Programmatic Agreement
between
The Federal Highway Administration-Nebraska Division
and
The Nebraska Department of Roads
for

At-Grade Railroad Crossing Improvement Activities

The Federal Highway Administration-Nebraska Division (FHWA) and the Nebraska Department of Roads (NDOR) have developed this Programmatic Agreement (PA) to outline the policy and procedure for environmentally approving certain federally-funded actions that involve installing or replacing railroad warning devices on existing structures where no land acquisition or road closures exceeding 24 hours will occur.

WHEREAS, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with the National Environmental Policy Act (NEPA) and implementing regulations (23 CFR 771);

WHEREAS, NDOR and FHWA have jointly been invited to concur in this PA;

WHEREAS, NDOR, as the statewide recipient of the federal-aid program, is responsible for compliance with all federal laws and regulations pursuant to 23 CFR 1.36;

WHEREAS, this PA is consistent with the Statewide Long Range Plan, the Statewide Transportation Improvement Program (STIP), and applicable Metropolitan or Rural Planning Organizations' Transportation Improvement Programs (TIP's) and Long Range Transportation Plans, and is exempt from regional air quality conformity determinations (40 CFR parts 51 and 93);

WHEREAS, the FHWA has delegated approval authority of certain Categorical Exclusion (CE) activities to NDOR, as described in the *Programmatic Agreement for the Review and Approval of the NEPA Categorically Excluded Transportation Projects* (PCE Agreement) between FHWA and NDOR, dated 12/17/08;

WHEREAS, Part B of the PCE Agreement allows for exceptions to the PCE Agreement by FHWA;

WHEREAS, this PA will cover action types that would be classified as a PCE under the PCE Agreement and will create an exception to the requirement to complete a NEPA Determination Form for actions covered by this PA;

WHEREAS, FHWA will monitor the use of this PA and retains the authority to revoke approval authority upon discovery of misapplication of the PA or non-compliance with any federal law or regulation or the stipulations of this PA;

NOW THEREFORE, the FHWA and NDOR agree that activities addressed by this PA, which are not part of a larger undertaking, shall be administered in accordance with the following in order to satisfy FHWA's NEPA responsibilities.

Based on past experiences with similar actions, the FHWA has determined that certain at-grade railroad crossing improvement activities do not involve significant environmental impacts. These improvement activities include:

- Installing/replacing light bulbs,
- Installing/replacing signs on existing posts,
- Installing new signs on new post within the existing fill section
- Installing/replacing lights, gates, circuitry, or structures within the existing fill section, not to exceed the depth of the existing fill (including circuitry bungalows, etc.)
- Traffic control necessary for the at-grade railroad crossing improvements (excluding road closures/detours)

Based on the nature of the at-grade railroad crossing improvement activities, FHWA does not anticipate negative impacts to natural, cultural, historic, recreational resources from these activities; these activities do not negatively impact air, noise, water quality, or travel patterns, and do not present any negative cumulative impacts. FHWA has determined that these types of activities do not affect listed species, there is no potential to affect historic properties from these actions, and there is no potential to impact waters of the U.S. Furthermore, experience has demonstrated that these types of activities do not generate controversy on environmental grounds, nor do they impact Section 4(f) protected properties.

Therefore, FHWA has determined that project-specific NEPA and technical documents shall not be generated for this class of action in Nebraska, unless the stipulations below are not met.

Stipulation 1
NDOR agrees to review individual projects environmentally approved by this programmatic agreement to ensure unusual circumstances as outlined by 23 CFR 771.117(b) do not exist. If an unusual circumstance is identified, NDOR shall coordinate with FHWA for guidance and shall create a project-specific NEPA document, in compliance with the PCE Agreement.
Stipulation 2
This agreement does not apply to activities on roadways or properties identified as eligible in the *Nebraska Historic Highway Survey* (2002).
Stipulation 3
NDOR agrees to include the following commitments in the project-specific Green Sheets and/or the project agreement documents for actions approved under this agreement:

To eliminate possible noise impacts to migrating Whooping Cranes:

- Any work occurring within ¼ mile of perennial waters during Spring Migration: March 10 to May 10 or during Fall Migration: September 16 to November 16 shall be limited to daylight hours between 10:00am and 4:00pm.

To eliminate possible noise impacts to nesting Least Terns or Piping Plovers:

- Any work occurring within ¼ mile of perennial waters should be done between August 15-April 1. If work cannot be done during this time, steps shall be taken to avoid disturbing terns and plovers. While working the contractor shall park their work vehicles(s) in a manner that would block the visibility of any stream, river, sandpit, or water-body. Work is to be conducted as quickly and quietly as possible. Radios are to be turned off at the activity site.

To eliminate possible indirect impacts to species sensitive to night-time lights:

- Except for work within fully developed, urbanized areas, nighttime work with lights is prohibited.

To avoid impacts to undetected archaeological resources:

- Work is limited to in-kind replacement/repair (signs to signs, gates to gates, etc) with any and all ground disturbance limited to fill material locations only, not to exceed the depth of the fill material.

To avoid unanticipated impacts:

- The contractor shall not stage, store, waste or stockpile materials and equipment in undisturbed locations, or in known/potential wetlands and/or known/potential streams that exhibit a clear "bed and bank" channel. Potential wetland areas consist of any area that is known to pond water, swampy areas or areas supporting known wetland vegetation (e.g. Cattails, bulrush, Canary reed grass, smartweed, or areas where there is a distinct difference in vegetation (at lower elevations) from the surrounding upland areas.)

To avoid impacts to the community:

- Through access shall be maintained at all times for the rail line. Any closures to the roadway will be for short duration (less than 24 hours) with an alternate access route adequately signed. Emergency services shall be given adequate notice of any closures.
- Access must be maintained at all times to any and all public parks, recreation areas and wildlife refuges.

To avoid Hazardous Material concerns:

- Any items that may contain hazardous materials, such as lead-based paint or mercury, must be properly handled and disposed of as outlined in the standard specifications.

Stipulation 4
NDOR shall document that the individual projects approved under this PA were reviewed to determine if each of the stipulations outlined above could be met and that the required commitments were included in the project agreement documents and/or project green sheet. This documentation shall be added to each of the project records.

Administrative Conditions

1. This agreement becomes effective on the date of signature, below.
2. Applicability - If it is unclear what work associated with at-grade railroad crossing improvement activities applies to this PA, NDOR shall coordinate with FHWA to determine the appropriateness of utilizing this PA.
3. Monitoring – FHWA shall complete a process review of the use of this PA. Within the first year of execution, NDOR shall provide a listing of actions approved under this agreement 6 months after the signing of this PA. For subsequent years, a listing of actions approved under this agreement shall be provided to FHWA from NDOR by December 31st of each year.

4. Termination – Any party may terminate this PA by providing 30 days written notice to the other party. In the event of termination, these classes of action shall be required to have an individual NEPA document generated to demonstrate environmental approval, unless this PA is terminated due to an update to the PA or the incorporation of these activities into a different agreement document.

6-23-10

Nebraska Department of Roads — Date

6-23-10

Federal Highway Administration — Date