June 2018

IOWA DEPARTMENT OF TRANSPORTATION
AGREEMENT FOR CITY BRIDGE FEDERAL-AID SWAP FUNDING

CITY: Council Bluffs

PROJECT NO.: BHM-SWAP-1642(683)--SA-78

AGREEMENT NO.: 4-19-HBP-SWAP-10

This is an agreement between the City of Council Bluffs, Iowa (hereinafter referred to as the Recipient) and the Iowa Department of Transportation (hereinafter referred to as the Department), for funding through the Federal-aid Swap City Highway Bridge Program (HBP) under 761 Iowa Administrative Code (IAC) Chapter 161.

The parties agree as follows:

1. The Recipient shall be the lead local governmental agency for carrying out this agreement.

2. All notices required under this agreement shall be in writing to the Department and the Recipient's contact person. The Department's contact persons shall be the Local Systems Project Development Engineer, Christy VanBuskirk, and Western Region Local Systems Field Engineer, Brian J. Catus. The Recipient's contact person shall be the Public Works Director.

3. The Recipient shall be responsible for the development and completion of the following bridge project:

   A. FHWA Structure Number: 043960

   B. Location: North Broadway over Indian Creek

   C. Preliminary Estimated Total Eligible Costs: $2,735,000

4. The eligible project construction limits shall include the bridge plus grading and paving to reach a "touchdown point" determined by the Department. Eligible project costs include construction costs. Non-construction costs incurred for engineering, inspection, and right-of-way, may be applied towards the local match for Construction. Certain activities necessary to comply with Federal or State environment or permit requirements, including studies and mitigation of the project's environmental impacts, are also eligible. Costs associated with permitting and studies may be applied towards the local match for Construction. With prior approval of the Department utility relocations, construction of items related to mitigation activities, and Railroad activities that are associated with work inside the eligible project construction limits, but performed outside of the Prime Contractor's contract may be reimbursed as construction costs.

5. Costs associated with work outside the eligible project construction limits, routine maintenance activities, operations, and monitoring expenses are not eligible. In addition, administrative costs, and fees or interest associated with bonds or loans are not eligible.

6. 80% of the eligible construction project costs incurred after the effective date of this agreement shall be paid from Federal-aid Swap funds up to a maximum of $1,000,000. At no time will the reimbursed amount exceed $1,000,000. Non-construction costs related to the development of the construction project may be applied toward the 20% match required for the Recipient. Non-construction costs are identified in paragraph 4. Eligible non-construction costs may be used to decrease the 20% local match for Construction. Any reduction in the 20% local match for Construction will be reimbursable after the Prime Contractor's retainage is paid and the local Construction contract is closed. The maximum amount paid to the Recipient will be the total actual construction cost after non-construction costs are applied to the 20% match or $1,000,000 whichever is less. The Recipient shall pay 100% of the non-eligible project costs. Reimbursed costs will be limited to state funds that are made available to cities through the County and City Bridge Construction Funds outlined in 761 Iowa Administrative Code, Chapter 161

7. The Recipient shall conduct project development and implementation in compliance with applicable laws, ordinances, and administrative rules. For projects which also include Farm-to-Market funds, the Recipient shall follow all administrative and contracting procedures required for Farm-to-Market projects.

8. The Recipient shall pay for all project costs not reimbursed with City Bridge Program funds.

9. The project shall be let to contract within 3 years of the date this agreement is signed by the Department. If not, the Recipient may be in default, for which the Department may revoke funding commitments. This agreement may be extended for a period of 6 months upon receipt of a written request from the Recipient at least 30 days prior to the 3-year deadline.

10. If any part of this agreement is found to be void and unenforceable then the remaining provisions of this agreement shall remain in effect.

11. This agreement is not assignable without the prior written consent of the Department.

12. It is the intent of both (all) parties that no third party beneficiary be created by this agreement.

13. This agreement and the attached Exhibit 1 constitute the entire agreement between the Department and the Recipient. No representations, promises, or warranties have been made by either party that are not fully expressed in this agreement. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement which shall be effective only upon written acceptance of the Department and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed this agreement as of the date shown opposite its signature below.

City Signature Block

By_____ Date _____, 20_____

_____
Title of city official

I,_____, certify that I am the City Clerk of Council Bluffs, and that_____, who signed said Agreement for and on behalf of the city was duly authorized to execute the same by virtue of a formal resolution duly passed and adopted by the city on the _____ day of _____, 20_____.

Signed_____ Date _____, 20_____

City Clerk of Council Bluffs, Iowa

IOWA DEPARTMENT OF TRANSPORTATION
Highway Administration

By_____ Date _____, 20_____

Brian J. Catus, P.E.
Local Systems Field Engineer
Western Region

EXHIBIT 1
General Agreement Provisions for use of Federal-aid Swap Funds on Non-primary Projects

Unless otherwise specified in this agreement, the Recipient shall be responsible for the following:

1. General Requirements.

a. The Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the Recipient, the Department has provided guidance in the Federal-aid Project Development Guide (Guide) and the Instructional Memorandums to Local Public Agencies (I.M.s) that are referenced by the Guide. Both are available on-line at: https://www.iowadot.gov/local_systems/publications/im/lpa_ims.htm. The Recipient shall follow the applicable procedures and guidelines contained in the Guide and I.M.s in effect at the time project activities are conducted.

b. In accordance with Title VI of the Civil Rights Act of 1964 and associated subsequent nondiscrimination laws, regulations, and executive orders, the Recipient shall not discriminate against any person on the basis of race, color, national origin, sex, age, or disability. In accordance with Iowa Code Chapter 216, the Recipient shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability. The Recipient agrees to comply with the requirements outlined in I.M. 1.070, Title VI and Nondiscrimination Requirements.

c. The Recipient shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the associated Code of Federal Regulations (CFR) that implement these laws, and the guidance provided in I.M. 1.080, ADA Requirements. When pedestrian facilities are constructed, reconstructed, or altered, the Recipient shall make such facilities compliant with the ADA and Section 504.

d. To the extent allowable by law, the Recipient agrees to indemnify, defend, and hold the Department harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the Department's application review and approval process, plan and construction reviews, and funding participation.

e. As required by the 2 CFR 200.501 “Audit Requirements,” a non-Federal entity expending $750,000 or more in Federal awards in a year shall have a single or program-specific audit conducted for that year in accordance with the provision of that part. Auditee responsibilities are addressed in Subpart F of 2 CFR 200. The Federal funds provided by this agreement shall be reported on the appropriate Schedule of Expenditures of Federal Awards (SEFA) using the Catalog of Federal Domestic Assistance (CFDA) number and title as shown on the first page of this agreement. If the Recipient will pay initial project costs and request reimbursement from the Department, the Recipient shall report this project on its SEFA. If the Department will pay initial project costs and then credit those accounts from which initial costs were paid, the Department will report this project on its SEFA. In this case, the Recipient shall not report this project on its SEFA.

f. The Recipient shall supply the Department with all information required by the Federal Funding Accountability and Transparency Act of 2006 and 2 CFR Part 170.

g. The Recipient shall comply with the following Disadvantaged Business Enterprise (DBE) requirements:

   i. The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

   ii. The Recipient shall comply with the requirements of I.M. 5.010, DBE Guidelines.

   iii. The Department’s DBE program, as required by 49 CFR Part 26 and as approved by the Federal Highway Administration (FHWA), is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose

sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

h. Termination of funds. Notwithstanding anything in this agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this agreement without penalty and without any advance notice as a result of any of the following: 1) The Federal government, legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this agreement or to operate as required and to fulfill its obligations under this agreement; or 2) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or 3) If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this agreement is withdrawn or materially altered or modified. The Department shall provide the Recipient with written notice of termination pursuant to this section.

2. Programming and Federal Authorization.

a. The Recipient shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The Recipient shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the Department, includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, Federal funds cannot be authorized.

b. Before beginning any work for which Federal funding reimbursement will be requested, the Recipient shall contact the Department to obtain the procedures necessary to secure FHWA authorization. The Recipient shall submit a written request for FHWA authorization to the Department. After reviewing the Recipient's request, the Department will forward the request to the FHWA for authorization and obligation of Federal funds. The Department will notify the Recipient when FHWA authorization is obtained. The cost of work performed prior to FHWA authorization will not be reimbursed with Federal funds.

c. Upon receiving FHWA Authorization, the Recipient must show federal aid funding activity to receive the programmed amount authorized for the project. If there are no funding activity for nine or more months after the previous activity, the remaining unused programmed amount will be de-obligated from the project and there will be no further federal aid reimbursement issued for the project. If the recipient knows in advance that funding activity will not occur for the nine months, the Contract Administrator needs to be notified to determine if programming of fund can be adjusted or other options can be explored.

3. Federal Participation in Work Performed by Recipient Employees.

a. If Federal reimbursement will be requested for engineering, construction inspection, right-of-way acquisition or other services provided by employees of the Recipient, the Recipient shall follow the procedures in I.M. 3.330, Federal-aid Participation in In-House Services.

b. If Federal reimbursement will be requested for construction performed by employees of the Recipient, the Recipient shall follow the procedures in I.M. 6.010, Federal-aid Construction by Local Agency Forces.

c. If the Recipient desires to claim indirect costs associated with work performed by its employees, the Recipient shall prepare and submit to the Department an indirect cost rate proposal and related documentation in accordance with the requirements of 2 CFR 200. Before incurring any indirect costs, such indirect cost rate proposal shall be certified by the FHWA or the Federal agency providing the largest amount of Federal funds to the Recipient. If approved, the approved indirect cost rate shall be incorporated by means of an amendment to this agreement.

4. Design and Consultant Services

a. The Recipient shall be responsible for the design of the project, including all necessary plans, specifications, and estimates (PS&E). The project shall be designed in accordance with the design guidelines provided or referenced by the Department in the Guide and applicable I.M.s.

b. If the Recipient requests Federal funds for consultant services, the Recipient and the Consultant shall prepare a contract for consultant services in accordance with 23 CFR Part 172. These regulations require a qualifications-based selection process. The Recipient shall follow the procedures for selecting and using consultants outlined in I.M. 3.310, Federal-aid Participation in Consultant Costs.

c. If Preliminary Engineering (PE) work is Federally funded, and if right-of-way acquisition or actual construction of the road is not started by the close of the tenth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay to the Department the amount of Federal funds reimbursed to the Recipient for such PE work. PE includes work that is part of the development of the PS&E for a construction project. This includes environmental studies and documents, preliminary design, and final design up through and including the preparation of bidding documents. PE does not include planning or other activities that are not intended to lead to a construction project. Examples include planning, conceptual, or feasibility studies.

5. Environmental Requirements and other Agreements or Permits.

a. The Recipient shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location approval. The Recipient shall complete any mitigation agreed upon in the FHWA approval document. These procedures are set forth in I.M. 3.020, Concept Statement Instructions, 4.030, Environmental Data Sheet Instructions, 4.020, NEPA Class of Action, and 4.120, Cultural Resource Regulations.

b. If farmland is to be acquired, whether for use as project right-of-way or permanent easement, the Recipient shall follow the procedures in I.M. 4.170, Farmland Protection Policy Act.

c. The Recipient shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the Department, or other agencies as required. The Recipient shall follow the procedures in I.M. 4.130, 404 Permit Process, 4.140, Storm Water Permits, 4.190, Highway Improvements in the Vicinity of Airports or Heliports, and 4.160, Asbestos Inspection, Removal, and Notification Requirements.

d. In all contracts entered into by the Recipient, and all subcontracts, in connection with this project that exceed $100,000, the Recipient shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all their regulations and guidelines. In such contracts, the Recipient shall stipulate that any facility to be utilized in performance of or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities or is under consideration to be listed.

6. Right-of-Way, Railroads and Utilities.

a. The Recipient shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in I.M. 3.600, Right-of-Way Acquisition, and the Department's Right of Way Bureau Local Public Agency Manual. The Recipient shall contact the Department for assistance, as necessary, to ensure compliance with the required procedures, even if no Federal funds are used for right-of-way activities. The Recipient shall obtain environmental concurrence before acquiring any needed right-of-way. With prior approval, hardship and protective buying is possible. If the Recipient requests Federal funding for right-of-way acquisition, the Recipient shall also obtain FHWA authorization before purchasing any needed right-of-way.

b. If the project right-of-way is Federally funded and if the actual construction is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay the amount of Federal funds reimbursed for right-of-way costs to the Department.

c. If a railroad crossing or railroad tracks are within or adjacent to the project limits, the Recipient shall obtain agreements, easements, or permits as needed from the railroad. The Recipient shall follow the procedures in I.M. 3.670, Work on Railroad Right-of-Way, and I.M. 3.680, Federal-aid Projects Involving Railroads.

d. The Recipient shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highway Right of Way for projects on non-primary Federal-aid highways. For projects connecting to or involving some work inside the right-of-way for a primary highway, the Recipient shall follow the Department's Policy for Accommodating Utilities on Primary Road System. Certain utility relocation, alteration, adjustment, or removal costs to the Recipient for the project may be eligible for Federal funding reimbursement. The Recipient should also use the procedures outlined in I.M. 3.640, Utility Accommodation and Coordination, as a guide to coordinating with utilities.

e. If the Recipient desires Federal reimbursement for utility costs, it shall submit a request for FHWA Authorization prior to beginning any utility relocation work, in accordance with the procedures outlined in I.M. 3.650, Federal-aid Participation in Utility Relocations.

7. Contract Procurement.

The following provisions apply only to projects involving physical construction or improvements to transportation facilities:

a. The project plans, specifications, and cost estimate (PS&E) shall be prepared and certified by a professional engineer or architect, as applicable, licensed in the State of Iowa.

b. For projects let through the Department, the Recipient shall be responsible for the following:

i. Prepare and submit the PS&E and other contract documents to the Department for review and approval in accordance with I.M. 3.700, Check and Final Plans and I.M. 3.500, Bridge or Culvert Plans, as applicable.

ii. The contract documents shall use the Department's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the Department.

iii. Follow the procedures in I.M. 5.030, Iowa DOT Letting Process, to analyze the bids received, make a decision to either award a contract to the lowest responsive bidder or reject all bids, and if a contract is awarded, execute the contract documents and return to Department.

c. For projects that are let locally by the Recipient, the Recipient shall follow the procedures in I.M. 5.120, Local Letting Process- Federal-aid.

d. The Recipient shall forward a completed Project Development Certification (Form 730002) to the Department in accordance with I.M. 5.050, Project Development Certification Instructions. The project shall not receive FHWA Authorization for construction or be advertised for bids until after the Department has reviewed and approved the Project Development Certification.

e. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 26.12.

f. The Recipient shall not provide the contractor with notice to proceed until after receiving written notice the Iowa DOT has concurred in the contract award.

8. Construction.

a. A full-time employee of the Recipient shall serve as the person in responsible charge of the project. For cities that do not have any full time employees, the mayor or city clerk will serve as the person in responsible charge, with assistance from the Department.

b. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

c. For projects let through the Department, the project shall be constructed under the Department's Standard Specifications for Highway and Bridge Construction and the Recipient shall comply with the procedures and

responsibilities for materials testing according to the Department's Materials I.M.s. Available on-line at: http://www.iowadot.gov/erl/current/IM/navigation/nav.htm.

d. For projects let locally, the Recipient shall provide materials testing and certifications as required by the approved specifications.

e. If the Department provides any materials testing services to the Recipient, the Department will bill the Recipient for such testing services according to its normal policy as per Materials I.M. 103.

f. The Recipient shall follow the procedures in I.M. 6.000, Construction Inspection, and the Department's Construction Manual, as applicable, for conducting construction inspection activities.

9. Reimbursements.

a. After costs have been incurred, the Recipient shall submit to the Department periodic itemized claims for reimbursement for eligible project costs. Requests for reimbursement shall be made at least annually but not more than bi-weekly.

b. To ensure proper accounting of costs, reimbursement requests for costs incurred prior to June 30 shall be submitted to the Department by August 1 if possible, but no later than August 15.

c. Reimbursement claims shall include a certification that all eligible project costs, for which reimbursement is requested, have been reviewed by an official or governing board of the Recipient, are reasonable and proper, have been paid in full, and were completed in substantial compliance with the terms of this agreement.

d. The Department will reimburse the Recipient for properly documented and certified claims for eligible project costs. The Department may withhold up to 5% of the Federal share of construction costs or 5% of the total Federal funds available for the project, whichever is less. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the Department determines the Recipient has been overpaid, the Recipient shall reimburse the overpaid amount to the Department. After the final audit or review is complete and after the Recipient has provided all required paperwork, the Department will release the Federal funds withheld.

e. The total funds collected by the Recipient for this project shall not exceed the total project costs. The total funds collected shall include any Federal or State funds received, any special assessments made by the Recipient (exclusive of any associated interest or penalties) pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties), proceeds from the sale of excess right-of-way, and any other revenues generated by the project. The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the Recipient do exceed the total project costs, the Recipient shall either:

1) in the case of special assessments, refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or

2) refund to the Department all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds. In return, the Department will either credit reimbursement billings to the FHWA or credit the appropriate State fund account in the amount of refunds received from the Recipient.

10. Project Close-out.

a. Within 30 days of completion of construction or other activities authorized by this agreement, the Recipient shall provide written notification to the Department. The Recipient shall follow and request a final audit, in accordance with the procedures in I.M. 6.110, Final Review, Audit, and Close-out Procedures for Federal-aid, Federal-aid Swap, and Farm-to-Market Projects. Failure to comply with the procedures will result in loss of federal fund, reimbursed funds shall be returned and a possible suspension may be placed on the Recipient from receiving federal fund on future projects until the Recipient has demonstrated responsible management of federal funds on roadway projects.

b. For construction projects, the Recipient shall provide a certification by a professional engineer, architect, or landscape architect as applicable, licensed in the State of Iowa, indicating the construction was completed in substantial compliance with the project plans and specifications.

c. Final reimbursement of Federal funds shall be made only after the Department accepts the project as complete.

d. The Recipient shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The Recipient shall also make these materials available at all reasonable times for inspection by the Department, FHWA, or any authorized representatives of the Federal Government. Copies of these materials shall be furnished by the Recipient if requested. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final closure document. Upon receipt of FHWA approval of the final closure document, the Department will notify the Recipient of the record retention date.

e. The Recipient shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the Department and the FHWA.