

AGREEMENT

THIS AGREEMENT IS ENTERED INTO between the State of Nebraska, Department of Roads (hereinafter referred to as "Owner"), and Platte River Recovery Implementation Foundation, Trustee (hereinafter referred to as "Program")

1. DESCRIPTION OF PROERTY. The Owner hereby agrees to allow the Program to occupy and perform detailed construction and monitoring work on real estate owned by the State of Nebraska, Department of Roads and located in Section 17, Township 8 North, Range 16 West, Buffalo County, Nebraska, more specifically located south of Interstate 80, excluding the Rest Area property, to the center of the Platte River, all of which is more particularly shown on the attached Exhibit "A" that is made a part hereof by this reference (hereinafter referred to as "Property"), The access to the property shall be via the river unless otherwise granted by the Owner to the Program on a case by case basis.
2. TERM OF AGREEMENT. The term of this agreement shall be from July 1, 2016 to December 31, 2031. Any extension of this agreement must be in writing and attached to this agreement. Both parties agree that the failure to execute an extension at least (2) months before the end of the current term shall be constructive notice of the intent to allow this agreement to expire. Either party may terminate the Agreement by giving written notice to terminate (60) day prior to the effective date of termination.
3. USE AND OCCUPANCY. The Program shall only use the property herein described exclusively for channel clearing and sand and water manipulation as more specifically set forth in the detailed plans attached hereto and made a part hereof as Exhibit "B". For purposes of this section, Program includes its employees, agents, contractors, invitees and guests. The Program has the right and authority to keep all vegetation below one (1) meter in height using any and all legal methods with all such work to be coordinated with the Owner to assure that the best method of removal of the vegetation is used. The Owner shall be notified of all work being done and, as reports become available, either links to electronic information or copies of assessments and reports will be made available to the Owner. The Program covenants and agrees to comply with all statutes, rules, orders, regulations and requirements of federal, state, county and city government regulating the use by the Program of the premises and warrants that all of the Program's employees, agents, and contractors shall be properly trained. All required permits, licenses and notices to do work in the area will be the responsibility of the Program. Any and all fines, costs and expenses as a result of any work done or not done on the property by the Program, its employees, agents, and contractors, during the term of this agreement shall be paid by the Program and the Program agrees to indemnify and hold harmless the Owner against all liability, loss, cost, damage, or expense sustained by the Owner related to such fines, costs and expenses.
4. COSDIERATION. The only consideration between the parties is the mutual benefit being provided to each party for the work being done hereunder.

5. PROGRAM'S AGREEMENTS. The Program agrees that:

- (a) Removal of Personal Property. Upon termination of this agreement or any extension or renewal thereof, the Program shall have thirty (30) days to remove any and all personal property of the Program, even though said property may be attached to the realty; provided, the Program shall repair all damages to the property caused by the installation and removal. Failure or refusal of the Program to remove any or all of the personal property within such time period shall cause the Program to forfeit all rights in and to such personal property and such personal property shall become property of the Owner.
- (b) Indemnification of Owner. The Program agrees to indemnify and hold harmless the Owner against all liability, loss, cost, damage, or expense sustained by the Owner arising out of, directly or indirectly, or due to the Program's use of the property or due to any accident or other occurrence causing injury to any person or persons or damage to property resulting from the Program's use of the property. The Program shall keep in force Program's own liability insurance policies as will fully protect the Program and the Owner against claims against and all persons for personal injury, death, or property damage occurring in or about the property.
- (c) Delivery and Possession. The Program agrees to yield possession of the property to the Owner and vacate the property at the expiration of the term of this agreement without further notice.
- (d) Real Estate Taxes. The Program agrees to pay any Real Estate Taxes that may arise from this agreement as per State Statute 77-202.11.

6. OWNERS AGREEMENT. The Owner agrees that:

- (a) Sale of Property. If the Owner should sell or otherwise transfer this property, the Owner will not be subject to the provisions of this agreement.
- (b) Quiet enjoyment. The Owner warrants that the Owner has the right to enter into an agreement in relationship to the property, and will defend the Program's possession against any and all persons whomsoever.

7. SUB-LEASE AND ASSIGNMENT. The Program shall not sub-let nor assign this lease of any portion hereof without the expressed written consent of the Owner. Such consent shall be in the absolute discretion of the Owner.

8. RELATIONSHIP OF THE PARTIES. The relationship of the parties is that of owner and occupant. This agreement shall not be deemed to give rise to a partnership relation, and neither party shall have the authority to obligate the other without written consent, except as specifically provided in this agreement.

9. REMEDIES ON DEFAULT. The failure or delay of the Owner or the Program to exercise any of their respective rights or privileges under this provision of the agreement, or any other terms of this agreement, shall not be held a waiver of any of the terms, covenants, or conditions of said instrument, nor of any of the respective rights or privileges of either party under the same. Any act of either the Owner or the Program

waiving, or which may be held to have waived, any specific default of the other party shall not be construed or held to be a waiver of any future default. If the Program fails to perform any term, condition, or covenant of this agreement, the Owner may terminate this agreement by giving written notice of termination to the Program and may regain possession of the property in the manner then provided by the law of the State of Nebraska. The right to terminate this agreement shall be in addition to any other rights or remedies then provided by the law of the State of Nebraska for breach of this agreement by the Program.

10. **BINDING EFFECT.** All provisions of this agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.
11. **TIME OF ESSENCE.** Time is of the essence of this agreement and in the performance of the terms hereof.
12. **COUNTER PARTS.** This agreement may be executed in any one or number of counterparts, each of which shall be deemed an original and which, together, shall constitute one and the same agreement.
13. **COPIES AND/OR FACSIMILES.** A facsimile or photocopy of a properly executed counterpart of this agreement shall be a legally binding and valid as the original.

The Program as a part of the consideration hereof, does hereby covenant and agree (1) that the leased premises or any part thereof shall not be used for the erection or display of any advertising sign, device or display other than On Premises signs, (2) that the leased premises shall not be used for the storage, processing, sorting, transfer or any other use related to or connected with scrap material of any nature or kind; or be used for the storage of flammable, explosive, or hazardous material, so as to create or cause an unsightly or obnoxious appearance or create a hazard upon the premises herein leased.

The Program, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the Program shall use the premises in compliance with all other requirements imposed by or pursuant to Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation –

Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. That in the event of breach of any of the above nondiscrimination covenants, the Owner shall have the right to terminate the lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

The Owner, its agents or authorized Federal Highway Administration representatives, may enter upon said premises at any time.

OWNER
State of Nebraska, Department of Roads

PROGRAM
Platte River Recovery Implementation
Foundation, Trustee

By: _____
Robert Frickel, Right of Way Manager

By: _____
Diane Wilson, President

Dated: _____

Dated: _____