

Public Property, Safety, and Works Committee
Monday, October 9, 2023 4:00 PM
Columbus Community Building/Community Room
2500 14 Street
Columbus, NE 68601

The Mayor and City Council reserve the right to go into closed session as per Section 84-1410 of the Nebraska Revised Statutes. A current agenda is on file at City Hall, 2500 14 Street, Columbus, Nebraska. For more information, call 402-562-4224 or visit our website at www.columbusne.us.

{{Name: Agenda Item Name}}

1. Statement of compliance with Open Meetings Act and roll call.

NEBRASKA OPEN MEETINGS ACT

84-1407. Act, how cited.

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

Source: Laws 2004, LB 821, § 34.

84-1408. Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source: Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

Annotations

- Nebraska's public meetings laws do not apply to school board deliberations pertaining solely to disputed adjudicative facts. *McQuinn v. Douglas Cty. Sch. Dist. No. 66*, 259 Neb. 720, 612 N.W.2d 198 (2000).
- The primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990).
- The public meetings law is broadly interpreted and liberally construed to obtain the objective of openness in favor of the public, and provisions permitting closed sessions must be narrowly and strictly construed. *Grein v. Board of Education of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).
- Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- A county board of equalization is a public body whose meetings shall be open to the public. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Judicial Resources Commission or subcommittees or subgroups of the commission;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Virtual conferencing means conducting or participating in a meeting electronically or telephonically with interaction among the participants subject to subsection (2) of section 84-1412.

Source: Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810; Laws 2011, LB366, § 2; Laws 2021, LB83, § 11; Laws 2022, LB922, § 12.

Operative Date: July 21, 2022

Annotations

- A township is a political subdivision, and as such, a township board is subject to the provisions of the public meetings laws. *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).
- A county agricultural society is a public body to which the provisions of the Nebraska public meetings law are applicable. *Nixon v. Madison Co. Ag. Soc'y*, 217 Neb. 37, 348 N.W.2d 119 (1984).
- Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of

having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

- Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- Although the Open Meetings Act does not define "subcommittee," a subcommittee is generally defined as a group within a committee to which the committee may refer business. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- The Open Meetings Act does not require policymakers to remain ignorant of the issues they must decide until the moment the public is invited to comment on a proposed policy. By excluding nonquorum subgroups from the definition of a public body, the Legislature has balanced the public's need to be heard on matters of public policy with a practical accommodation for a public body's need for information to conduct business. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- As an administrative agency of the county, a county board of equalization is a public body. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- The electors of a township at their annual meeting are a public body under the Open Meetings Act. *State ex rel. Newman v. Columbus Township Bd.*, 15 Neb. App. 656, 735 N.W.2d 399 (2007).
- The meeting at issue in this case was a "meeting" within the parameters of subsection (2) of this section because it involved the discussion of public business, the formation of tentative policy, or the taking of any action of the public power district. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).
- Informational sessions in which the governmental body hears reports are briefings. *Johnson v. Nebraska Environmental Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct;

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source: Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1; Laws 2011, LB390, § 29; Laws 2012, LB995, § 17.

Annotations

- There is no absolute discovery privilege for communications that occur during a closed session. *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).
- If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- The public interest mentioned in this section is that shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities. *Grein v. Board of Education*, 216 Neb. 158, 343 N.W.2d 718 (1984).
- Hearing in closed executive session was contrary to this section since there was no showing of necessity or reason under subdivision (1)(a), (b), or (c), but did not result in reversal of board decision. *Simonds v. Board of Examiners*, 213 Neb. 259, 329 N.W.2d 92 (1983).
- Negotiations for the purchase of land need not be conducted at an open meeting but the deliberations of a city council as to whether an offer to purchase real estate

should be made should take place in an open meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

- Public meeting law was not violated where the Board of Regents of the University of Nebraska voted to hold a closed session to consider the university president's resignation, and also discussed the appointment of an interim president during such session. *Meyer v. Board of Regents*, 1 Neb. App. 893, 510 N.W.2d 450 (1993).

84-1411. Meetings of public body; notice; method; contents; when available; right to modify; duties concerning notice; virtual conferencing authorized; requirements; emergency meeting without notice; appearance before public body.

(1)(a) Each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (1)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committee, such notice shall be published in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's website.

(ii) In the case of the governing body of a city of the second class or village or such body's advisory committee, such notice shall be published by:

(A) Publication in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's website; or

(B) Posting written notice in three conspicuous public places in such city or village. Such notice shall be posted in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (1)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(c) In addition to a method of notice required by subdivision (1)(b)(i) or (ii) of this section, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

(e) Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or

(ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2)(a) The following entities may hold a meeting by means of virtual conferencing if the requirements of subdivision (2)(b) of this section are met:

(i) A state agency, state board, state commission, state council, or state committee, or an advisory committee of any such state entity;

(ii) An organization, including the governing body, created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act;

(iii) The governing body of a public power district having a chartered territory of more than one county in this state;

(iv) The governing body of a public power and irrigation district having a chartered territory of more than one county in this state;

(v) An educational service unit;

(vi) The Educational Service Unit Coordinating Council;

(vii) An organization, including the governing body, of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act;

(viii) A community college board of governors;

(ix) The Nebraska Brand Committee;

(x) A local public health department;

(xi) A metropolitan utilities district;

(xii) A regional metropolitan transit authority; and

(xiii) A natural resources district.

(b) The requirements for holding a meeting by means of virtual conferencing are as follows:

(i) Reasonable advance publicized notice is given as provided in subsection (1) of this section, including providing access to a dial-in number or link to the virtual conference;

(ii) In addition to the public's right to participate by virtual conferencing, reasonable arrangements are made to accommodate the public's right to attend at a physical site and participate as provided in section 84-1412, including reasonable seating, in at least one designated site in a building open to the public and identified in the notice, with: At least one member of the entity holding such meeting, or his or her designee, present at each site; a

recording of the hearing by audio or visual recording devices; and a reasonable opportunity for input, such as public comment or questions, is provided to at least the same extent as would be provided if virtual conferencing was not used;

(iii) At least one copy of all documents being considered at the meeting is available at any physical site open to the public where individuals may attend the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act; and

(iv) Except as otherwise provided in this subdivision or subsection (4) of section 79-2204, no more than one-half of the meetings of the state entities, advisory committees, boards, councils, organizations, or governing bodies are held by virtual conferencing in a calendar year. In the case of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act, the organization may hold more than one-half of its meetings by virtual conferencing if such organization holds at least one meeting each calendar year that is not by virtual conferencing. The governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by virtual conferencing if the governing body's quarterly meetings are not held by virtual conferencing.

(3) Virtual conferencing, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by virtual conferencing. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness to appear before the public body by means of virtual conferencing.

(7)(a) Notwithstanding subsections (2) and (5) of this section, if an emergency is declared by the Governor pursuant to the Emergency Management Act as defined in section 81-829.39, a public body the territorial jurisdiction of which is included in the emergency declaration, in whole or in part, may hold a meeting by virtual conferencing during such emergency if the

public body gives reasonable advance publicized notice as described in subsection (1) of this section. The notice shall include information regarding access for the public and news media. In addition to any formal action taken pertaining to the emergency, the public body may hold such meeting for the purpose of briefing, discussion of public business, formation of tentative policy, or the taking of any action by the public body.

(b) The public body shall provide access by providing a dial-in number or a link to the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act. Reasonable arrangements shall be made to accommodate the public's right to hear and speak at the meeting and record the meeting. Subsection (4) of this section shall be complied with in conducting such meetings.

(c) The nature of the emergency shall be stated in the minutes. Complete minutes of such meeting specifying the nature of the emergency and any formal action taken at the meeting shall be made available for inspection as provided in subsection (5) of section 84-1413.

(8) In addition to any other statutory authorization for virtual conferencing, any public body not listed in subdivision (2)(a) of this section may hold a meeting by virtual conferencing if:

(a) The purpose of the virtual meeting is to discuss items that are scheduled to be discussed or acted upon at a subsequent non-virtual open meeting of the public body;

(b) No action is taken by the public body at the virtual meeting; and

(c) The public body complies with subdivisions (2)(b)(i) and (2)(b)(ii) of this section.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2; Laws 2012, LB735, § 1; Laws 2013, LB510, § 1; Laws 2017, LB318, § 1; Laws 2019, LB212, § 5; Laws 2020, LB148, § 3; Laws 2021, LB83, § 12; Laws 2022, LB742, § 1; Laws 2022, LB908, § 1; Laws 2022, LB922, § 13.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB742, section 1, with LB908, section 1, and LB922, section 13, to reflect all amendments.

Note: Changes made by LB742 and LB908 became effective July 21, 2022. Changes made by LB922 became operative July 21, 2022.

Cross References

- **Intergovernmental Risk Management Act**, see section 44-4301.
- **Interlocal Cooperation Act**, see section 13-801.
- **Joint Public Agency Act**, see section 13-2501.

- **Municipal Cooperative Financing Act**, see section 18-2401.

Annotations

- Under subsection (1) of this section, the Legislature has imposed only two conditions on the public body's notification method of a public meeting: (1) It must give reasonable advance publicized notice of the time and place of each meeting and (2) it must be recorded in the public body's minutes. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).
- An emergency is "(a)ny event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).
- An agenda which gives reasonable notice of the matters to be considered at a meeting of a city council complies with the requirements of this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).
- When notice is required, a notice of a special meeting of a city council posted in three public places at 10:00 p.m. on the day preceding the meeting is not reasonable advance publicized notice of a meeting as is required by this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).
- Teacher waived right to object to lack of public notice in board of education employment hearing by voluntary participation in the hearing without objection. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).
- A county board of commissioners and a county board of equalization are not required to give separate notices when the notice states only the time and place that the boards meet and directs a citizen to where the agendas for each board can be found. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- A county board of equalization is a public body which is required to give advanced publicized notice of its meetings. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- Notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- True notice of a meeting is not given by burying such in the minutes of a prior board proceeding. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- An agenda notice which merely stated "work order reports" was an inadequate notice under this section because it did not give interested persons knowledge that plans for a 345 kv transmission line through the district was going to be discussed and voted upon at the meeting. Inadequate agenda notice under this section meant there was a substantial violation of the public meeting laws; however, later actions by the board of directors cured the defects in notice, and such actions were in substantial compliance with the statute. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, a camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings, including meetings held by virtual conferencing. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making virtual conferencing available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act; and

(f) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) Each public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at a meeting.

(8) Public bodies shall make available at the meeting or the instate location for virtual conferencing as required by subdivision (6)(c) of this section, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting, either in paper or electronic form. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source: Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB962, § 1; Laws 2021, LB83, § 13.

Annotations

- To preserve an objection that a public body failed to make documents available at a public meeting as required by subsection (8) of this section, a person who attends a public meeting must not only object to the violation, but must make that objection to the public body or to a member of the public body. *Stoetzel & Sons v. City of Hastings*, 265 Neb. 637, 658 N.W.2d 636 (2003).

84-1413. Meetings; minutes; roll call vote; secret ballot; when; agenda and minutes; required on website; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written or kept as an electronic record and shall be available for inspection within ten working days or prior to the next convened meeting, whichever occurs

earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing or keeping the minutes is absent due to a serious illness or emergency.

(6) Beginning July 31, 2022, the governing body of a natural resources district, the city council of a city of the metropolitan class, the city council of a city of the primary class, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public website the agenda and minutes of any meeting of the governing body. The agenda shall be placed on the website at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the website at such time as the minutes are available for inspection as provided in subsection (5) of this section. This information shall be available on the public website for at least six months.

Source: Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3; Laws 2015, LB365, § 2; Laws 2016, LB876, § 1; Laws 2021, LB83, § 14; Laws 2022, LB742, § 2.

Effective Date: July 21, 2022

Annotations

- If a person present at a meeting observes and fails to object to an alleged public meetings laws violation in the form of a failure to conduct rollcall votes before taking actions on questions or motions pending, that person waives his or her right to object at a later date. *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 944, 653 N.W.2d 240 (2002).
- Subsection (2) of this section does not require the record to state that the vote was by roll call, but requires only that the record show if and how each member voted. Neither does the statute set a time limit for recording the results of a vote, after which no corrections of the record can be made. If no intervening rights of third persons have arisen, a board of county commissioners has power to correct the record of the proceedings had at a previous meeting so as to make them speak the truth, particularly where the correction supplies some omitted fact or action and is done not to contradict or change the original record but to have the record show that a certain action was taken or thing done, which the original record fails to show. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).
- Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943,

and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

- There is no requirement that a public body make a record of where notice was published or posted. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source: Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

Annotations

- The Legislature has granted standing to a broad scope of its citizens for the very limited purpose of challenging meetings allegedly in violation of the Open Meetings Act, so that they may help police the public policy embodied by the act. *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010).

- Any citizen of the state may commence an action to declare a public body's action void. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).
- The reading of ordinances constitutes a formal action under subsection (1) of this section. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).
- If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- Under the Public Meetings Act, a county lacks capacity to maintain an action to declare its official conduct "void" for noncompliance with the act. *County of York v. Johnson*, 230 Neb. 403, 432 N.W.2d 215 (1988).
- When a petitioner under this section is successful in the district court, that court may allow attorney fees. *Tracy Corp. II v. Nebraska Pub. Serv. Comm.*, 218 Neb. 900, 360 N.W.2d 485 (1984).
- Informal discussions between the Tax Commissioner and the State Board of Equalization in which instructions were clarified, with such clarification leading to the amendment of hearing notices, did not constitute a public meeting subject to the provisions of this section. *Box Butte County v. State Board of Equalization and Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).
- The right to collaterally attack an order made in contravention of the Public Meeting Act must occur within a period of one year as is specifically provided by this section. *Witt v. School District No. 70*, 202 Neb. 63, 273 N.W.2d 669 (1979).
- Statutory change, requiring "publicized notice" for board of education employment hearings, occurring between dates meeting scheduled and conducted, held not to void proceedings. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).
- Voiding an entire meeting is a proper remedy for violations of the Open Meetings Act. Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- Actions by the board of directors were merely voidable under this section, and not void. Pursuant to subsection (3) of this section, the plaintiffs were awarded partial attorney fees because they were successful in having the court declare that the board of directors was in substantial violation of the statute, even though the plaintiffs did not get the relief requested of having the board's actions declared void. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

--

Source: http://nebraskalegislature.gov/laws/display_html.php?begin_section=84-1407&end_section=84-1414

Date: July 2022

2. Columbus South Bridges Project temporary easement acquisition and authorization for mayor to sign all related documents.

The City of **Columbus**

MEMORANDUM

DATE: October 4, 2023
FROM: Richard J. Bogus, P.E.
TO: Tara Vasicek, City Administrator
RE: Columbus South Bridges Temporary Easement Acquisition

RECOMMENDATION:

Recommend the approval of the Columbus South Bridges project temporary easement acquisition and authorization for mayor to sign the acquisition contract, payment/allocation voucher, and affidavit of authority.

DISCUSSION:

The Nebraska Department of Transportation is reconstructing the US Hwy 81/30 Loup River bridges and is in need of a temporary easement in Pawnee Park to construct the project. The compensation also includes removal and resetting of the City's jersey barriers located on the west side of the highway underpass.

The NDOT property acquisition package and materials follow the federal Uniform Act. The appraisal appears to be fair compensation.

FISCAL IMPACT:

Compensation of \$9,340.00

ALTERNATIVE:

None.

SIGNATURE:

By: Richard J. Bogus

Approved By: [Signature]

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

August 30, 2023



Jim Pillory, Governor

City of Columbus, Platte County, Nebraska
Attn: Rick Bogus
PO Box 1677
Columbus, NE 68602

Re: Project Number: 30-(131)
Tract Number: 1
Control Number: 31983
Project Location: Columbus So. Bridges

The State of Nebraska, Department of Transportation is planning to improve a portion of Highway 81 in Platte County. We need to acquire additional land to construct this improvement. In your case, we need temporary easement and improvement(s), if any, in land you own located in all that part of Lots 1 & 2, also known as the W 1/2 NE 1/4 and all accretions in Section 25, Township 17 North, Range 1 West of the 6th P.M Platte County, Nebraska.

Enclosed are the contracts and other documents that comprise our just compensation offer in the amount of \$9,340.00. Also included is the appraisal used as the basis for the offer, a plan sheet showing the affected areas of your property, a brochure explaining our policies and your rights and a civil rights survey.

Please look over this material and call me to discuss any questions or concerns you may have regarding this matter. My toll free number is 1-800-764-0422. If you wish I will be more than happy to meet with you personally to discuss our proposal.

If you are satisfied with our offer, please do the following:

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

Please sign all documents in blue ink.

1. **Sign, before a notary public**, one contract.
(Spouses need to sign, even if not shown as a recorded owner.)
2. **Sign, before a notary public**, the deed(s), if provided.
3. **Sign and fill out** the W-9, Request for Taxpayer Identification and Certification form;
 - a. If you are the sole owner (single or spouses), you need only one W-9.
 - b. If multiple owners, then you and each owner/couple need to fill out and sign a separate W-9 form, even if you are receiving none of the proceeds.
4. **Sign and fill out the Payment/Allocation Voucher** form; each owner/couple needs to list themselves and the other owners and designate how the total amount will be divided. *This is only for IRS accounting purposes. We will issue one check with all names on it, except we are required to make an electronic deposit when the consideration is over \$25,000. If there are multiple owners and/or parties (mortgage, etc.) and an electronic deposit is necessary, we will be required to hire a title company to handle the payment.*
5. **If a corporation or LLC**, please complete, sign and notarize the Affidavit.
6. **Return** the executed documents in the enclosed postage paid return envelope and also;
 - c. COMPLETE & INCLUDE the Request for Tenant Information form, if provided.
 - d. INCLUDE for reimbursement, a paid receipt for notary services, if charged.

You will usually receive payment within four to six weeks after we have received the properly executed documents. If we need a release of mortgage or deed of trust it will depend on how quickly the company owning the debt instrument takes to process our request.

We appreciate your cooperation and patience in helping us complete this project that will provide safer driving conditions for the traveling public.

Sincerely,

Brian Flowerday
Right of Way Division
cc: File

- Project Summary -

Columbus So. Bridges

Control Number: 31983 Project Number: NH-30-5(131)

County: Platte NDOT District: 3

Proposed Start Construction Date: 9/23/2024*

Proposed End Construction Date: 8/31/2027*

**These dates are subject to change*

LOCATION:

This project involves three bridges on US Highway 30 (US-30) in Platte County. Two of the bridges (S030 37773L and S030 37773R) span the Loup River at mile marker (MM) 377.73 located approximately 0.42 miles north of the south junction of US-30 and US Highway 81 (US-81), and the third bridge (S030 37787) is the subway bridge (underpass) over Pawnee Park Drive at MM 377.87 approximately 0.02 miles north of the south corporate limits of City of Columbus (City). This project includes the length of the bridge and approximately 2000 feet beyond both ends of the bridge

SCOPE OF WORK:

The improvements on this project consist of bridge repairs and bridge replacement. The existing roadway on this segment of US-30 generally consists of four, 12-foot-wide asphalt lanes divided by a 16-foot-wide raised concrete median, curbed 26-foot-wide back-to-back in both directions. The southbound segment at the beginning of the project south of the Loup River has a 10-foot-wide outside shoulder, of which 8 feet are paved with asphalt.

ACCOMMODATION OF TRAFFIC:

Grading beyond the hinge point would be required at spot locations.

The southbound bridge over the Loup River (S030 37773L) would be replaced with a new bridge. A grade raise of the entire structure is anticipated. Work would be required in the waterway. A shared use path would be included on the west side. Guardrail would be replaced.

The deck on the northbound bridge over the Loup River (S030 37773R) would be repaired. The bridge rail would be repaired. A grade raise of the entire structure is not anticipated. Work would not be required in the waterway. Guardrail would be replaced.

The southbound portion of the subway bridge over Pawnee Park Drive (S030 37787) would be replaced with a new box culvert. A grade raise of the entire structure is not anticipated. Work would be not required in the waterway. Guardrail would be replaced.

This project would be constructed under traffic with lane closures controlled by appropriate traffic control devices and practices.

Additional property rights would be required to build this project.

Access to adjacent properties would be maintained during construction but may be limited at times due to phasing requirements.

RIGHT-OF-WAY ACQUISITION

NEBRASKA DEPARTMENT OF TRANSPORTATION

As our state, cities, and towns grow, changes to the transportation system are needed to support that growth.

Sometimes, as a part of making those improvements, it is necessary to acquire private property.

This process is called right-of-way acquisition and the citizens of the State of Nebraska, through their Legislature, have given the Agency statutory permission to acquire private property for this purpose. It involves a transfer of the property from the owner to the state in exchange for just compensation.

We understand that this can be a difficult and inconvenient process, however, right-of-way acquisition is a necessary event in the normal course of progress. This document serves as a guide to help you understand the process and know your rights.



FOR MORE INFORMATION:
NDOT Right of Way Division
P.O. Box 94759
Lincoln, NE 68509-4759
402-479-4761



NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

THE ACQUISITION PROCESS



IDENTIFY NEED

The Agency determines that there is a need to improve the transportation system, using a combination of long- and short-term planning, data analysis, and stakeholder and public engagement.



PROJECT DEVELOPMENT

Next, the Agency develops a project to address that need. During that process, the Agency sometimes identifies that the acquisition of private property will be required for the project's construction.

ACQUISITION PROCESS TRIGGERED



OFFER

Next, as an owner you will be contacted by a right-of-way agent, who will make a written offer for the property.

Appraisals are made for the mutual benefit of property owners and the Agency. It is the responsibility of the landowner to notify the Agency of any value added matters or any possible loss due to damage that may have been overlooked in the appraisal.

The Agency will provide you a reasonable amount of time to consider the offer and to ask questions.



VALUATION

After the acquisition process has been triggered, the **fair market value** of the subject property is determined.

Real property will be appraised before the initiation of negotiations. Landowners will be given the opportunity to accompany the appraiser during inspection if the acquisition is valued at \$10,000 or more.

The Agency will establish the just compensation that will be offered for your property.



PAYMENT

Once documents are executed and delivered, payment is furnished to you by mail or by electronic transfer. At that time, the Agency takes possession of the property.



RELOCATION ASSISTANCE

If you need to move because your home has been acquired, or if you must relocate your business or farm operation, relocation assistance will be provided.

For more information, please review the Relocation Assistance brochure.

IF AN AGREEMENT CANNOT BE REACHED

If an agreement between the landowner and the Agency cannot be reached, the Agency will begin formal condemnation (eminent domain) proceedings on the property. Condemnation is a means to settle honest disagreements, protecting both you and the Agency during the process. In this action, the County Court appoints three local property owners as a Board of Appraisers. This board examines the arguments on both sides, then issues a formal report of its finding of the property's value. This report sets the condemnation award and once the award is deposited in the courts, the Agency takes possession of the property. If you or the Agency disagree with the Board of Appraisers' award amount, either may appeal to the District Court for further consideration.



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

OWNERS COPY

APPRAISAL REVIEW REPORT

Date: July 11, 2023

To: Tom Weber – Chief Negotiator

From: Greg Heinzmann – Review Appraiser

Subject: Project #: 30-5(131) Control #: 31983
 Project Name: Columbus South Bridges
 Tract: 1
 Owner: City of Columbus, Platte County, Nebraska

The appraisal report submitted by Mary Kusuma for this tract has been reviewed and is approved when used with this review.

This review is two-part; part one is a "desk review" of the appraiser's report. The reviewer examined the report for mathematical errors, correct ownerships, basic assumptions and completeness. Part two is a field review of the property. The reviewer visually inspected the property and area affected by the acquisition, consulted the right-of-way plans, analyzed the general neighborhood data and verified county records when and if needed.

This report meets or exceeds the minimum requirement of the Nebraska Department of Roads Right of Way Manual.

The total compensation has been approved and restated as follows:

Owner's Compensation

1.52ac temporary easement, called	\$2,280.00	APPR
0.53ac temporary easement, called	\$4,770.00	APPR
0.11ac temporary easement, called	\$990.00	APPR
Jersey Barriers	\$1,300.00	APPR

Total Owner Compensation \$9,340.00

Total Tract Compensation \$9,340.00

Total Lessee Interest \$0.00

ROW Appraisal Checklist

Required Documentation	
Topic	Review Response
Effective date of valuation	Yes
Date of appraisal or estimate	Yes
Scope of work	
Project number	
Tract number	
Identification of property (address, legal description)	Yes
Recorded ownership (tenant info if available)	
3-year sale analysis of subject	Yes
Physical characteristics of property	Yes
Present use	Yes
Highest & best use	Yes
Proper valuation methods used	Yes
Determination of value and basis therefore	Yes
Valuation process logical & reasonable	Yes
Is the valuation report clear & does it guide and direct the reader?	Yes
Leasehold interests	
Description, location and area of acquisition	Yes
Statement of value of property being acquired broken down as to land and improvements	Yes
Photos of part acquired	
Data supporting land & improvement value and "cost to cure" items	Yes
Certification fulfills minimum requirements	
A log of contacts and inspections	
Sales verified with principal	N/A
Date of sale	Yes
Names of grantees and grantors	Yes
Legal description/address of comparable	Yes
Area / Size	Yes
Types of improvements	Yes
Sale Price	Yes
Motive of buyer and/or seller	N/A
Conditions/terms of sale	N/A
Photographs of significant features	N/A
Deed recording information	N/A
Prior sales of comparable within one year	N/A

CERTIFICATE OF REVIEW APPRAISER

**This opinion of value may not meet minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act.
[In accordance with Neb. Rev. Stat. Section 76-2221(1)]**

This opinion of value conforms to the requirements of Federal law (42 USC 4601 – 4655), Federal Rules and Regulations (49, CFR, Part 24 as amended) and the Nebraska Department of Transportation Right of Way Manual as approved by the Federal Highway.

I certify that, to the best of my knowledge and belief:

- The statements of fact reported contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of the work under review and no personal interest with respect to the parties involved or in any benefits from the acquisition of subject property appraised.
- That I understand that such estimate is to be used in connection with the acquisition of new property rights for a highway, road, street or other transportation project to be constructed by the State of Nebraska or by the State on behalf of a local public agency (LPA) with the assistance of Federal-aid highway funds, or other Federal Funds.
- That I have not revealed the findings and results of such estimate to anyone other than the proper officials of the acquiring agency or officials of the Federal Highway Administration, and will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.
- My determination of compensation has been reached independently based on the evaluation and other factual data of record without collaboration or direction.
- My determination of total compensation includes only items compensable under State law. The total compensation does not include items ineligible for Federal reimbursement except: None
- I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.
- I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favor the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this review.
- My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the appropriate State laws, regulations and policies and procedures applicable to review of acquisition for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.
- I have made a personal inspection of the property that is the subject of this report. I have made a personal inspection of the comparable sales relied upon in making said report. The subject and the comparable sales relied upon in making said estimate were as represented by the photographs contained in said report.
- No one provided significant evaluation, review, or consulting assistance to the person signing this certification.

My Review determination of the subject property is \$9,340.00 as of 06/14/2023.

Lessee Interest: \$0.00

July 11, 2023

Date



Greg Heinzmann

Salaried Review Appraiser for NDOT

WAIVER VALUATION

Project Name: Columbus South Bridges

Project Number: 30-5(131)

Control Number: 31983

Tract Number: 1

**City of Columbus, Platte County, Nebraska
County**

**Nebraska Department of Transportation
Right of Way Division**

Date Signed

06/26/2023

Mary Kusuma

Salaried Staff Appraiser

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

CERTIFICATE OF APPRAISER

This opinion of value may not meet minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act.

[In accordance with Neb. Rev. Stat. Section 76-2221(1)]

This Waiver Valuation is prepared under a waiver of appraisal provision authorized by Federal Highway Administration regulations, 49 CFR 24.102(C) (2). This opinion of value conforms to the requirements of Federal law (42 USC 4601 – 4655), Federal Rules and Regulations (49, CFR, Part 24 as amended) and the Nebraska Department of Transportation Right of Way Manual as approved by the Federal Highway.

I certify that, to the best of my knowledge and belief:

- The statements of fact reported in this report are true and correct.
 - The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
 - I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
 - That I understand that such estimate is to be used in connection with the acquisition of new property rights for a highway, road, street or other transportation project to be constructed by the State of Nebraska or by the State on behalf of a local public agency (LPA) with the assistance of Federal-aid highway funds, or other Federal Funds.
 - That I have not revealed the findings and results of such estimate to anyone other than the proper officials of the acquiring agency or officials of the Federal Highway Administration, and will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.
 - My determination of compensation has been reached independently based on the evaluation and other factual data of record without collaboration or direction.
 - I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
 - I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
 - My engagement in this assignment was not contingent upon developing or reporting predetermined results.
 - My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this report or from its use.
 - My compensation for completing this assignment is not contingent upon the development or reporting of predetermined value or direction of value that favor the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this report.
 - My analyses, opinions, and conclusions were developed and this report was prepared in conformity with the appropriate State laws, regulations and policies and procedures applicable to valuation of acquisition for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.
 - I have made a personal inspection of the property that is the subject of this report. I have made a personal inspection of the comparable sales relied upon in making said report. The subject and the comparable sales relied upon in making said estimate were as represented by the photographs contained in said report.
- No one provided significant real property valuation assistance to the person signing this certification.

My opinion of fair market value of acquisition as of 06/14/2023 is \$9,340.00 based on my independent estimates and the exercise of my professional judgment.

Lessee Interest: \$0.00

06/26/2023

Date



Mary Kusuma
Salaried Appraiser for NDOT

SALIENT FACTS

Owner:	City of Columbus, Platte County, Nebraska
Legal Description:	all that part of Lots 1 & 2, also known as the W 1/2 NE 1/4 and all accretions in Section 25, Township 17 North, Range 1 West of the 6th P.M., Platte County, Nebraska,
Address/Location:	Highway 81 Columbus, Platte County Nebraska
Client:	Nebraska Department of Transportation, Right of Way Division
Purpose of the Estimate:	To estimate just compensation applicable under the laws of the State of Nebraska.
Function of the Estimate:	To provide the State of Nebraska Department of Transportation with a basis of negotiations for real property acquisition.
Rights being acquired:	Temporary Easement
Current Use:	Agricultural
Highest & Best Use:	Agricultural
Effective Date of Appraisal:	06/14/2023
Three-year sales history:	The subject property has not sold in the three years prior to the effective date of this report
Property Description:	
Zoning:	R-1 Single Family Residential District
Utilities:	Typical for the area
Site Size:	87.28 acres
Dimensions:	Irregular
Topography:	Gently sloping to flat
Soil Conditions:	Assumed sufficient for the current highest and best use
Dates of Inspection:	06/14/2023

VALUATION

Estimate of site value:

The subject property is an irregularly shaped parcel located on the west side of NE-Highway 81 in Columbus, NE. It is an improved property and encompasses approximately 84.28 acres of large commercial land and approximately 3 acres of river. Currently, it is being used as a special use area, designated as a city of Columbus Park. According to the FEMA National Flood Hazard map, this property is situated in an "Area with reduced flood risk due to levee" with reference number 3141C0340E, effective as of April 19, 2010. The subject tract is zoned as R1, which designates it as a single-family residential district. The surrounding area consists of a mix of commercial, industrial, recreational, and agricultural uses. After conducting a thorough analysis of the four tests of highest and best use, the appraiser has concluded that the present use of the subject tract as large commercial land is the most suitable.

The market was determined to be Platte County. Official records were examined from the Platte County Assessors and Register of Deed Offices revealed a limited large commercial land and river market in Platte County. The appraiser researched large commercial land and river sales over the past two years and discovered several potential comparable sales. The comparable sales used within this report are felt to be reliable indicators of the current market value and were the best available as of the date of this report.

<u>Grantee</u>	<u>Grantor</u>	<u>Book/ Page</u>	<u>Date</u>	<u>Coomercial land Acres</u>	<u>Sale Price</u>	<u>\$/Acres</u>
Meadow Ridge Properties LLC	DGMJ LLC	248/376	05/12/2021	30.26	\$910,000	\$27,065
Under Contract	Micek	Under Contract	-	36.82	\$2,849,200	\$50,298
Listing	Thiele	Listing	-	28.32	\$1,160,000	\$26,624

The real estate analysis provided a value range of \$26,624 to \$50,298 per acre for large commercial land. All sales were taken into consideration during the final assessment of value. Given that the subject tract is a larger commercial land size and located in a flood zone, greater emphasis was placed on the lower end of the value range. Based on the appraiser's opinion, the value for large commercial land in the project area is **\$30,000 per acre**, while the value for the river area is **\$5,000 per acre**.

84.27 acres Commercial @ \$30,000.00/acres =	\$2,528,100.00
3.00 acres River @ \$5,000.00/acres =	\$15,000.00

Estimate of improvement value:
Improvements Not Affected.

DESCRIPTION AND AFFECT OF ACQUISITIONS

Additional Consideration to the appraisal: In the opinion of the appraiser, the property will suffer no additional damages (other than the ones listed below) as a result of this acquisition.

The City of Columbus, as the tract owner, has agreed to move the jersey barriers located approximately at Sta. 416+57 Lt. during the construction process. They will be responsible for relocating these barriers and ensuring their proper placement once the construction is finished.

During the meeting with ROW designers and engineering consultants for this project, it was determined that the south trail will be closed while the north trail will remain open. Therefore, the items located at the entrance of the north trail, such as signs, bollards, and trash cans, will not be disturbed during this project.

Right of Way

No new Right of Way is being acquired

Permanent Easement

No new permanent easements are being acquired

Temporary Easement

TE1

An irregularly shaped piece of Temporary Easement for access purposes will be acquired from this tract. It is situated on the west side of NE Highway 81, southeast of the property on Loup River, and encompasses 1.52 acres. The acquisition of this parcel will not negatively impact the value of the remaining land.

TE2

An irregularly shaped piece of Temporary Easement for construction purposes will be acquired from this tract. It is situated on the west side of NE Highway 81, east of the property, and encompasses 0.53 acres. The acquisition of this parcel will not negatively impact the value of the remaining land.

TE3

An irregularly shaped piece of Temporary Easement for culvert purposes will be acquired from this tract. It is situated on the west side of NE Highway 81, east of the property, and encompasses 0.11 acres. The acquisition of this parcel will not negatively impact the value of the remaining land.

TE1	1.52ac	River	\$5,000.00/ac	10.00%	3.00yr	\$2,280.00
TE2	0.53ac	Commercial	\$30,000.00/ac	10.00%	3.00yr	\$4,770.00
TE3	0.11ac	Commercial	\$30,000.00/ac	10.00%	3.00yr	\$990.00

Access Control

No new control of access is being acquired

Improvements

The improvements on this tract are not affected and are not valued on this assignment.

Damages

There are Jersey barriers located on the east side of the property that will be included in the new temporary easement. To estimate the cost of moving and replacing these barriers, the appraiser used the NDOT Commercial Moving Rate Schedule.

For the Jersey Barrier:

- Two workers will be needed, costing \$30.00 per hour per worker, for a total of two hours to move and two hours to replace the items, which amounts to \$240.00.
- One vehicle will be used, costing \$30.00 per hour for a total of four hours, resulting in a cost of \$120.00.

According to the CAT rental store's online equipment rental, the daily rate for Jersey barriers is \$460.00. Since the barriers will be needed for 2 days, the total rental cost comes to \$920.00.

Therefore, the total cost to move these Jersey barriers is \$1,280.00, which is rounded up to \$1,300.00. Hence, the total cost to move and replace the barriers is \$1,300.00.

Jersey Barriers	\$1,300.00
-----------------	------------

SUMMARY OF ACQUISITIONS & DAMAGES

Temporary Easements	\$8,040.00
Damages	\$1,300.00
TOTAL COMPENSATION	\$9,340.00

ADDENDUM



Aerial view



TE 1 looking south



TE 2 looking west



TE2 looking east



TE 2 & TE 3 looking north



TE 3 Looking east



TE 2 & TE 3 looking northeast

ORIGINAL

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

ACQUISITION CONTRACT

Copies to:

1. Right of Way Division, NDOT
2. Owner (NDOT Approved)
3. Owner
4. District

Project No.: **30-5(131)**
Project Name: **Columbus South Bridges**
Control No.: **31983**
Tract No.: **1**

THIS CONTRACT, made and entered into this _____ day of _____, 20_____
by and between **City of Columbus, Platte County, Nebraska**,
Address: **PO Box 1677, Columbus, NE 68602**, hereinafter called the OWNER, and the Nebraska
Department of Transportation, hereinafter called the STATE.

TEMPORARY EASEMENT

WITNESSETH: In consideration of the payment or payments as specified below, the OWNER hereby grants to the STATE a Temporary Easement to certain real estate described as follows:

A TEMPORARY EASEMENT TO A TRACT OF LAND FOR ACCESS PURPOSES, LOCATED IN SECTION 25, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PLATTE COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE N01°49'53"W ON AN ASSUMED BEARING A DISTANCE OF 2201.20 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE N64°59'52"W A DISTANCE OF 55.35 FEET TO A POINT ON THE NORTHEASTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE TO THE POINT OF BEGINNING; THENCE N64°59'52"W A DISTANCE OF 70.60 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N83°14'52"W A DISTANCE OF 11.41 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N01°37'34"W A DISTANCE OF 838.62 FEET; THENCE N79°26'33"E A DISTANCE OF 80.07 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 884.37 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING 1.52 ACRES, MORE OR LESS.

THE EASEMENT AREA(S) MAY BE USED FOR THE TEMPORARY RELOCATION OF UTILITIES DURING THE CONSTRUCTION OF THE PROJECT. UPON COMPLETION AND ACCEPTANCE OF PROJECT 30-5(131), ALL RIGHTS, INTEREST AND USE OF THE ABOVE DESCRIBED TEMPORARY EASEMENT AREA(S) SHALL BE RETURNED TO THE GRANTOR(S) AND TO ITS SUCCESSORS AND ASSIGNS WITH THE AFORESAID CHANGES COMPLETED.

A TEMPORARY EASEMENT TO A TRACT OF LAND FOR CONSTRUCTION PURPOSES, LOCATED IN SECTION 25, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PLATTE COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE N01°49'53"W ON AN ASSUMED BEARING A DISTANCE OF 3116.89 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE S79°26'33"W A DISTANCE OF 42.00 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE TO THE POINT OF BEGINNING; THENCE S79°26'33"W A DISTANCE OF 244.80 FEET; THENCE N88°06'15"W A DISTANCE OF 112.17 FEET; THENCE N01°49'53"W A DISTANCE OF 35.23 FEET; THENCE N77°11'19"E A DISTANCE OF 258.43 FEET;

Project No.: **30-5(131)**
Project Name: **Columbus South Bridges**
CN: **31983**
Tract No.: **1**
Page: **1**

THENCE N47°59'29"E A DISTANCE OF 37.15 FEET; THENCE N88°10'07"E A DISTANCE OF 62.51 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 36.49 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N88°40'43"E A DISTANCE OF 10.00 FEET ALONG SAID RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 41.99 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING 0.53 ACRES, MORE OR LESS.

THE EASEMENT AREA(S) MAY BE USED FOR THE TEMPORARY RELOCATION OF UTILITIES DURING THE CONSTRUCTION OF THE PROJECT. UPON COMPLETION AND ACCEPTANCE OF PROJECT 30-5(131), ALL RIGHTS, INTEREST AND USE OF THE ABOVE DESCRIBED TEMPORARY EASEMENT AREA(S) SHALL BE RETURNED TO THE GRANTOR(S) AND TO ITS SUCCESSORS AND ASSIGNS WITH THE AFORESAID CHANGES COMPLETED.

A TEMPORARY EASEMENT TO A TRACT OF LAND FOR CULVERT CONSTRUCTION PURPOSES, LOCATED IN SECTION 25, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PLATTE COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE N01°49'53"W ON AN ASSUMED BEARING A DISTANCE OF 3189.09 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE S88°10'07"W A DISTANCE OF 50.82 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE TO THE POINT OF BEGINNING; THENCE S88°10'07"W A DISTANCE OF 62.51 FEET; THENCE N47°59'29"E A DISTANCE OF 31.82 FEET; THENCE N04°00'38"W A DISTANCE OF 91.41 FEET; THENCE N88°10'07"E A DISTANCE OF 42.67 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 111.88 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING 0.11 ACRES, MORE OR LESS.

THE EASEMENT AREA(S) MAY BE USED FOR THE TEMPORARY RELOCATION OF UTILITIES DURING THE CONSTRUCTION OF THE PROJECT. UPON COMPLETION AND ACCEPTANCE OF PROJECT 30-5(131), ALL RIGHTS, INTEREST AND USE OF THE ABOVE DESCRIBED TEMPORARY EASEMENT AREA(S) SHALL BE RETURNED TO THE GRANTOR(S) AND TO ITS SUCCESSORS AND ASSIGNS WITH THE AFORESAID CHANGES COMPLETED.

The STATE agrees to purchase the above described Right of Way and/or Easement(s) and to pay, therefore, upon the delivery of said executed Deed and/or Easement(s). If the OWNER so desires, he/she shall have the right to receive 100% of the final payments due under this contract prior to vacating the premises being acquired.

1.52ac Temporary Easement	\$2,280.00
0.53ac Temporary Easement	\$4,770.00
0.11ac Temporary Easement	\$990.00
Jersey Barriers	\$1,300.00
TOTAL	\$9,340.00

It is agreed and understood that the STATE is hereby granted an immediate right of entry upon the premises described above.

Any fence constructed, reconstructed or moved by Owner/Tenant pursuant to this acquisition must be placed outside of the limits of State property. It is expressly agreed that any fence erected along the new

property line by Owner/Tenant will be owned by the property owner and will not be a "division fence" as that phrase is used under Nebraska law.

The above payments shall cover all damages caused by the establishment and construction of the above project except for CROP DAMAGE, if any, which will be paid for in an amount based on the yield from the balance of the field less expenses of marketing and harvesting. CROP DAMAGE shall mean damage to such crops as are required to be planted annually and which were planted at the time of the signing of this contract and which are actually damaged due to construction of this project, but in no case shall damages be paid for more than one year's crop. The OWNER agrees to make a reasonable attempt to harvest any crop so as to mitigate the crop damage.

If any other party shall hold any encumbrance against the aforementioned property at the time of delivery of the aforementioned property, such payments as are due under this contract shall be made to the OWNER jointly with the party or parties holding such encumbrance, unless said party or parties holding such encumbrance shall have in writing waived his/her right to receive such payment.

Expenses for partial release of mortgages will be paid by the STATE, if required.

This contract shall be binding on both parties as soon as it is executed by both parties, but should none of the above real estate be required, this contract shall terminate upon the payment of \$10.00 by the STATE to the OWNER.

This contract may be executed in more than one copy, each copy of which, however, shall serve as an original for all purposes, but all copies shall constitute but one and the same contract.

REMARKS

THIS IS A LEGAL AND BINDING CONTRACT - READ IT.

The representative of the STATE, in presenting this contract has given me a copy and explained all its provisions. A complete understanding and explanation has been given of the terminology, phrases, and statements contained in this contract. It is understood that no promises, verbal agreements or understanding, except as set forth in this contract, will be honored by the STATE.

Duly executed this ____ day of _____, A.D. 20 ____.

City of Columbus, Platte County, Nebraska

by

Authorized Officer or Agent

Print name of Authorized Officer or Agent and Title

STATE OF _____)

COUNTY OF _____)

)ss.

The foregoing instrument was acknowledged before me this ____ day of _____, A.D., 20____, by _____,

(Printed Name of Individual who appeared before Notary)

_____, of City of Columbus, Platte County, Nebraska, on behalf of the city.
(Title of officer or agent)

Notary Public

[]

NOTARY STAMP HERE

[]

Project No.: 30-5(131)
Project Name: Columbus South Bridges
CN: 31983
Tract No.: 1



STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

By _____
Brendon Schmidt - Right of Way Manager

Date _____

Project No.: 30-5(131)
Project Name: Columbus South Bridges
CN: 31983
Tract No.: 1



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

ACQUISITION CONTRACT

Copies to:

- 1. Right of Way Division, NDOT
- 2. Owner (NDOT Approved)
- 3. Owner
- 4. District

Project No.: **30-5(131)**
 Project Name: **Columbus South Bridges**
 Control No.: **31983**
 Tract No.: **1**

THIS CONTRACT, made and entered into this _____ day of _____, 20 _____
 by and between **City of Columbus, Platte County, Nebraska**,
 Address: **PO Box 1677, Columbus, NE 68602**, hereinafter called the OWNER, and the Nebraska
 Department of Transportation, hereinafter called the STATE.

TEMPORARY EASEMENT

WITNESSETH: In consideration of the payment or payments as specified below, the OWNER hereby grants to the STATE a Temporary Easement to certain real estate described as follows:

A TEMPORARY EASEMENT TO A TRACT OF LAND FOR ACCESS PURPOSES, LOCATED IN SECTION 25, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PLATTE COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE N01°49'53"W ON AN ASSUMED BEARING A DISTANCE OF 2201.20 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE N64°59'52"W A DISTANCE OF 55.35 FEET TO A POINT ON THE NORTHEASTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE TO THE POINT OF BEGINNING; THENCE N64°59'52"W A DISTANCE OF 70.60 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N83°14'52"W A DISTANCE OF 11.41 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N01°37'34"W A DISTANCE OF 838.62 FEET; THENCE N79°26'33"E A DISTANCE OF 80.07 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 884.37 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING 1.52 ACRES, MORE OR LESS.

THE EASEMENT AREA(S) MAY BE USED FOR THE TEMPORARY RELOCATION OF UTILITIES DURING THE CONSTRUCTION OF THE PROJECT. UPON COMPLETION AND ACCEPTANCE OF PROJECT 30-5(131), ALL RIGHTS, INTEREST AND USE OF THE ABOVE DESCRIBED TEMPORARY EASEMENT AREA(S) SHALL BE RETURNED TO THE GRANTOR(S) AND TO ITS SUCCESSORS AND ASSIGNS WITH THE AFORESAID CHANGES COMPLETED.

A TEMPORARY EASEMENT TO A TRACT OF LAND FOR CONSTRUCTION PURPOSES, LOCATED IN SECTION 25, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PLATTE COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE N01°49'53"W ON AN ASSUMED BEARING A DISTANCE OF 3116.89 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE S79°26'33"W A DISTANCE OF 42.00 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE TO THE POINT OF BEGINNING; THENCE S79°26'33"W A DISTANCE OF 244.80 FEET; THENCE N88°06'15"W A DISTANCE OF 112.17 FEET; THENCE N01°49'53"W A DISTANCE OF 35.23 FEET; THENCE N77°11'19"E A DISTANCE OF 258.43 FEET;

THENCE N47°59'29"E A DISTANCE OF 37.15 FEET; THENCE N88°10'07"E A DISTANCE OF 62.51 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 36.49 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N88°40'43"E A DISTANCE OF 10.00 FEET ALONG SAID RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 41.99 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING 0.53 ACRES, MORE OR LESS.

THE EASEMENT AREA(S) MAY BE USED FOR THE TEMPORARY RELOCATION OF UTILITIES DURING THE CONSTRUCTION OF THE PROJECT. UPON COMPLETION AND ACCEPTANCE OF PROJECT 30-5(131), ALL RIGHTS, INTEREST AND USE OF THE ABOVE DESCRIBED TEMPORARY EASEMENT AREA(S) SHALL BE RETURNED TO THE GRANTOR(S) AND TO ITS SUCCESSORS AND ASSIGNS WITH THE AFORESAID CHANGES COMPLETED.

A TEMPORARY EASEMENT TO A TRACT OF LAND FOR CULVERT CONSTRUCTION PURPOSES, LOCATED IN SECTION 25, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PLATTE COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE N01°49'53"W ON AN ASSUMED BEARING A DISTANCE OF 3189.09 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE S88°10'07"W A DISTANCE OF 50.82 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE TO THE POINT OF BEGINNING; THENCE S88°10'07"W A DISTANCE OF 62.51 FEET; THENCE N47°59'29"E A DISTANCE OF 31.82 FEET; THENCE N04°00'38"W A DISTANCE OF 91.41 FEET; THENCE N88°10'07"E A DISTANCE OF 42.67 FEET TO A POINT ON THE WESTERLY EXISTING HIGHWAY 81 RIGHT OF WAY LINE; THENCE S01°19'17"E A DISTANCE OF 111.88 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING 0.11 ACRES, MORE OR LESS.

THE EASEMENT AREA(S) MAY BE USED FOR THE TEMPORARY RELOCATION OF UTILITIES DURING THE CONSTRUCTION OF THE PROJECT. UPON COMPLETION AND ACCEPTANCE OF PROJECT 30-5(131), ALL RIGHTS, INTEREST AND USE OF THE ABOVE DESCRIBED TEMPORARY EASEMENT AREA(S) SHALL BE RETURNED TO THE GRANTOR(S) AND TO ITS SUCCESSORS AND ASSIGNS WITH THE AFORESAID CHANGES COMPLETED.

The STATE agrees to purchase the above described Right of Way and/or Easement(s) and to pay, therefore, upon the delivery of said executed Deed and/or Easement(s). If the OWNER so desires, he/she shall have the right to receive 100% of the final payments due under this contract prior to vacating the premises being acquired.

1.52ac Temporary Easement	\$2,280.00
0.53ac Temporary Easement	\$4,770.00
0.11ac Temporary Easement	\$990.00
Jersey Barriers	\$1,300.00
TOTAL	\$9,340.00

It is agreed and understood that the STATE is hereby granted an immediate right of entry upon the premises described above.

Any fence constructed, reconstructed or moved by Owner/Tenant pursuant to this acquisition must be placed outside of the limits of State property. It is expressly agreed that any fence erected along the new

property line by Owner/Tenant will be owned by the property owner and will not be a "division fence" as that phrase is used under Nebraska law.

The above payments shall cover all damages caused by the establishment and construction of the above project except for CROP DAMAGE, if any, which will be paid for in an amount based on the yield from the balance of the field less expenses of marketing and harvesting. CROP DAMAGE shall mean damage to such crops as are required to be planted annually and which were planted at the time of the signing of this contract and which are actually damaged due to construction of this project, but in no case shall damages be paid for more than one year's crop. The OWNER agrees to make a reasonable attempt to harvest any crop so as to mitigate the crop damage.

If any other party shall hold any encumbrance against the aforementioned property at the time of delivery of the aforementioned property, such payments as are due under this contract shall be made to the OWNER jointly with the party or parties holding such encumbrance, unless said party or parties holding such encumbrance shall have in writing waived his/her right to receive such payment.

Expenses for partial release of mortgages will be paid by the STATE, if required.

This contract shall be binding on both parties as soon as it is executed by both parties, but should none of the above real estate be required, this contract shall terminate upon the payment of \$10.00 by the STATE to the OWNER.

This contract may be executed in more than one copy, each copy of which, however, shall serve as an original for all purposes, but all copies shall constitute but one and the same contract.

REMARKS

THIS IS A LEGAL AND BINDING CONTRACT - READ IT.

The representative of the STATE, in presenting this contract has given me a copy and explained all its provisions. A complete understanding and explanation has been given of the terminology, phrases, and statements contained in this contract. It is understood that no promises, verbal agreements or understanding, except as set forth in this contract, will be honored by the STATE.

Duly executed this ____ day of _____, A.D. 20____.

City of Columbus, Platte County, Nebraska

by

Authorized Officer or Agent

_____ , _____

Print name of Authorized Officer or Agent and Title

STATE OF _____)

)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, A.D., 20____, by _____,

(Printed Name of Individual who appeared before Notary)

_____, of City of Columbus, Platte County, Nebraska, on behalf of the city.
(Title of officer or agent)

Notary Public

[_____]

NOTARY STAMP HERE

[_____]

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

By _____
Brendon Schmidt - Right of Way Manager

Date _____

Project No.: 30-5(131)
Project Name: Columbus South Bridges
CN: 31983
Tract No.: 1

STATE OF NEBRASKA - DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY DIVISION

REQUEST FOR TENANT, RENTER OR LESSEE INFORMATION

There is no agreement with a tenant, renter or lessee concerning this property.

There is an agreement with a tenant, renter or lessee concerning this property.

Tenant's Name: _____

Tenant's Address: _____

Tenant's Phone: home/work: _____

cell: _____

Lease Type: Verbal
 Written (Provide copy of written contract, if available.)

Term: Month to Month
 Year to Year
 Other Duration

Owner's Signature

Date



Nebraska Department of Transportation
PAYMENT/ALLOCATION VOUCHER

Originating OE:	NIS Number:
350	

Purchase from: **City of Columbus, Platte County, Nebraska**

DESCRIPTION OF PURCHASE AND/OR COMPENSATION:

1.52ac Temporary Easement	\$2,280.00
0.53ac Temporary Easement	\$4,770.00
0.11ac Temporary Easement	\$990.00
Jersey Barriers	\$1,300.00

Total: \$9,340.00

Gross proceeds shown above to be allocated as follows:

Below, please list each party to whom NDOT should issue separate checks for payment, their addresses, and the amount each should receive. Those "Allocated Amounts" must add up to the "Total" amount shown just above the "Allocated Amount" column. (PLEASE NOTE: each party receiving funds MUST complete and sign a W-9 form).

Name (Please print or type)	Address (Street or PO Box, City, State ZIP)	Allocated Amount
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

Seller(s) Certification: I hereby certify that the goods, services, or real property interests listed above are proper charges against the State of Nebraska and that payment has not been received or previously claimed. I further certify the allocation of proceeds shown above is correct. NOTE: ALL parties listed in the "Purchase From:" section at the top of this form MUST SIGN in the area below to confirm their agreement to this distribution of funds.



Owners'/Sellers'/Tenants' (Signatures)	Date

Signature of Authorized Department of Transportation Official

Date

Project No.: 30-5(131)
Project Name: Columbus South Bridges
Control No.: 31983
Tract No.: 1

STATE OF NEBRASKA W-9 & ACH ENROLLMENT FORM

PLEASE SUBMIT FORM TO INVOICED AGENCY

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following boxes:

Individual Sole proprietor C Corporation S Corporation Partnership Trust/Estate

Non-Profit Entity Government (Local, State or Federal)

Limited Liability Company. Enter the tax classification (C = C Corporation, S = S Corporation, P = Partnership) _____

Other (see instructions) _____

Note: Enter the owner's name on line 1 and mark the appropriate federal tax classification box for disregarded entities.

4 Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____

5 Address:

Remit Address (if different):

6 City, state, and ZIP code

City, state, and ZIP code

Taxpayer Identification Number (TIN):

Social Security Number (SSN): _____

OR

Employer Identification Number (EIN): _____

Certification:

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding due to failure to report interest and dividend income, and
3. I am a U.S. citizen or other U.S. person (defined in the instructions), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

For additional instructions please refer to <http://www.irs.gov/pub/irs-pdf/fw9.pdf> to obtain a copy of the IRS Form W-9 General Instructions.

Signature of US Person: _____ Date: _____

Printed Name: _____ Contact Phone: _____

Comments or Business/Entity Notes:

ACH Enrollment: (Rev. December 2014) Initial Setup Change Close Account

This information is REQUIRED to process ACH payments. Without this information, your payment may be delayed.

Financial Institution Name:	Nine Digit Routing Number:	Prior Routing Number: *	<input type="checkbox"/> Check here if the bank is outside of the United States.
Address:	Depositor Account Number:	Prior Account Number: *	<input type="checkbox"/> Check here if our payments to you are being forwarded from a U.S. financial institution to a financial institution in another country
City, state and ZIP code:	Type of Account: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	* Prior ACH instructions are required to be completed if changing/updating your ACH instructions with the State of Nebraska.	

This account will be used for all payments by the State of Nebraska unless specified here: _____

E-mail: _____

(Used for ACH payment notifications.)

Authorized Individual or Entity Signature:	Attachment Required! (Select and attach one of the following items for verification):
Printed Name:	<input type="checkbox"/> Blank check (voided) or <input type="checkbox"/> Photocopy of a cleared check
Title:	<input type="checkbox"/> Letter or statement from your financial institution
Date:	<input type="checkbox"/> Vendor invoice or letter which contains printed ACH instructions

Internal Use Only:

Project Number: 30-5(131) Control Number: 31983 Tract Number: 1

Nebraska Department of Transportation - Right of Way Division

Civil Rights Survey

The Federal Highway Administration (*FHWA*) works collaboratively with the Nebraska Department of Transportation (*NDOT*) to protect the rights of those impacted by transportation projects receiving Federal-aid by ensuring that applicable laws, regulations, and policies are being complied with. As stated under 23 CFR 200.9, NDOT has the responsibility to uphold the rules relating to the civil rights of impacted citizens and affected communities by highway construction projects.

23 CFR 200.9 b 4 is the reason for this survey and is written as follows:

Sec. 200.9 State highway agency responsibilities.

- (a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.
- (1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) **requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.**
- (b) State actions. (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
- (4) Develop procedures for the collection of statistical data (**race, color, religion, sex, and national origin**) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.

This Civil Rights Survey is intended to ensure that NDOT is collecting the statistical data needed to assure Federal Compliance. Answering these questions is **entirely voluntary**. You are requested to return this form to the NDOT, whether you choose to complete it or not.

Race/Color:

- White Hispanic/Latino Black American Indian/Alaskan Native
 Asian Native Hawaiian/Other Pacific Islander Multi-racial
 Other: _____

Religion: _____

Sex: Male Female

National Origin: _____

- 3. Amend city code regarding request to appeal dangerous dog designation to correct state statute reference, clarify that appeal fee is non-refundable, extend time frames for indigence determination and scheduling of appeal hearing, and amend terms for selection of appeal board.**



City Clerk's Office
(402) 562-4224
Email: cclerk@columbusne.us
www.columbusne.us

DATE: October 5, 2023
FROM: Janelle Kline, City Clerk
TO: Public Property, Safety, and Works Committee
RE: Proposed amendment to City Code regarding requests to appeal dangerous dog designation.

RECOMMENDATION:

I recommend the city code be amended to correct the reference to state statute, clarify that the appeal fee is non-refundable, extend the timeframe for city attorney to make a determination of indigence, permit the Chair of the Public Property, Safety, and Works Committee to select any three elected officials to serve as the Appeal Board, to designate the city administrator as an alternate member of the Appeal Board in the event that three elected officials are not available, and extend the timeframe for city clerk to schedule appeal hearing to no more than ten days (Saturdays, Sundays, and legal holidays excluded) from receipt of written request to appeal.

DISCUSSION:

Attached is a red-line copy of proposed amendments to the section of city code that relates to dangerous dogs and the appeal process. The current city code does not allow sufficient time for the city attorney to review applications for waivers of the appeal fee or for the city clerk to schedule an appeal hearing when there are conflicts with schedules and availability of meeting rooms. Allowing the Public Property Committee chair to choose any three elected officials or an alternate to serve on the Appeal Board will also help with scheduling conflicts.

SIGNATURE:

By: _____

Janelle Kline

Approved By: _____

[Signature]



§ 90.034 DANGEROUS DOGS; ADMINISTRATIVE REVIEW.

(A) No person shall own, keep, harbor or allow to be in or upon any premises occupied by that person or under that person's charge or control, any dangerous dog without said dog being confined and subject to all restrictions placed upon such dogs by the State as provided in Neb. RS 54- 617 through ~~564~~-624. Any City law enforcement officer or other authority designated by the Mayor and City Council is authorized to kill such dog if found acting in a threatening manner to the officer or the public.

(B) The owner of the dog declared to be a dangerous dog has the right to appeal such determination. The owner must file a written request with the City Clerk's office within 48 hours (Saturdays, Sundays and legal holidays excluded) of receiving actual notification of the declaration of the dog as dangerous. At the time of the request, said owner shall pay ~~an~~ a non-refundable appeal fee as set by resolution. The appeal fee may be waived if the request is made and accompanied by a sworn itemized declaration of the appellant dog owner demonstrating indigence. The City Attorney will review such request within ~~three~~ five days of the receipt of the request to determine indigence (Saturdays, Sundays, and legal holidays excluded) and report to the City Clerk prior to the scheduling of the hearing. "Indigence" is defined as the inability to pay the appeal cost without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Failure to request such a hearing within 48 hours or to appear at the appeal hearing as scheduled will result in the determination remaining in full force and effect. The Erna Badstieber Paws and Claws Adoption Center shall be entitled to request the appeal hearing without the appeal fee.

(C) The Appeal Board shall consist of a three-person committee chosen by the Chairperson of the Public Property, Safety and Works Committee and to consist of any three ~~City Council members~~ selected officials. The city administrator shall serve as an alternate member of the Appeal Board in the event that three elected officials are not available. Once a hearing request for an appeal hearing is received, a hearing before this Committee will be scheduled by the City Clerk for a date and time no later than five-ten days from the receipt of the written request from the dog owner (Saturdays, Sundays and legal holidays excluded) unless special accommodations are necessary. The hearing shall be limited to the victim, if available, along with the reporting form from the investigating law enforcement officer who has rendered a declaration of dangerous in accordance with this section and the defense offered by the owner. The decision of the Committee will be final. The owner may appeal the Committee's finding to the District Court of Platte County, Nebraska.

('63 Code, § 6-2-10) (Ord. 97-16, passed 8-4-97; Am. Ord. 13-12, passed 7-15-13; Am. Ord. 14-08, passed 8-4-14) Penalty, see § 90.999

4. Master plan for Centennial Park.



MEMORANDUM

DATE: October 4, 2023

FROM: Betsy Eckhardt, Park and Recreation Director

TO: Public Property, Safety, and Works Committee

RE: Centennial Park Master Plan

DISCUSSION: We currently have 2 projects on the CIP plan for Centennial Park. A council member has expressed that they would like a master plan for Centennial Park before moving forward. The proposed cost to perform this for Centennial Park is \$8,102.00 plus reimbursable expenses if you wish to continue with a master plan process.

FISCAL IMPACT: \$8102.00 plus reimbursable expenses

ALTERNATIVE: We would do a design-bid-build for these projects that would include a study to support the best possible locations for those proposed projects.

CONCURRENCE: Richard Bogus, City Engineer

SIGNATURE:

Approved By: *Betsy Eckhardt*
Betsy Eckhardt, Park and Recreation Director

Approved By: *Tara Vasicek*
Tara Vasicek, City Administrator

September 27, 2023

Betsy Eckhardt
Parks and Recreation Director
City of Columbus
2424 14 Street
P.O. Box 1677
Columbus, NE 68602-1677
Betsy.Eckhardt@columbusne.us

**RE: Columbus Centennial Park, 23451
Professional Services Agreement**

Ms. Betsy:

We are pleased to submit this professional services agreement for Landscape Architectural Services as provided herein between The City of Columbus (*Client*) and Confluence (*Landscape Architect*). Please return one copy of the executed agreement to Confluence. We are looking forward to working on your project!

Project

This work effort is to prepare a site master plan of improvements for Centennial Park in Columbus, NE. This master plan will identify a long-term approach to improvements including:

1. Combined restroom, concession, and storage building.
2. Trail connections to the larger trail system of the city. This will include walkway improvements and ADA access to park facilities.
3. Location for future splash pad and shelter.
4. Improved and upgraded playground.
5. Improvements to park facilities as identified.
6. Parking lot improvements as needed.

Article 1: Landscape Architectural Services

- 1.1 Scope of Services. The Scope of Landscape Architectural Services to be provided under this agreement are detailed in "Exhibit B".
- 1.2 Supplemental Services. Supplemental Services are detailed in "Exhibit B" – Supplemental Services are beyond the basic Scope of Services, and when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation (either on the hourly basis stated in "Exhibit A" or the basis of a negotiated sum) beyond the Compensation stated in Article 4 Landscape Architect Compensation.

- 1.3 Standard of Care. The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.
- 1.4 Changes to Approved Services. Revisions to drawings or other documents shall constitute Supplemental Services made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Project requirements.
- 1.5 Schedule of Performance. The Client's signature on this Agreement shall be the basis for the Landscape Architect to begin providing services for the Project. The Landscape Architect shall perform the services per the Client's proposed schedule or as expeditiously as is consistent with the standard of care described in section 1.1, above.

Article 2: Client's Responsibilities

- 2.1 Information. The Client shall provide data about the site and other information on which the design is to be based as well as Client's budget parameters for the Project. Some data for the site may be provided as part of the Scope of Services. The Landscape Architect shall be entitled to rely on the accuracy and completeness of information provided by the Client.
- 2.2 Budget. The Landscape Architect shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by the Landscape Architect as a part of the Scope of Services, opinions of probable construction costs are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning. Such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated.
- 2.3 Approvals. The Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services.
- 2.4 Project Permit and Review Fees. The Client shall pay all fees required to secure jurisdictional approvals for the Project.

Article 3: Ownership of Documents

- 3.1 The Landscape Architect shall be deemed the author and owner of all document's deliverables developed pursuant to this Agreement and provided to the Client by the Landscape Architect (collectively, the "Design Materials"). Subject to payment by the Client of all fees and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for to the construction of the Project and for information and reference with respect to the use of the Project.

Article 4: Landscape Architect Compensation

- 4.1 Compensation for the Scope of Services performed under this agreement shall be the Stipulated Sum of \$8,120.00 plus reimbursable expenses and applicable taxes.
- 4.2 Reimbursable Expenses are expenditures made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 15%. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of contracting, and other, similar, direct Project related expenditures. See Exhibit A for Confluence standard Reimbursable Expenses.
- 4.3 Supplemental Services, when requested in writing by the Client, shall require additional compensation to be determined on an hourly basis or on the basis of a negotiated fee. See "Exhibit A" for Confluence standard hourly rates.
- 4.4 Monthly payments to the Landscape Architect shall be based on (1) the percentage of Scope of Services completed and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.
- 4.5 Payments are due and payable 45 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 60 days after the invoice date shall be determined overdue and shall accrue 1.5% simple interest per month. At the Landscape Architect's option, overdue payments may be grounds for termination or suspension of services. In the event any portion or all of an account remains unpaid 120 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

Article 5: Insurance, Indemnification, Consequential Damages & Limitation of Liability

- 5.1 Insurance. The Landscape Architect shall secure and maintain insurance coverages indicated as follows:

<u>Coverage:</u>	<u>Liability Limits:</u>
Professional Liability:	\$2,000,000 per claim/\$4,000,000 aggregate
Commercial General Liability:	\$1,000,000 per claim/\$2,000,000 aggregate
Comprehensive Automobile Liability:	\$1,000,000 combined single limit
Umbrella Liability:	\$3,000,000 each occurrence/\$3,000,000 aggregate
Drone Aviation Liability:	\$1,000,000 per claim
Workers Compensation:	\$2,000,000 per claim/\$2,000,000 policy limit

- 5.2 Indemnification: Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers, employees, and representatives, from and against liability for losses, damages, and expenses, including reasonable attorney's fees, to the extent such losses, damages or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages or expenses are caused by the joint or concurrent negligence of the Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

- 5.3 Consequential Damages. The Landscape Architect and the Client waive consequential damages for claims, disputes, or other matters in question which arise of or are related to this Agreement, including but not limited to consequential damages due to the termination of this Agreement by either party in accordance with the provisions of Article 7 thereof.
- 5.4 Limitation of Liability. To the maximum extent permitted by law, the Client agrees to limit the Landscape Architect's liability for the Client's damages to the sum of \$15,000.00 or the Landscape Architect's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

Article 6: Dispute Resolution

- 6.1 If a dispute arises out of or relates to this agreement, the parties shall endeavor to resolve their differences first through direct discussions. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation, the cost of which shall be shared equally by both parties.
- 6.2 For any claim subject to, but not resolved by, mediation pursuant to 6.1, the method of binding dispute resolution shall be as follows:
- Arbitration pursuant to the Construction Industry Mediation Rules of the American Arbitration Association
 - Litigation in a court of competent jurisdiction
- 6.3 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

Article 7: Termination

- 7.1 This agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period. If the project is terminated, the Landscape Architect shall be paid their compensation for services performed prior to receipt of written notice from the Client, together with reimbursable expenses and applicable taxes then due.

Article 8: Other Terms & Conditions

- 8.1 Promotional Materials & Images. The Landscape Architect shall have the right to include photographic or artistic representations of the design of the Project among the Landscape Architect's promotional and professional materials. The Landscape Architect shall be given reasonable access to the completed Project to make such representations. However, the Landscape Architect's materials shall not include the Client's confidential or proprietary information if the Client has previously advised the Landscape Architect in writing of the

specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for the Landscape Architect in the Client's promotional materials for the Project.

8.2 Assignment. Neither party shall assign their interest in this Agreement without the expressed written consent of the other, except as to the assignment of the proceeds.

8.3 Governing Law. The laws of the State of Nebraska shall govern this agreement.

8.4 Complete Agreement. This Agreement represents the entire understanding between the Client and Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement may be amended only in writing signed by both the Client and Landscape Architect.

Exhibits

The following Exhibits are incorporated in and made part of this Agreement:

"A" - Landscape Architect's Hourly Compensation Rates & Reimbursable Expenses Schedule

"B" - Scope of Services

Offered by:

Confluence, Inc.



09-27-23

Signature & Date

Dolores D Silkworth, Principal

Printed Name & Title

Confluence
1111 N 13th Street, Suite 203
Omaha, Nebraska 68102

Accepted By:

City of Columbus

Signature & Date

Printed Name & Title

Exhibit "A": Landscape Architect's Standard Hourly Rates & Reimbursable Expenses

STANDARD HOURLY RATES

Senior Principal	\$175.00 - \$255.00 per hour
Principal	\$160.00 - \$220.00 per hour
Associate Principal	\$140.00 - \$190.00 per hour
Associate	\$115.00 - \$175.00 per hour
Senior Project Manager	\$105.00 - \$155.00 per hour
Project Manager	\$95.00 - \$135.00 per hour
Senior Landscape Architect	\$95.00 - \$175.00 per hour
Landscape Architect	\$85.00 - \$125.00 per hour
Senior Project Planner	\$95.00 - \$135.00 per hour
Planner II	\$85.00 - \$125.00 per hour
Planner I.....	\$75.00 - \$115.00 per hour
Landscape Architect-In-Training / Landscape Designer.....	\$75.00 - \$115.00 per hour
Landscape Architect Intern / Landscape Designer	\$65.00 - \$90.00 per hour
Draftsperson	\$55.00 - \$90.00 per hour
Graphic Designer	\$75.00 - \$105.00 per hour
Clerical / System Staff	\$75.00 - \$125.00 per hour

REIMBURSABLE EXPENSES

Social Pinpoint Public Engagement Tool	\$1,500.00
Filing Fees	1.15 x cost
Materials and Supplies	1.15 x cost
Meals and Lodging	1.15 x cost
Mileage	\$.655 per mile
Postage	1.15 x cost
Printing by Vendor	1.15 x cost
B/W Photocopies/Prints 8½ x 11	\$.10 each
B/W Photocopies/Prints 11x17.....	\$.20 each
Color Photocopies/Prints 8½ x 11	\$.75 each
Color Photocopies/Prints 11x17.....	\$1.50 each
Large Format Plotting - Bond	\$2.50/SF
Large Format Plotting - Mylar	\$4.50/SF
Large Format Plotting - Photo	\$5.00/SF
Flash Drives.....	\$10.00 each
Booklet Binding (cover, coil, back)	\$4.50 each
Foam Core	\$8.00 each
Easel Pads	\$32.75 each
Electronic Files	\$50.00 Each
Online Meeting Service.....	\$35.00 Each

Effective 1/1/2023

End of Exhibit "A"

Exhibit “B”: Scope of Services

1.1 Scope of Services

- 1.1.1 Conceptual Site Master Plan. The Landscape Architect shall prepare a conceptual site master plan through the following:
- (a.) Identify existing site conditions and features such as topography, drainage patterns, vegetation, including significant specimen plants water elements, structures, views, and known off-site considerations relevant to the Client’s Program.
 - (b.) Review existing site conditions and park facilities within the park.
 - (c.) Walk the site and photograph park facilities. Discuss park needs with the Park Staff
 - (d.) Share sketch ideas after the site visit with Park Staff.
 - (e.) Prepare a hand drawn, conceptual draft master plan identifying locations for all park elements, both existing and future including:
 - Combined restroom, concession and storage building.
 - Trail connections to the larger trail system of the City. This will include walkway improvements and ADA access to park facilities.
 - Location for future splash pad and shelter.
 - Improved and upgraded playground.
 - Improvements to park facilities as identified.
 - Parking lot improvements as needed.
 - Future landscape and tree plantings.
 - (f.) Meet with Park and City Staff to review the Draft Master Plan
 - (g.) Modify the Master Plan to accommodate any modifications requested.
 - (i) Final Deliverable will be a plan view of the park showing the locations of all facilities including brief descriptions for each of the park plan facilities. Also included may be photos of the park and/or precedence images.

End of Exhibit “B”

5. Adjournment.