

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 2, 2011 AGENDA**

Subject:	Type:	Submitted By:
FEDERAL FUNDS PURCHASE PROGRAM AGREEMENT- HBP FUNDS NEBRASKA DEPARTMENT OF ROADS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor and City Clerk to enter into an Agreement with the Nebraska Department of Roads to participate in a program that provides the City the potential to sell federal-aid Highway Bridge Program funds, that the City may be eligible for at a future date, to the Nebraska Department of Roads at the rate of 80 cents for each dollar of federal-aid. The funds received from the State would have less requirements in regards to the manner in which projects using the funds must be conducted and could be carried over from year to year.

FISCAL IMPACT

This program does not take effect until March 1, 2014 and does not apply to the City of La Vista until such time as we have "deficient bridges" as determined by the NDOR Bridge Inspection Program.

RECOMMENDATION

Approval.

BACKGROUND

The Federal Funds Purchase Program is being established by the NDOR. This program defines a process for the NDOR to purchase federal funds allocated to Local Public Agencies with state cash. LB98 provided the NDOR with this authority. For the City of La Vista and other Local Public Agencies in Transportation Management Areas, such as MAPA, this will apply only to Highway Bridge Program funds and does not apply to Surface Transportation Program funds. The cash payment to be made by the State to the Local Public Agency will be equal to eighty percent (80%) of the total dollar amount of federal-aid funds being purchased. The discount in value is to cover the increased costs, restrictions, and risks associated with meeting federal aid requirements. The agreement sets forth the details on how the Highway Bridge Program funds will be allocated amongst participating Local Public Agencies and the requirements applicable to the use of the state cash.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ROADS TO PARTICIPATE IN A FEDERAL FUNDS PURCHASE PROGRAM.

WHEREAS, each year the federal government makes available to Nebraska certain federal-aid transportation funds, including funds from the Surface Transportation Program (STP) and the Highway Bridge Program (HBP) (formerly known as the Highway Bridge Replacement and Rehabilitation Program), for use on State and local federal-aid transportation projects and,

WHEREAS, certain federal-aid STP and HBP funds have historically been made available to the Local Public Agency (LPA) by the State for its use in funding federal-aid projects on the public streets or roads within its jurisdiction; and

WHEREAS, LPA and the NDOR wish to enter into and Agreement to provide for the purchase, at a discount, certain federal-aid dollars currently made available to the LPA; and

WHEREAS, the LPA is interested in selling its available federal-aid funds to the State on the terms and conditions set out in this Agreement, including certain limitations on the use of the cash received by the LPA;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the Mayor and City Clerk to sign the Federal Funds Purchase Program Agreement between the City of La Vista, Nebraska and The Nebraska Department of Roads on behalf of the City of La Vista.

PASSED AND APPROVED THIS 2ND DAY OF AUGUST, 2011.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**FEDERAL-AID TRANSPORTATION FUND
PURCHASE-SALE AGREEMENT**

Nebraska Department of Roads

City of La Vista

THIS AGREEMENT made and entered into by and between the State of Nebraska, Department of Roads, hereinafter referred to as the "State," and the City of La Vista, Nebraska, hereinafter referred to as Local Public Agency, or "LPA."

RECITALS

WHEREAS, the State and LPA have authority to enter into this Agreement and to expend funds pursuant to LB 98 of the 2011 Nebraska Legislature, signed by the Governor, which will be codified in Neb. Rev. Stat. §§ 39-1307 and 66-4,100; and,

WHEREAS, each year the federal government makes available to Nebraska certain federal-aid transportation funds, including funds from the Surface Transportation Program (STP) and the Highway Bridge Program (HBP) (formerly known as the Highway Bridge Replacement and Rehabilitation Program), for use on State and local federal-aid transportation projects; and,

WHEREAS, certain federal-aid STP and HBP funds have historically been made available to the LPA by the State for its use in funding federal-aid projects on the public streets or roads within its jurisdiction; and,

WHEREAS, the State presently intends, and LPA wishes to replace that historical practice with a purchase-sale process as further set out herein; and,

WHEREAS, the HBP fund portion of this purchase program will also apply to communities that make up the Transportation Management Areas (TMA) in Nebraska; and,

WHEREAS, for LPA to use federal funds for a federal-aid transportation project, the LPA must provide a local match and meet all federal-aid funding program requirements, some of which would not apply to a project constructed under State laws; and,

WHEREAS, LPA believes that it is not able to expend these federal-aid funds as efficiently or effectively as it would prefer because of the complexity of the processes required of LPAs on federal-aid transportation projects; and,

WHEREAS, the federal-aid funds made available to the LPA are of a type that would also be eligible for use by the State for federal-aid projects on certain State highway and bridge projects; and,

WHEREAS, the State is willing to obligate and expend additional federal-aid project funds, and the State is willing to assume the risk of meeting all federal-aid requirements for use of any additional federal-aid funds it obtains, and,

WHEREAS, the State is interested in purchasing at a discount certain federal-aid funds currently allocated to LPA, such discount to cover the costs and risks incurred by the State to meet federal-aid requirements; and,

WHEREAS, the LPA is interested in selling its available federal-aid funds to the State on the terms and conditions set out in this Agreement, including certain limitations on the use of the cash received by LPA.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

SECTION 1. Effective Date and Term of this Agreement. This Agreement will be effective only upon the execution of this Agreement by the State. The term of this Agreement is four years, beginning on the date that the State makes the first "cash payment" to LPA. At the end of the initial term, this Agreement will automatically renew for successive one year terms, unless the LPA provides the State with notice of termination sixty or more days before the end of any term of this Agreement. The State may terminate this Agreement for any reason at any time by giving LPA advance notice 60 days prior to the date of termination.

SECTION 2. Federal Funds Eligible for Purchase. This Agreement applies to the following categories of federal-aid funds: (a) STP Funds (for both Populations less than 5,000, and Populations 5,000 to 200,000), and (b) HBP Funds. Each year the State will determine the total dollar amount of each of these funds that will be eligible for purchase (hereinafter "the Purchase Pool"), from all funds made available by the federal government for use on local projects within these categories.

SECTION 3. Calculation of LPA's share of the Federal-Aid Funds Purchase

Pools. The following will govern the annual calculation of LPA's share of the Purchase Pool established by NDOR for each category of funds. Only LPAs who enter into a Federal-Aid Transportation Fund Purchase-Sale Agreement with the State (hereinafter referred to as a "Participating" LPA, County or City) will (a) be counted for calculating the proportions described below and (b) will be eligible to receive a share of the Purchase Pools. The historical practice of allocating Federal funds to LPAs in existence prior to the effective date of this Agreement will not be considered in making any calculations under this Agreement.

A. STP Funds Calculation.

1. STP Funding for Populations 5,000 to 200,000 (cities of the first class group). Each year, the State will determine the share of the Purchase Pool attributable to each Participating City of the First Class based on the proportion of that City's total population to the population of all Participating Cities of the First Class in Nebraska. Population will be based upon the latest U.S. Census Bureau census figures.
2. STP Funding for Populations Less Than 5,000. (This category is made up of the 93 Nebraska Counties; each City of the Second Class and Village located within a County draws solely from the County's share of these funds, at the discretion of the County.) Each year, the State will determine the share of the Purchase Pool attributable to each Participating County by calculating each County's proportional share of the totals of all Participating Counties using the following factors and weights:
 - The number of rural residents as reported by the U.S. Census Bureau (25%).
 - The number of rural motor vehicles registered in the County (25%).
 - The number of centerline miles of classified (on- and off-federal system) rural roads in the County (50%).

For this section, rural is defined as the areas outside the corporate limits of any City of the First Class, City of the Primary Class or City of the Metropolitan Class.

B. **HBP Funds Calculation.**

Each year, the State will determine the share of the Purchase Pool attributable to each Participating County and City of the First Class, including those within the Omaha and Lincoln TMAs and the Cities of Omaha and Lincoln, based on the proportion of that LPA's square feet of bridge deck area of deficient bridges by the total number of square feet of bridge deck area of deficient bridges of all Participating LPAs in this category.

SECTION 4. Cash Payment Calculation and Payment Date. The cash payment to be made by the State to LPA will be equal to eighty percent (80%) of the total dollar amount of federal-aid funds purchased by the State from LPA beginning in Fiscal Year 2013. The cash payment will be made to LPA on or about March 1 of each year beginning on or about March 1, 2014.

SECTION 5. Limitations on LPA's Use of Cash Payment. The portion of the cash payment received by LPA from the State for the purchase of **STP funds** shall be used solely for the cost of construction, reconstruction, maintenance, or repair of public highways, streets, roads, or bridges and facilities, appurtenances, and roadway structures deemed necessary in connection therewith. The portion of the cash payment received by LPA from the State for the purchase of **HBP funds** shall be used solely for the construction, reconstruction, improvement, repair or maintenance of LPA public road bridges. The LPA's use of the cash payment for "maintenance," under the prior two sentences, shall be limited to maintenance projects that preserve, restore or correct major roadway or bridge conditions and the cash payment will not be used for LPA's routine maintenance activities.

The phrase "facilities, appurtenances, and roadway structures deemed necessary in connection therewith," as used in the first sentence of this section, includes medians; accessory lanes; steps; handrails; sidewalks, adjoining trails, paths and related structures; drainage facilities such as storm sewers, curb or grate inlets,

culverts, ditches, and other drainage structures; guardrails; lighting facilities; driveways; retaining walls and other similar facilities that are necessary or desirable and directly related to the proper design of streets, roads and highways.

LPA shall segregate the cash payment and shall separately account for the STP and HBP portions of any cash payment received from the State within its accounting system. The LPA may accumulate and invest the STP or HBP portions of the cash payment it receives so long as the earnings from such investments are used for the applicable purposes provided in this section. The cash payment funds may be used for any phase of an allowable project. The phases of an allowable project include, but are not limited to: 1) preliminary engineering, 2) right-of-way acquisition, 3) utility relocations, 4) construction, and 5) construction engineering.

All roads and bridges shall be designed and constructed to meet the minimum standards of the Nebraska Board of Public Roads Classifications and Standards.

SECTION 6. Annual Certification of Use of Cash Payment and Action Required for Improper Use of Funds. LPA shall file an annual certification with the State, using a copy of the attached Annual Certification Form (Exhibit B), confirming that it has used the cash payment it received solely for the purposes allowed under this Agreement. The annual certification shall be filed with the Local Projects Division of the State and the form shall be submitted by LPA within 90 days after the end of LPA's fiscal year. Further, LPA agrees to immediately report to State any use of the cash payment for a nonconforming use under this Agreement. Within 60 days of discovery of any improperly diverted funds, LPA shall provide the State with a repayment plan for LPA to replace the improperly diverted funds by depositing an equivalent amount of other local funds into the cash payment account. If LPA fails to repay the funds, or fails to provide a repayment plan that is acceptable to the State, the State will withhold LPA's future annual payments under this Agreement until LPA repays all improperly diverted funds. If LPA fails to meet the requirement of the prior sentence, the State may terminate this Agreement and redistribute any funds it holds on behalf of LPA.

SECTION 7. Additional Terms and Conditions. The parties agree to the following additional terms and conditions:

- A. Federal Legislation. The LPA authorizes the State to take such steps as are deemed by the State to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Surface Transportation Act for this Agreement. The terms of this Agreement are subject to changes in federal legislation. The State reserves the right to (1) change the dollar amount of federal-aid funds the State purchases from LPA, or (2) terminate this Agreement, in the event such changes in federal law significantly impacts, nullifies or renders impractical the continuing purchase of LPA's federal-aid funds.
- B. Availability of State Funds. The total federal-aid funds purchased by the State under this Agreement are contingent upon the availability of State funds to make the purchase. If, in the judgment of the State, sufficient State funds are not available to make the payments under this Agreement, the State may (1) reduce the dollar amounts of federal-aid funds the State purchases from LPA, or (2) terminate this Agreement without additional cost, responsibility or obligation to LPA.
- C. Application of Purchased Funds. The LPA understands that the State, at its sole discretion, may use the federal-aid funds purchased from LPA for any federally eligible purpose or project within the State.
- D. Audits. The LPA agrees to make its records and books available at any time to representatives or designees of the State for audit.
- E. Applicable Law. The LPA agrees to follow all applicable laws governing the transaction set out in this Agreement and the use of the State payment for local street, road or bridge projects.
- F. Local Ordinances and Resolutions. The LPA agrees to adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.
- G. Maintenance of and Commitments for Projects Constructed with Federal Funds. This Agreement does not relieve the LPA of maintaining, at its own expense, all transportation projects under its jurisdiction which have used, or will use federal funds in the future (see, 23 U.S.C. § 116). The

LPA agrees to make provisions each year for the maintenance costs involved in properly maintaining all of its federal-aid routes and facilities. The LPA shall also be solely responsible for any required environmental commitments, including monitoring, and any other commitments made, after the construction of projects on its federal-aid routes which have used, or will use federal funds in the future. In the event that the federal government withholds funds from the State related to LPA's failure to meet its obligations under this section, LPA agrees that the State, in addition to all other remedies, may withhold its future cash payments under this agreement until all funds are repaid.

- H. Repayment of Federal Funds For Projects Not Completed. If LPA presently has a federal-aid project under development that has not been constructed, but for which federal-funds have been received by LPA, LPA has certain time periods under federal law to complete construction of such project, or LPA will be required to repay all federal funds it has been reimbursed for the project. (See 23 C.F.R. § 630.112(c).) In the event that LPA fails to complete construction of such a project, LPA shall repay the federal government, or the State on its behalf, an amount equal to all federal-aid funds previously reimbursed to LPA expended for the project. In the event that LPA fails to repay the federal government or the State, LPA agrees that the State, in addition to all other remedies, may withhold its future cash payments to LPA under this Agreement until all funds are repaid.

- I. Bridges. LPA is responsible for the safety inspection and evaluation of all public street or road bridges under its jurisdiction. These responsibilities include inspections, reports, load ratings, quality control, maintaining bridge files, and all other requirements of the National Bridge Inspection Standards (NBIS). LPA shall provide to the State copies of all bridge plans, hydraulic design reports, load rating reports and inspection reports for all bridges under its jurisdiction. If LPA fails to carry out its duties concerning the NBIS, the State will withhold LPA's future annual payment

under this Agreement until LPA complies with all NBIS requirements. If LPA fails to meet the requirements of the prior sentence, the State may terminate this Agreement and redistribute any funds it holds on behalf of LPA.

- J. Right-of-Way. The LPA is advised to use the "Uniform Act" and keep good records when purchasing right-of-way for a project. The "Uniform Act" is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. § 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs."
- K. No Third-Party Benefits. No third-party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- L. Fair Employment Practices Act. The LPA agrees to abide by Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. §§ 48-1101 through 48-1126, which is hereby made a part of and included in this Agreement by reference.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this ____ day of _____, 2011.

WITNESS:

CITY OF LA VISTA

LPA Clerk

By

Title

EXECUTED by the State this ____ day of _____, 2011.

STATE OF NEBRASKA
DEPARTMENT OF ROADS

By

Title

ANNUAL CERTIFICATION FORM

hereinafter "Local Public Agency" or "LPA"

Period of Time Covered by Certification

First Year --- Date of Receipt of First Cash Payment to Date of this Certification
Subsequent Years---Date of Last Certification to Date of this Certification

This certification is given by LPA pursuant to the requirements of the second paragraph of Neb. Rev. Stat. § 39-1307 (as this section was amended by Section 1 of LB98, 2011 Legislative Session), and as required by Section 5 of the Federal-Aid Transportation Fund Purchase-Sale Agreement (the Agreement) between the State of Nebraska Department of Roads (State) and LPA.

LPA has received cash payment funds from the State according to the terms of the Agreement. LPA agreed in Section 5 of the Agreement to restrict LPA's use of the cash payment funds to certain specified uses. (See the language of Section 5 set out below). Section 6 of the Agreement requires LPA to make this certification annually.

The undersigned hereby certifies that he or she:

- (1) Has been properly authorized by LPA's governing body to make this certification on behalf of the LPA.
- (2) Has sufficient information to accurately, fully and fairly make this certification.
- (3) Is familiar with the terms of the Agreement between the LPA and the State, including particularly, the limitations on LPA's use of the cash payment funds set out in Section 5 of the Agreement.
- (4) Is familiar with LPA's accounting systems and bank and investment accounts and knows (a) where the cash payment funds have been deposited or invested and (b) how the cash payment funds have been managed and accounted for within LPA's financial records.
- (5) Is familiar with the details of all projects or activities of LPA for which funds in the cash payment account have been used by LPA.
- (6) Believes, that to the best of his or her knowledge and belief, (1) LPA's use of the cash payment funds fully and fairly complies with the requirements of Section 5 of the Agreement, and (2) LPA has segregated the cash payment it received from the State and has separately accounted for any STP and HBP portions of the cash payment within its accounting system.

Date

Signature

Printed name

Title

SECTION 5. Limitations on LPA's Use of Cash Payment.

The portion of the cash payment received by LPA from the State for the purchase of STP funds shall be used solely for the cost of construction, reconstruction, maintenance, or repair of public highways, streets, roads, or bridges and facilities, appurtenances, and roadway structures deemed necessary in connection therewith. The portion of the cash payment received by LPA from the State for the purchase of HBP funds shall be used solely for the construction, reconstruction, improvement, repair or maintenance of LPA public road bridges. The LPA's use of the cash payment for "maintenance," under the prior two sentences, shall be limited to maintenance projects that preserve, restore or correct major roadway or bridge conditions and the cash payment will not be used for LPA's routine maintenance activities.

The phrase "facilities, appurtenances, and roadway structures deemed necessary in connection therewith," as used in the first sentence of this section, includes medians; accessory lanes; steps; handrails; sidewalks, adjoining trails, paths and related structures; drainage facilities such as storm sewers, curb or grate inlets, culverts, ditches, and other drainage structures; guardrails; lighting facilities; driveways; retaining walls and other similar facilities that are necessary or desirable and directly related to the proper design of streets, roads and highways.

LPA shall segregate the cash payment and shall separately account for the STP and HBP portions of any cash payment received from the State within its accounting system. The LPA may accumulate and invest the STP or HBP portions of the cash payment it receives so long as the earnings from such investments are used for the applicable purposes provided in this section. The cash payment funds may be used for any phase of an allowable project. The phases of an allowable project include, but are not limited to: 1) preliminary engineering, 2) right-of-way acquisition, 3) utility relocations, 4) construction, and 5) construction engineering.

All roads and bridges shall be designed and constructed to meet the minimum standards of the Nebraska Board of Public Roads Classifications and Standards.