accessible within the scope of the alteration.

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'Technically infeasible' is defined in the ADAAG as follows:

Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

After exhausting all reasonable alternatives, it may sometimes be determined under this policy that strict adherence to all accessibility requirements may not be technically feasible. A design that does not meet the requirements may be allowed when consistent with this section.

A. The following is a nonexclusive list of situations when an exception may be considered:

When ADAAG slope requirements cannot be met because of the difference in elevation between the highway and:

- (1) the floor elevation of existing buildings or structures;
- (2) the topography or geography of the area adjoining the project;
- (3) the elevation of intersecting streets and roads.

When building the project in strict compliance with the ADAAG would cause:

- (1) the project to encroach on an environmentally sensitive or protected area;
- (2) the project to not conform with minimum design standards;
- (3) the project to negatively affect historic property, park lands, tribal lands or other similar properties;
- (4) an adverse effect on the safety of the traveling public.

B. In determining whether a finding of technical infeasibility under the ADAAG should be granted, the NDOT may consider the availability of a reasonable alternate accessible route.

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- C. When it is asserted that compliance with a particular standard is technically infeasible, documentation shall be submitted to the NDOT Roadway Design Engineer that describes why all the requirements cannot be met and providing a design complying to the fullest extent possible. The request for an exception shall provide all necessary facts showing that a design in strict adherence would qualify as technically infeasible. The request shall include a complete description of the work considered to be beyond the scope of the transportation improvement that would be required. Cost to make a facility accessible is a consideration but is not a determining factor.
 - D. The Roadway Design Engineer has the authority to approve or deny requests by NDOT and others for an exception based on a finding of technical infeasibility.
- 8. **Maintenance of Accessible Facilities:** Based on Neb. Rev. Stat. §§ 39-2105 and 39-1339, generally, cities and villages have the duty to construct, operate, and maintain new and existing sidewalks and curb ramps along the state highway system within the corporate limits. Construction, operation, and maintenance of facilities constructed outside the corporate limits shall be addressed by agreement with the local agency or the Sanitary Improvement District.
 - 9. **Training:** The NDOT will provide training required to implement this policy.
 - 10. **NDOT Publications:** The NDOT Roadway Design Manual and Standard/Special Plans, the NDOT Construction Manual, the NDOT Right-of-Way Manual and the NDOT Maintenance and Operations Manual shall be amended or supplemented by the Division responsible for each manual as appropriate to provide guidance for ADA accessibility issues.
 - 11. **Documentation:** Documentation of project specific decisions related to accessibility shall be kept in the project records and archived as required by the records retention policy. Non-project related decision documents shall be retained in the appropriate file in the District and archived according to the records retention policy. All documentation shall be copied to the appropriate folder in the NDOT document management database.

Khalil Jaber, P.E.
Deputy Director-Engineering

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Nebraska Department of Transportation
Operating Instruction 60-11
April 28, 2020

MUNICIPAL COST SHARING

1. **Purpose:** To provide policy for the calculation of the municipal share of project costs for projects on **non-freeway** state highways located within or adjacent to the corporate limits of a municipality. Project costs include costs for preliminary engineering, eligible utility rehabilitation, construction, right-of-way and construction engineering. This policy applies to all **non-freeway** state highway projects including: “New and Reconstructed” projects, “Resurfacing, Restoration and Rehabilitation” (3R) projects, and “Maintenance” projects. This policy does not apply to projects determined by the Department to be “wants” or economic development projects. Projects classified as “wants” are projects that do not satisfy a state highway transportation need or that exceed the recognized need. Economic development projects are projects that are being built primarily to accommodate adjacent economic development. The office of primary responsibility for this DOT-OI is the Roadway Design Division. This DOT-OI supersedes DOT-OI 60-11 dated December 3, 2013. This policy is in compliance with and supplementary to Nebraska Revised Statutes.
2. **Statutory References:** Neb. Rev. Stat. §§ 39-1339 and 39-2105 (See Attachment A).
3. **State Highways Abutting, Adjoining or Adjacent to the Municipal Corporate Limits:**
 - A. In accordance with Sections 5, 6, and 7, a municipal corporation will be required to participate in the cost of the entire width of a project if:
 - (1) A portion of a state highway abuts, or adjoins the corporate limits of the municipality, or
 - (2) A portion of a state highway that is adjacent to the corporate limits when it appears to the Department that the state highway is being used by municipal traffic as if it were within the corporate limits of the municipality.
 - B. Apportionment of costs will be based upon the municipal corporate limits existing on the date that the department signs the municipal agreement.
4. **Agreements:**
 - A. Projects involving a municipal contribution: The Department and municipality shall enter into a written agreement establishing the scope of the project and a tentative construction schedule. It is the intent of the Department that the project be coordinated throughout the project term with the municipality.

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- B. Projects involving no municipal contribution: When a municipality is not required to make a financial contribution to a project, a written agreement for parking restrictions, encroachments, municipal-owned utilities, and other matters is required. If an existing municipal maintenance agreement adequately covers parking restrictions, encroachments, municipal-owned utilities, and other aspects of the project, and if no financial participation or change in participation is required, no new or modified agreement is necessary.

5. Municipal Share – all Municipalities:

- A. A municipality will not be required to share in project costs if the estimated municipal share is \$10,000 or less.
- B. Unless addressed elsewhere herein, a municipality will pay 100 percent of the project costs of a project that is at the request of and for the sole benefit of the municipality.
- C. A municipality will pay 100 percent of the costs of improvements constructed at the request of the municipality which are beyond the scope of and are not warranted by the highway project.
- D. Relinquishment Projects: Municipalities will not normally share in the cost of projects accomplished as part of a relinquishment agreement. Improvements under these projects will be based upon DOT-OI 60-13, Relinquishment of Roads from the Highway System.

E. Traffic operations and lighting systems:

- (1) The project costs for traffic signals and/or lighting systems, not part of a “New and Reconstructed”, “3R”, or “Maintenance” project, will be allocated 50 percent to the Department and 50 percent to the municipality. Project costs include the cost of all work required for the construction of the traffic signals and/or lighting systems, such as intersection geometric improvements.
- (2) The municipality will pay 100 percent of the cost of operating, repairing and maintaining the traffic signal and/or lighting system.
- (3) Roundabouts will be part of the project costs when the Department deems them necessary. The municipality will pay 100 percent of the difference in project costs when a roundabout is built at their request in lieu of the Department’s recommended design.

F. Rail/highway grade crossing safety projects:

- (1) Project costs will be funded with a combination of state, federal, local and railroad funds. The cost sharing on specific projects will be determined by an agreement between the parties involved. Eligible project items may include preliminary and construction engineering, right-of-way, utilities, and construction costs.

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- (2) Railroad companies require that the construction of all pedestrian viaducts must incorporate a chain link fence as part of a rail safety project. The chain link fence must be a minimum of six (6) feet high and extend along the railroad track right-of-way for a minimum of 500 feet in each direction from the pedestrian viaduct, on both sides of the track. NDOT agrees to participate in a one-time maximum payment of \$40,000 to the municipality for fence construction. NDOT assumes no other liability or involvement beyond said financial participation. Municipalities will be responsible for 100% of the cost of obtaining all necessary right-of-way, construction, and maintenance of said fence, as well as any necessary reconstruction costs. These terms will be included in the project agreement with the municipality.

G. Highway and Municipal Drainage Facilities:

- (1) Definitions:

Highway drainage facilities are the facilities designed to collect and drain waters from the highway, the right-of-way and adjoining lands. These highway drainage facilities are usually located within the highway right-of-way.

Municipal drainage facilities are the facilities used by the municipality for the drainage of waters including waters draining from the highway drainage facilities. These municipal drainage facilities are usually located outside of highway right-of-way.

Additional drainage waters are the increased waters reaching the drainage facilities due to the project being built.

- (2) Apportionment of costs:

Highway drainage facilities: Costs will be shared as a project cost.

Municipal drainage facilities: The municipality will pay all costs associated with the upgrade of municipal drainage facilities.

- (3) Drainage design – No additional drainage waters:

The Department will design its highway drainage facilities to collect and discharge storm water based on the design guidelines set out in the Roadway Design Division's "Drainage Design Manual", if feasible, based on all applicable considerations. When the highway drainage facilities connect or drain into the municipal drainage facilities, the Department will calculate and notify the municipality of the capacity of the municipal drainage facilities necessary to convey waters away from the highway. When the capacity of the municipal drainage facilities does not comply with the Department's design guidelines, the Department will notify the municipality that it should upgrade its municipal drainage facilities. The Department will request, for safety and liability reasons, that the municipality commit to one of the plans for upgrading their municipal drainage facilities as described below:

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- (a) The municipality provides the Department with reasonable written assurances of a present plan for a future upgrade of its municipal drainage facilities. The municipality shall provide the Department with the details of its proposed improvements that will convey the design hydraulic event determined by the Department.
- (b) The municipality requests that the project include an upgrade of its municipal drainage facilities to be paid for solely by the municipality, and the municipality shall enter into an agreement with the Department concerning this upgrade of its facilities prior to the Department beginning the design of the project.

If the Department determines that significant additional drainage waters will be conveyed to the municipal drainage facilities because of the design of the project, the Department will determine, on a case-by-case basis, whether the municipal drainage facilities will be upgraded and whether the Department will share in any portion of the cost of such upgrade. The extent of the upgrade to the municipal drainage facilities and the division of cost for such upgrade will be a matter of negotiation to be resolved and set forth in an agreement with the municipality.

H. Municipal Utility Reimbursement Policy:

- (1) Non-betterment relocation of municipality-owned utilities made necessary by the construction or reconstruction of state highways within the municipal corporate limits are eligible as a project cost. The relocated municipality-owned utilities shall meet all applicable standards or codes that govern the installation, operation, and maintenance of said facilities.
- (2) All relocation of municipality-owned utilities made necessary by the construction or reconstruction of state highways outside the corporate limits and located within the state right-of-way are not eligible for reimbursement by the Department.
- (3) Non-betterment relocation of municipality-owned utilities due to construction or reconstruction of state highways which are located outside the corporate limits and outside the state right-of-way are eligible as a project cost for reimbursement by the Department. The relocated municipality-owned utilities shall meet all applicable standards or codes that govern the installation, operation, and maintenance of said facilities.
- (4) Any municipality-owned utility cost that is eligible as a project cost will be included in the project cost sharing. When it is determined that a municipality is required to participate in the cost of a project, the cost sharing will be in accordance with Sections 5, 6, and 7.

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- I. **Americans with Disabilities Act (ADA) Compliance:** The municipality will be responsible for 100 percent of the costs for upgrading existing sidewalks and curb ramps to meet ADA accessibility guidelines, which are outside the normal scope of the project and are at the request of the municipality.

6. **Municipal Share – Municipalities with a Population of 5,000 or Less:**

- A. Except as provided in this section, the municipality with a population of 5,000 or less will not ordinarily be required to participate in the cost of a project.
- B. **On Highway Parking Areas:** The municipality will pay 100 percent of the costs of constructing additional parking areas and the reconstruction of existing parking areas, which are at the request of the municipality. One hundred percent of the costs of resurfacing existing parking areas will be the responsibility of the Department.
- C. **Federal-Aid Safety Projects:** The minimum municipal share is 20 percent of the total cost of a federal-aid safety project for projects on streets or roads that are not on the state highway system. At the discretion of the Strategic Safety Infrastructure Projects Team, federal-aid safety projects with a municipal share can have a cap on federal-aid safety funds. No municipal contribution is required for a federal-aid safety project on the state highway system.
- D. **Americans with Disabilities Act (ADA) Upgrades – Sidewalks and Curb Ramps:**
 - (1) **“New and Reconstructed” Projects:** The municipality will not be required to share in the costs of constructing or reconstructing sidewalks and curb ramps when included in the normal scope of a “New and Reconstructed” project.
 - (2) **“3R” or “Maintenance” Projects:**
 - (a) Sidewalks will not ordinarily be reconstructed as a part of a “3R” or “Maintenance” project, unless the municipality requests that sidewalks be reconstructed, at its sole cost, as a part of the project.
 - (b) Curb ramps will be constructed or reconstructed to meet federal and state accessibility guidelines under “3R” and “Maintenance” projects at no cost to the municipality. The cost of constructing or reconstructing sidewalk required to blend these curb ramps into the adjoining sidewalk will also be performed at no cost to the municipality.

7. **Municipal Share – Municipalities with a Population Over 5,000:**

- A. Municipalities with a population over 5,000 may be required to participate in the cost of a project within, or in some instances, adjacent to the corporate limits of the municipality.

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B. Computation of Total Cost for “New and Reconstruction” Projects:

A municipality’s project cost share shall be based on the number of thru-traffic lanes as described below. Where the number of lanes is in transition, the start and end points for the differing number of lanes shall be at the mid-point of each transition. Turn lanes, medians, parking areas and surfaced shoulders shall not be considered to be thru-traffic lanes.

- (1) **Projects including no more than two thru-traffic lanes:** Except as provided in Section 5 of this DOT-OI, the municipality will not be required to share in the cost of a project that includes no more than two thru-traffic lanes.
- (2) **Projects including no more than four thru-traffic lanes:** Except as provided in Section 5 of this DOT-OI, the municipality will pay 20 percent of the project cost attributable to any portion of the project that includes four thru-traffic lanes.
- (3) **Projects including more than four thru-traffic lanes:** Except as provided in Section 5 of this DOT-OI, the municipality will pay a share of the cost of the project attributable to any portion of the project that includes more than four thru-traffic lanes. The municipality’s share will be based upon the number of thru-traffic lanes in excess of the lesser number of lanes entering or leaving the municipality, however, the municipality’s minimum share will be 20 percent.

Example one: If the highway enters the municipality with two thru-traffic lanes and leaves the municipality with four thru-traffic lanes and the project has a two thru-traffic lane segment, a four thru-traffic lane segment and a six thru-traffic segment, the municipal cost share is 0 percent of the cost of the two thru-traffic lane segment, 20 percent of the cost of the four thru-traffic lane segment and 66.67 percent of the cost of the six thru-traffic lane segment of the project.

Example two: If the highway enters and leaves the municipality with four thru-traffic lanes and the project has a four thru-traffic lane segment and a six thru-traffic lane segment, the municipal cost share is 20 percent of the cost of the four thru-traffic lane segment and 33.33 percent of the cost of the six thru-traffic lane segment of the project.

Example three: If the highway enters and leaves the municipality with six thru-traffic lanes and the project has a six thru-traffic lane segment and an eight thru-traffic lane segment, the municipal cost share is 20 percent of the six thru-traffic lane segment and 25 percent of the cost of the eight thru-traffic lane segment of the project.

C. Computation of Total Cost for “3R” and Maintenance” Projects:

A municipality’s project cost share shall be based on the number of thru-traffic lanes as described below. Where the number of lanes is in transition, the start and end points for the differing number of lanes shall be at the mid-point of each transition. Turn lanes, medians, parking areas and surfaced shoulders shall not be considered to be thru-traffic lanes.

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- (1) The municipality's share will be the cost of the number of thru-traffic lanes in excess of the lesser number of thru-traffic lanes entering or leaving the municipality.

Example one: If the highway enters and exits the municipality with two thru-traffic lanes and the project has a two thru-traffic lane segment and a four thru-traffic lane segment, the municipal cost share is 0 percent of the cost of the two thru-traffic lane segment and 50 percent of the cost of the four thru-traffic lane segment of the project.

Example two: If the highway enters and exits the municipality with four thru-traffic lanes and the project has a four thru-traffic lane segment and a six thru-traffic lane segment, the municipal cost share is 0 percent of the cost of the four thru-traffic lane segment and 33.33 percent of the cost of the six thru-traffic lane segment of the project.

Example three: If the highway enters the municipality with two thru-traffic lanes and exits the municipality with four thru-traffic lanes and the project has a two thru-traffic lane segment, a four thru-traffic segment and a six thru-traffic lane segment, the municipal cost share is 0 percent of the cost of the two thru-traffic lane segment, 50 percent of the cost of the four thru-traffic lane segment and 66.67 percent of the cost of the six thru-traffic lane segment of the project.

Example four: If the highway enters the municipality with four thru traffic lanes and exits the municipality with six thru-traffic lanes and the project has a four thru-traffic lane segment, a six thru-traffic lane segment and an eight thru-traffic lane segment, the municipal cost share is 0 percent of the cost of the four thru-traffic lane segment, 33.33 percent of the cost of the six thru-traffic lane segment and 50 percent of the cost of the eight thru-traffic lane segment of the project.

- (2) Municipalities will not normally share in the cost of resurfacing projects accomplished as part of a relinquishment agreement.
- (3) Because funding is limited and because many municipalities have their own annual resurfacing programs, District Engineers may elect to allow the municipality to design, let, and construct municipal resurfacing projects. In such cases, the preliminary and construction engineering costs are 100 percent the responsibility of the municipality. Resurfacing projects on the highway system let by the municipality shall include elimination of barriers to access as defined under the Americans with Disabilities Act and subsequent Federal regulations or technical guidance.

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D. Bridges:

- (1) The municipal share of the total cost of new construction, replacement, rehabilitation, redecking, widening and placing a structural overlay, and adding sidewalks to bridges will be determined pursuant to Section 7.B. Construction of additional width for lanes or sidewalks beyond that which is existing or under contract by the municipality shall be constructed at the municipalities cost.

Example: If the Department is replacing a two-lane bridge with an existing sidewalk on one side and the municipality requests that the new bridge accommodate a planned but not contracted three lane section with a shared use path on one side and a sidewalk on the other, the additional costs associated with the additional lane and the additional width of walkway would be 100% municipal cost.

- (2) In general, bridge maintenance work will not require municipal cost participation (i.e. polymer deck overlays, abutment repair, pier repair, deck repair, joint repair, curb repair, curb replacement, and approach slab repair).

E. Americans with Disabilities Act (ADA) Compliance – Sidewalks and Curb Ramps:

- (1) **“New and Reconstructed” Projects:** The municipality will share in the costs of constructing or reconstructing sidewalks and curb ramps to meet state and federal accessibility regulations and technical guidance when included in any “New and Reconstructed” project as a project cost.
- (2) **“3R” or “Maintenance” Projects:**
 - (a) Sidewalks will not ordinarily be reconstructed as a part of a “3R” or “Maintenance” project, unless the municipality requests that sidewalks be reconstructed, at its sole cost, as a part of the project.
 - (b) Elimination of barriers to access including the construction of curb ramps will be constructed or reconstructed to meet state and federal accessibility regulations and technical guidance under “3R” and “Maintenance” projects with resurfacing of any thickness. The municipality will share in the cost of eliminating barriers to access including constructing or reconstructing curb ramps, and sidewalk construction or reconstruction required to blend these curb ramps into the adjoining sidewalk as a project cost.

- F. **On Highway Parking Areas:** The municipality will be responsible for 100 percent of the costs of constructing additional parking areas and/or the reconstruction or resurfacing of existing parking areas, which are at the request of the municipality.

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G. **Federal-Aid Safety Projects:**

- (1) **Municipality is Responsible Charge:** The municipal share of a federal-aid safety project either **on** or **off** the highway system, and the **Municipality is the Responsible Charge**, is 100 percent of the Preliminary Engineering, Final Design, and NEPA Services costs of the projects and a minimum of 10 percent of the Right-Of-Way, Utilities, Construction, and Construction Engineering costs of the project. At the discretion of the Strategic Safety Infrastructure Projects Team, federal-aid safety projects with a municipal share can have a cap on federal-aid safety funds.
- (2) **NDOT is Responsible Charge:** The municipal share of a federal-aid safety project either **on** or **off** the state highway system and **NDOT is the Responsible Charge** is a minimum of 20 percent of the total cost of the project, including Preliminary Engineering, Final Design, NEPA Services, Right-of-Way, Utilities, Construction, and Construction Engineering. At the discretion of the Strategic Safety Infrastructure Projects Team, federal-aid safety projects with a municipal share can have a cap on federal-aid safety funds.

- H. **Traffic Signals and Lighting Systems:** For the purpose of determining the municipal share of traffic signals and/or lighting systems installed as part of a “New and Reconstructed”, “3R”, or “Maintenance” project, the costs are considered a project cost. The municipality will pay 100 percent of the cost of operating, repairing and maintaining the traffic signal and/or lighting system. The municipal agreement will detail the municipality’s duties and responsibilities related to operation, maintenance and repair of the traffic signal or street lighting systems.

Khalil Jaber, P.E.
Deputy Director-Engineering

ATTACHMENT "A"

Neb. Rev. Stat. § 39-1339

State highway system; connecting links, defined; duty of department.

Except as provided in section 39-1372, the responsibility of the department for the maintenance of connecting links on the state highway system shall be determined in accordance with the following provisions:

- (1) The department shall be liable for the cost of surface maintenance of the traveled way of connecting links, not including the parking lanes thereon, in cities of the metropolitan, primary, and first classes; PROVIDED, such connecting links were constructed under the authority of the department and construction costs were paid in whole or in part with county, state or federal-aid funds. The department shall not be responsible for the maintenance of any connecting link or portion thereof, which was not built in whole or in part with county, state or federal-aid funds;
- (2) The department shall be liable for all of the surface maintenance of the traveled way of connecting links, including parking lanes thereon, in cities of the second class and villages; PROVIDED, such connecting links were constructed under the authority of the department and construction costs were paid in whole or in part with county, state or federal-aid funds. The department shall not be responsible for the maintenance of any connecting link or portion thereof which was not built with county, state or federal-aid funds;
- (3) The responsibility of the department for the maintenance of the connecting links, described in subdivisions (1) and (2) of this section, shall be limited to such things as are caused either by wear and tear of travel on such connecting links or by acts of God. Maintenance shall not be construed to include (a) snow removal, (b) maintenance caused by constructing, placing, replacing, repairing, or servicing water mains, sewers, gas lines, pipes, utility equipment, or other similar things placed beneath, across, or upon the surface of any portion of a connecting link, or (c) repairs or reconstruction going beyond the scope or normal surface maintenance or wear and tear of travel;
- (4) The maintenance of structures, on the connecting links described in subdivisions (1) and (2) of this section, shall not be limited to the traveled way but shall include the entire structure; PROVIDED, the department shall have no responsibility for the maintenance of appurtenances to such connecting links and the structures thereon, except by special agreement with the city or village in which the connecting link is situated. Appurtenances shall include, but are not limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, driveways, fire plugs, or retaining walls;

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- (5) The department shall maintain and keep in repair all public bridges and the approaches thereto when located in cities of the first class and on connecting links, which were constructed under the authority of the department and construction costs were paid in whole or in part with state or federal funds;
- (6) Nothing contained in this section shall be construed to prevent the department from entering into special agreements with cities or villages regarding the reconstruction and maintenance of connecting links in such cities and villages; and
- (7) As used in this section, unless the context otherwise requires, connecting link shall mean a street now designated as a state highway.

Neb. Rev. Stat. § 39-2105

Functional classifications; jurisdictional responsibility

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

- (1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the category of rural highways as Interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire Interstate system under either the rural or municipal category, and for connecting links between the Interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and sufficient study by the Department of Transportation results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;
- (2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, and minimum maintenance under the rural highway category;
- (3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all streets classified as expressway, which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

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- (4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision, which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

Note – The Department has defined the phrase “exceeds the design”, as used in the Statutes, to apply to the overall design of the roadway including the number of thru-traffic lanes entering or leaving the municipality. Because a municipal design and a rural design differ as far as appurtenances and drainage, the Department has established 20% as the minimum participation for new and reconstruction projects with four thru lanes within cities of the first class. Further refinement of the municipal participation rate will be based upon the actual number of thru-traffic lanes built with the project compared to the number of thru lanes entering or leaving the municipality. The test of “excess” in design applies to any point where the highway enters and/or leaves the municipality and not necessarily at the site of the improvement. Department policy defines the point where the highway enters and/or leaves the municipality to be the corporate limits of the municipality.

Website for Chapter 39 Nebraska Highway and Bridge Law State Statutes
<http://uniweb.legislature.ne.gov/laws/browse-chapters.php?chapter=39>

Nebraska Department of Transportation
Operating Instruction 60-12
October 23, 2019

Cost Sharing for Local Roads Crossing Freeways and Expressways

1. **Purpose:** To provide policy for determining the local (city or county) share of project costs on local roads crossing or intersecting state highway freeways and expressways. The office of primary responsibility for this DOT-OI is the Roadway Design Division. This DOT-OI supersedes DOT-OI 60-12 dated September 3, 2003.
2. Off-system crossroad and interchange improvements:
 - A. When the Department is constructing or upgrading an off-system crossroad over or under a freeway or expressway as a part of a new or reconstructed freeway or expressway project, it is Department policy that the “project” will fund construction of the crossroad to match the existing typical¹ section of the crossroad. If a county or city desires the crossroad to be constructed to an expanded typical section (multiple lanes), the county or city shall pay for all costs, associated with the crossroad, in excess of those required to match the existing typical section.
 - B. When no Department freeway or expressway expansion project is planned and a county or city desires to expand the typical section of an off-system crossroad passing over or under a freeway or expressway, the county or city shall pay for all expansion costs.
3. Distribution of cost savings resulting from changes in the number or design of local roads crossing or connecting to a freeway.
 - A. When the Department is planning a freeway reconstruction project, the “base” design must first be established and cost estimated. This is usually replacing those local facilities “in kind”. If the parties agree to eliminate a city or county road grade separation, the Department may apply up to the net cost savings to enhancing other features of the project of mutual interest, including other local roads within the project, with the following stipulations:
 - (1) A formal agreement is required.
 - (2) The savings cannot be applied to roads outside the project limits.
 - (3) The savings must be applied at the time of the Department’s project.
 - (4) The savings must be applied to features that meet but do not exceed the standards of the Board of Public Roads Classifications and Standards, and to features that fit within the local long-range comprehensive plan.

Khalil Jaber, P.E.
Deputy Director-Engineering

¹ existing typical is defined as the typical section in place, or under contract by the city or county, at the time the Department conducts its project contract letting.

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Nebraska Department of Transportation
Operating Instruction 60-13
February 12, 2018

RELINQUISHMENT OF ROADS FROM THE HIGHWAY SYSTEM

1. **Purpose:** To provide policy for the relinquishment of roads, by preparation, distribution, and disposition of relinquishment agreements between the Nebraska Department of Transportation and an outside party. The office of primary responsibility for this DOT-OI is the Project Development Division. This DOT-OI supersedes DOT-OI 60-13 dated September 25, 2007.

2. **General:**

When a segment of highway is relocated, the functional classification of the old highway will be changed. The Department will offer to relinquish to the political or governmental subdivision(s) or public corporation(s), any portion of the old state highway that has been relocated. If an offer to relinquish a highway segment is not accepted by the local jurisdiction(s), the State may abandon it as provided by law (See Section 8 "Abandonment of Roadway"). The Department will relinquish the highway to the local agency after following the approved policy for relinquishment of highways.

Before relinquishment, the Department will evaluate the condition of the roadway to determine the need for any rehabilitation. It is the intent of the Department to only relinquish roads that will provide suitable service for the travelling public.

Other than surface rehabilitation, improvements to the roadway will not be made. At the time of relinquishment, the Nebraska Department of Transportation (NDOT) will assess the adequacy of structures and determine if any reparation or corrective action is required. It is the intent of the State to relinquish only those structures which are structurally and functionally adequate for the purpose for which they will be used.

In any relinquishment or closure proceeding where the NDOT owns fee simple title to the underlying land, ownership should be reserved by the NDOT. However, the land may be sold according to Nebraska Statute Sec. 39-1325. If sold, the contract must guarantee that utility companies have a perpetual right to utilize the former state right of way.

Whenever a public hearing for a highway project is held, the Department of Transportation's presentation will include a statement explaining the proposed changes in the highway system and the proposed segments of the existing highway to be relinquished to local jurisdiction.

A highway may be automatically relinquished by the state when its functional classification changes. However, it is preferable to acquire a signed relinquishment agreement with the County or City prior to highway removal or location approval.

The relinquishment or abandonment of a highway segment must be recommended by the NDOT and the Highway Commission and approved by the Governor. This action should take place at the location approval stage.

3. **Procedure for Completing Agreements:**

The Project Development Agreements Engineer is the activity manager for relinquishment activities in the Project Scheduling System (Clarity), and will initiate all agreements pertaining to relinquishments and changes in classification and jurisdictional responsibility. The development of the agreement will be according to the time frame defined in Clarity.

The activity manager will coordinate this effort with Roadway Design, Project Development, Right of Way, and the District Engineer (DE). Throughout this entire process, Clarity will be updated by the activity manager to reflect the progress of the relinquishment activity for each applicable project.

The Project Development Agreements Engineer will attend dry-run hearings to review projects with relinquishments.

4. **Covenant Agreement Process:**

A. Expressway Projects

Alignment concepts are studied by the Project Development Division. Example projects are expressway studies and could include, new railroad viaduct construction, major river crossings or city bypass routes.

- (1.) During the course of such studies, Project Development will discuss the possibility of relinquishment with the governmental entity affected. Whenever possible, a commitment in the form of a resolution or letter of intent to accept the relinquishment will be obtained from each governmental entity involved.
 - a. When potential changes in the National and/or State Functional Classification of roadways is an issue, Materials & Research, Functional Classifications Section staff will be a part of the discussion with Local entities.
- (2.) Once an alignment is selected as the preferred route, a location hearing is normally conducted. Relinquishment information is provided in the engineering presentation and public comment is received.
- (3.) The Agreements Engineer will be notified when a relinquishment agreement is needed, and will be advised of any special or specific information necessary to accurately define any previously agreed upon circumstances.
- (4.) The Agreements Engineer will prepare a covenant agreement covering the proposed relinquishments. The draft review process will include Project Development, Roadway Design, Roadway Asset Management Engineer, and the respective DE.

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- (5.) If a petition or resolution has not been received from the local jurisdiction, then the relinquishment agreement will contain a paragraph stating that by signing the agreement, the governmental entity is petitioning the State to relinquish said State Highway, according to Nebraska Statute Section 39-1314.
- (6.) The Agreements Engineer will be advised of any subsequent revision(s) or supplementals to the relinquishment(s), by the initiating division, and will prepare the necessary Supplemental Document(s).
- (7.) The Agreements Engineer will send the agreement(s) to the appropriate DE to obtain the local signatures and certification.

B. Non-Expressway Projects

- (1.) The Project Development Division or the Roadway Design Division will notify the Agreements Engineer when a Relinquishment agreement is needed.
- (2.) Whenever possible, a commitment, in the form of a resolution or letter of intent to accept the relinquishment, will be obtained from each governmental entity involved.
- (3.) If Clarity calls for action, the Agreements Engineer will notify Roadway Design that project details are needed to start the relinquishment process.
- (4.) The Agreements Engineer will prepare a covenant agreement covering the proposed relinquishments. The draft review process will include Project Development, Roadway Design, Roadway Asset Management Engineer and the respective DE.
- (5.) The Agreements Engineer will be advised of any subsequent revision(s) or supplementals to the relinquishment(s), by the initiating division and will prepare the necessary Supplemental Document(s).
- (6.) The Agreements Engineer will send the agreement(s) to the appropriate DE to obtain the local signatures and certification.

C. Expressway and Non-Expressway Projects

- (1.) The DE will receive agreement(s) from the Agreements Engineer and will obtain signatures from representatives of local jurisdiction(s).
- (2.) The DE will return signed agreements to the Agreements Engineer.
- (3.) The Agreement Monitoring System will be initiated and updated by the Agreements Engineer.

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- (4.) The Agreements Engineer will file one completely executed agreement and will send other(s) to the District Engineer along with a copy in the District's file.
- (5.) The DE will return the fully executed agreement(s) to the local jurisdiction(s).
- (6.) The Agreements Engineer will be advised of any subsequent revision(s) or supplementals to the relinquishment(s), by the initiating division, and will prepare the necessary Supplemental Document(s).

5. Final/Supplemental Agreement Process:

- A. For all projects, if a covenant agreement exists, the Agreements Engineer will furnish a copy of the agreement to the Roadway Design Division for review and definition of reference points describing final areas of relinquishment. The Roadway Design Division will furnish the required geometric details to the Agreements Engineer for incorporation into the agreement.
- B. The Agreements Engineer will review all information with the applicable Division(s) to finalize the agreement.
- C. If not previously stated in the covenant agreement, and no petition of relinquishment exists, the agreement will contain a paragraph stating that by signing the agreement, the County or City is petitioning the State to relinquish said State Highway, according to Nebraska Statute Section 39-1314.
- D. A draft agreement will be sent to the: Roadway Asset Management Engineer; Roadway Design Division and the respective DE for review. If significant changes or additions are made during this review process, another review may be necessary.
- E. Appropriate changes will be made only with consensus, and will be accomplished by the Agreements Engineer.
- F. After final review, agreements will be provided to the DE by the Agreements Engineer.
- G. The DE will obtain signatures from representatives of local jurisdiction(s).
- H. The DE will return signed agreements to the Agreements Engineer.
- I. The Agreement Monitoring System will be initiated and updated by the Agreements Engineer.
- J. The Agreements Engineer will file one completely executed agreement and will send the other(s) to the DE along with a copy for the District's file.
- K. The DE will return the fully executed agreement(s) to the local jurisdiction(s).
- L. The Agreements Engineer will be advised of any subsequent revision(s) to the relinquishment(s), and prepare the necessary Supplemental Document(s).

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6. **Internal Distribution:**

After the agreements are signed the following distribution will be made by the Agreements Engineer within the Department:

- (1.) Roadway Design
- (2.) Traffic Engineering
- (3.) Right of Way
- (4.) Controller: Maintenance Unit
- (5.) District Engineer
- (6.) Project Development: Project Studies & Survey Engineer
- (7.) Materials & Research: Roadway Asset Management Engineer
- (8.) Operations
- (9.) Materials & Research: Mapping Section

7. **Document Recording and Final Disposition:**

When the Right of Way Division receives notice of the executed agreement, they will file all necessary legal documents, for the relinquishment, at the appropriate County Office and notify the DE and the Agreements Engineer when the relinquishment was recorded.

The DE shall notify the appropriate local officials, in writing, with copies to: the Agreements Engineer, Roadway Asset Management Engineer, Director, all Deputy Directors, the appropriate Highway Commissioner, and all appropriate Division Heads, of the effective date of change of jurisdictional responsibility.

Roadway Asset Management Engineer will make the final Functional Classification submittal to the Federal Highway Administration, perform all the necessary documentary changes in functional classifications, update the official state highway and local road/street Functional Classification maps and make submittal action to the American Association of State Highway and Transportation Officials (AASHTO) for Route Number changes when necessary.

If necessary the Traffic Engineer will issue a highway route revision informing all concerned officials of the new highway location, number, and identify the old highway.

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8. **Abandonment of Roadway:**

Projects should not progress to the design hearing stage without a signed agreement covering all relinquishments of highways affected by the project.

If the local government refuses to accept the relinquishment, the Department of Transportation will delay the project until an agreement with the local jurisdictions can be reached. If an agreement is not obtainable, the Department may abandon the segment as a public road, as provided by Section 39-1314 of State Statute, so the project may continue.

Khalil Jaber, P.E.
Deputy Director – Engineering

Nebraska Department of Transportation
Operating Instruction 60-16
October 23, 2019

POLICY FOR PHASE CONSTRUCTED 3R PROJECTS

1. **Purpose:** To provide policy for projects when construction is phased due to the condition of the pavement and time constraints necessary to develop a 3R project. The office of primary responsibility for this DOT-OI is the Roadway Design Division. This DOT-OI supersedes DOT-OI 60-16 dated June 5, 2012.

2. **Scope:**

A significant level of project development is required for “3R” projects in order to prepare them for letting. Occasionally the project development timeframe exceeds the remaining life of the pavement. In these cases, pavement condition and ability of the State maintenance forces to maintain the rapidly deteriorating roadway surface dictate that the rehabilitation of the surfacing occur prior to the projected letting of the project. This policy will allow for the phasing of the construction of the project to complete the surface rehabilitation as soon as possible and concurrently pursue the development of the remaining features necessary to meet the 3R standards such as culvert modification, widening, property acquisition, etc.

3. **Policy:**

It is the policy of the NDOT that when the construction of a project is phased due to the condition of the asset, a follow-up project addressing those design features requiring development to meet the design standards shall be let as soon as project development allows. The funds necessary to build the follow-up or “phase 2” project shall be set aside from the District’s allocation at the time the phase 1 project is awarded. These funds will not be redirected to a different purpose without the approval of the Deputy Director – Engineering.

The decision to construct a project in phases will be made by the Roadway Design Engineer following a request by the District Engineer and with the concurrence of the Program Management Engineer, the Materials and Research Engineer, and when appropriate, the Bridge Engineer.

Khalil Jaber, P.E.
Deputy Director – Engineering

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Nebraska Department of Transportation
Operating Instruction 60-19
July 24, 2020

USE OF PROPRIETARY AND STATE FURNISHED ITEMS

1. **Purpose:** To provide policy for use of patented or proprietary (sole source) products and NDOT supplied material on NDOT roadway and bridge construction projects, (and Local Public Agency projects when let by NDOT). The office of primary responsibility for this DOT-OI is the Construction Division. This is a new DOT-OI.

2. **References:** 23 CFR Part 635 [FHWA Docket No. FHWA-2018-0036] RIN 2125-AF84 Construction and Maintenance – Promoting Innovation in Use of Patented and Proprietary Products, and 23 CFR 635.407.

3. **The FHWA revised its regulations** to provide greater flexibility for States to use proprietary or patented materials in Federal-aid highway projects. This final rule rescinds the requirements limiting the use of Federal funds in paying for patented or proprietary materials, specifications, or processes specified in project plans and specifications, thus encouraging innovation in transportation technology and methods. This final rule is effective October 28, 2019.

4. **The revision of the rule has prompted questions** regarding the required documentation for the use of sole source or proprietary products on NDOT construction projects. The use of sole source and the use of NDOT or LPA supplied material are addressed below.

5. Patented or Proprietary Products (Sole Source)

NDOT and LPA adhered to the Federal regulations when Patented or Proprietary items are used in a state-let construction project. In order to maintain the integrity of the letting process, the change in the Federal regulations has created the need to develop a policy for NDOT and LPA projects when a proprietary product is specified. Regardless of funding type, NDOT policy requirements are as stated below.

This policy will apply when:

- NDOT or LPA specifies a proprietary in Federal-aid contracts, or
- NDOT or LPA references a single trade name material in specifications and on plans, or
- NDOT or LPA specifies proprietary products on their Approved Products List (APL) or Nebraska Qualified Material Vendors List (NQMVL), or
- NDOT or LPA uses specifications where only one manufacturer can meet the requirements.

To ensure transparency regarding the selection of materials or products used for NDOT/LPA projects, the Department will require a letter to the file, signed by the responsible Section Head (or project owner if and LPA), documenting why it's in the public interest for the Sole Source product to be specified. The letter should address whether there is a suitable alternative available and if the product is needed for synchronization. The letter must clearly substantiate the benefit of specifying the Sole Source product or material. The public interest justification may be completed on a program-wide basis for those Sole Sourced materials or products where the application is program-wide and where project specific public interest justification letters are not

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feasible, programmatic justifications will cover the use of the material or product on all projects for a specified amount of time, not to exceed one year, before re-evaluation of the Sole Source justification must take place.

6. NDOT or LPA Supplied Material

Federal regulations regarding material or products supplied by NDOT or an LPA are covered under 23 CFR 635.407, and are not encompassed in the final rule change. This means that the approval process for **NDOT or LPA supplied material on Federal-aid products will require a Public Interest Finding (PIF)** substantiating that it's in the public interest to require the contractor to use materials furnished by, or sources designated for use by, the NDOT or LPA. Factors to justify a PIF could include such items as cost effectiveness, material lead times, system integrity, and local shortages of material. The PIF must be signed by the Deputy Director - Engineering or their designee.

When the use of NDOT or LPA furnished manufactured material is approved based on a PIF, such use must be made mandatory. Manufactured materials to be furnished by NDOT or LPA must have been acquired through competitive bidding.

When NDOT or LPA owns or controls a local natural materials source, such as a borrow pit or a stockpile of salvaged pavement material, etc., the materials may be designated for either optional or mandatory use (optional use does not require a PIF). The location, cost, and any conditions to be met for obtaining the materials that are made available to the contractor must be stated in the special provisions.

Projects that are not federally funded must adhere to the process above, except that the PIF should be in the form of a letter to the file with the signature of the responsible Section Head (or project owner if an LPA). Deputy Director – Engineering signature is not required when the project is not Federal-aid participating.

7. The information above is not intended to be all-inclusive. Unique situations will be handled as they arise. Please contact the Contracts Letting Manager if you have questions or need additional information regarding the subjects herein.

Moe Jamshidi, P.E.
Deputy Director – Operations