

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 18, 2010 AGENDA**

Subject:	Type:	Submitted By:
COUNCIL POLICY STATEMENT – PROGRAMS, SERVICES, AND ACTIVITIES RELATED TO ADA/SECTION 504	◆ RESOLUTIONS (2) ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

SYNOPSIS

Resolutions have been prepared to approve Council Policy Statements pertaining to Programs, Services and Activities of the City of La Vista that are subject to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as a result of receiving Federal financial assistance on Transportation Projects.

FISCAL IMPACT

Additional staff time will be required to compile and submit annual compliance reports to the Nebraska Department of Roads who in turn will file reports with the Federal Highway Administration.

RECOMMENDATION

Approval

BACKGROUND

The City of La Vista, as a sub-recipient of Federal-Aid funding, is charged with the responsibility of expending said funds in accordance with Federal and State law, the rules and regulations of the Federal Highway Administration, and the requirements of the Local Public Agency (LPA) Guidelines Manual of the Nebraska Department of Roads. This includes compliance with the American's with Disability Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

Failure to meet all requirements for federal funding could lead to a project or projects being declared ineligible for federal funds, which could result in the City of La Vista being required to repay some or all of the federal funds expended for a project or projects.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A COUNCIL POLICY STATEMENT PERTAINING TO PROGRAMS, SERVICES AND ACTIVITIES OF THE CITY OF LA VISTA THAT ARE SUBJECT TO SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990 AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS: Certain transportation facilities (roads, streets, trails, and others) in City of La Vista have been designated as being eligible for federal funds by the Federal Highway Administration in compliance with federal laws pertaining thereto;

WHEREAS: City of La Vista desires to continue to participate in Federal-Aid transportation construction programs;

WHEREAS: The Nebraska Department of Roads as a recipient of said Federal funds is charged with oversight of the expenditures of said funds;

WHEREAS: City of La Vista as a sub-recipient of said Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal and State law, the rules and regulations of the Federal Highway Administration, the requirements of the Local Public Agency (LPA) Guidelines Manual of the Nebraska Department of Roads and the Americans with Disabilities/Section 504 – Civil Rights Policy of City of La Vista; and

WHEREAS: City of La Vista understands that the failure to meet all requirements for federal funding could lead to a project(s) being declared ineligible for federal funds, which could result in City of La Vista being required to repay some or all of the federal funds expended for a project(s).

NOW THEREFORE BE IT RESOLVED: The Mayor and City Council of La Vista, Nebraska does hereby adopt and bind itself to comply with all applicable federal law, including the rules and regulations of the Federal Highway Administration, all applicable state law and rules and regulations (Nebraska Administrative Code) and the requirements of the LPA Guidelines Manual of the Nebraska Department of Roads and the Americans with Disabilities/Section 504 – Civil Rights of City of La Vista.

BE IT FURTHER RESOLVED: The Mayor and City Council of La Vista, Nebraska does hereby designate the following as responsible for the management of the Americans with Disabilities/Section 504 – Civil Rights process: City Clerk

PASSED AND APPROVED THIS 18TH DAY OF MAY, 2010.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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**CITY OF LA VISTA
COUNCIL POLICY STATEMENT**

**Programs, Services, and Activities related to Section 504 - Rehabilitation Act of 1973
Americans with Disabilities Act of 1990**

**Issued:
Resolution No.**

Purpose

The City of La Vista will ensure that no qualified disabled individual shall, solely on the basis of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any of its programs, services, or activities as provided by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). The City of La Vista further ensures that every effort will be made to provide nondiscrimination in all of its programs or activities regardless of the funding source.

For our purposes, a disabled person is defined as any person who

- Has a physical or mental impairment that substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment

Authorities

Section 504 of the Rehabilitation Act of 1973, as amended, provides that "No otherwise qualified disabled individual in the United States, as defined in section 7(6), shall, solely by reason of his disability, be excluded for the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

29 USC 794 (October 29, 1992 to the Rehabilitation Act of 1973) substitutes "a disability" for "handicaps" and "disability" for "handicap".

49 CFR Part 27.13 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, "This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance".

49 CFR Part 28.102 (Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Transportation) states, "This part applies to all programs or activities conducted by the Department of Transportation except for programs and activities conducted outside the United States that do not involve individuals with disabilities in the United States."

28 CFR Part 35 (Judicial Administration) states that: "The purpose of this part is to effectuate Subtitle A of Title II of the ADA which prohibits discrimination on the basis of disabilities by public entities.

49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, "The purpose of this part is to carry out the intent of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) as amended, to the end that no otherwise qualified disabled individual in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

49 CFR Part 28-140 (Employment) states that, "(a) No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Department," and "(b) The definitions, requirements, and procedures of Section 504 of the Rehabilitation Act of 1973 (29 USC 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

29 CFR Part 1613 (Equal Employment Opportunity in the Federal Government) states that: "It is the policy of the Government of the United States . . . to provide equal opportunity in employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, or national origin and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency."

42 USC Part 12101-12213 (The Americans with Disabilities Act of 1990) states that: "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

Organization

Please see Responsibility Flow Chart on Attachment 1

Section 504/ADA Coordinator Responsibilities

The City Clerk is designated as the City's Section 504/ADA Coordinator. The Coordinator shall be responsible for coordinating the City's efforts to comply with and carry out its responsibilities under the Section 504/ADA including employment matters and receiving any complaints communicated to the Coordinator alleging the City's non-compliance or alleging any actions that would be prohibited acts.

Section 504/ADA Notice to the Public

The City of La Vista does not discriminate on the basis of disability in admission of its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The City of La Vista also does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Questions, complaints, or requests for additional information or accommodation regarding the ADA and Section 504 may be forwarded to the designated ADA and Section 504 compliance coordinator:

Pam Buethe, City Clerk
402-331-4343 Phone
402-331-4375 Fax
8116 Park View Blvd.
La Vista, NE 68128
pbuethe@cityoflavista.org
Office hours: Monday-Thursday, 8am-4:30pm, Friday, 8am-noon

Section 504/ADA Self-Evaluation

The following areas were evaluated at the time of the original passage of the acts and are reviewed periodically to ensure continued compliance.

- Personnel policies, procedures, benefits, programs, etc. were reviewed for accessibility.
- City buildings and facilities were evaluated for accessibility.
- City programs, services and activities were evaluated for accessibility.

The buildings, facilities, programs, services and activities are reviewed on an annual Basis as part of the Capital Improvement Program and the normal budget process.

Self-evaluations consider all programs, activities and services. Remedial measures necessary to bring the programs, policies, and services into compliance may include, but be limited to, (1) relocation of programs to accessible facilities; (2) offering programs in an alternative accessible manner; (3) structural changes to provide program access; (4) policy modifications to ensure nondiscrimination; and (5) auxiliary aids to needed to provide effective communication.

Section 504/ADA Transition Plan

The following areas identified in the self-evaluation process were given a transition plan and have been completed.

Employment

- Application form was reviewed and updated for compliance.
- Policy on pre-employment physical examinations was changed to be post job offer.
- Application procedure was changed to allow for changes in maximum testing times (such as those with dyslexia or other impairments).
- Job descriptions were updated. New format now includes a section for Essential Functions, Physical Requirements, Tools/Equipment Used, and Working Conditions.
- Recruitment information is now available in several formats and additional locations.
- Training with provided to all employees with additional training for supervisors regarding hiring policies, interviewing questions and procedures, etc.

Buildings/Facilities/Infrastructure

- Police Station (old facility)—pathways, door handles, and doorbells were changed, restroom facilities were modified, accessible parking and signage were altered for compliance.
- Police Station (new facility)—the new station was designed to be totally accessible according to building code requirements. Severe weather warning accommodations are available upon request.
- Fire Station No. 1 (old facility)—modified restrooms, added accessible parking spaces and with related signage and modified door handles. A new facility to replace Fire Station No. 1 is in the planning stages and will proceed when funding can be arranged.
- City Hall—a new City Hall was constructed prior to Jan. 1995 compliance deadline which conformed to all of the accessibility standards at that time.
- Municipal Swimming Pool—modifications were made to the bathhouse to modify restrooms and shower facilities, hallways were modified, and accessible parking was provided. Wheelchair access from the exterior is provided via a gate opening at the side of the building to circumvent a front door width restriction after which access to the bathhouse is available from inside the pool area. Some major issues, such as zero-depth entry remain. These will be addressed with a new aquatic facility at such time as funding can be obtained.
- Central Park-Restroom modifications were made and accessible parking stalls were provided.
- City Park—a drinking fountain was lowered and a new concession/maintenance building was constructed that provided accessible restrooms.
- Sports Complex—insulated piping and modified faucet handles in restrooms, changed door handles and provided accessible parking spaces
- Signage indicating accessible entrances was placed on each building.

Curb Ramps In Public Streets

- Newly built or altered streets and roads include ramps wherever there are curbs or other barriers to entry from a pedestrian walkway. "Altered" includes resurfacing while isolated panel replacement and filling-in potholes does not.

- New sidewalks and walkways in public right of way or public property contain curb ramps in accordance with the applicable design regulations at the time that they are constructed.
- The public may request curb ramps at specific locations at any time. They will be constructed if warranted at such time as funds are available.
- All existing streets have been provided with curb ramps.

Services

- Council meeting minutes are available in alternative formats including written and audiotape. City Council and other public hearing agendas are also available in different formats. These are available upon request to the City Clerk at least three working days prior to the public hearing.

Transition plans will be created/alterd as areas are identified during our continuing self-evaluations. Interested persons, including individuals with disabilities or organizations representing individuals with disabilities, will have an opportunity to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

ADA Compliant Procedure

1. If you believe you have been discriminated against, denied employment or a benefit, or excluded from participation in any City program or activity on the basis of disability in violation of the ADA, you may submit a complaint in writing to the City Clerk for resolution. The complaint form attached hereto should be used. The complaint should be submitted as soon as possible but no later than sixty (60) days after the alleged violation. A record of the complaint and action taken will be maintained. A decision by the City Clerk will be rendered to you in writing or an appropriate substitute format within 10 working days.
2. Upon receipt of a complaint the City Clerk will provide the appropriate Department Head with a copy of the complaint. The Department Head will assist the City Clerk in conducting an investigation. The City Clerk may seek assistance from other Department Heads and the City Attorney depending on the nature of the complaint. A response will be provided in writing to the complainant within 15 working days of receipt of the complaint. The response will explain the position of the City of La Vista and, if applicable, offer options for resolution or actions that will be taken by the City.
3. If the complaint can't be resolved to your satisfaction by the City Clerk you may appeal the decision or action to the City Administrator within 15 days after receipt of the response from the City Clerk.
4. If the complaint can't be resolved to your satisfaction by the City Clerk or City Administrator, then the complaint will be heard by the City Council and discussed at an open, public meeting of the elected body. The decision of the City Council is the final action of the City in response to the complaint..
5. A record of action taken on each request or complaint will be maintained as a part of the records or minutes at each level of the grievance process.

6. Your right to a prompt and equitable resolution of the complaint will not be impaired by your pursuit of other remedies, such as the filing of a complaint with the Department of Justice or other appropriate federal agency, or the filing of a suit in the state or federal court. Use of this grievance procedure isn't a prerequisite to the pursuit of other remedies.

Reasonable Accommodation Procedures

The requirements related to the provision of auxiliary aids and services and information concerning local providers are set forth in an attachment to this policy.

Assurances

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the City of La Vista, desiring to avail itself of federal financial assistance from the US Department of Transportation, hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this federal financial assistance.

The City of La Vista further assures that its programs will be conducted, and its facilities operated, in compliance with all requirements imposed by or pursuant to 49 CFR Part 27, 28 CFR Part 35 and 42 USC 12101-12213.

End

AMERICAN'S WITH DISABILITIES ACT
DISCRIMINATION COMPLAINT FORM

Instructions: Please fill out this form completely. Sign and return to the address on page 2.

Complainant:

Address:

City, State and Zip Code:

Telephone:

Home:

Cell:

Person Discriminated Against:
(if other than the complainant)

Address:

City, State and Zip Code:

When did the discrimination occur?

Where did the discrimination occur?

Describe the act(s) of discrimination (attach additional pages if necessary):

Have any additional efforts been made by you regarding this complaint? Yes___ No___

If yes, what?

Signature: _____

Date:

Return this form to:

Ms. Pam Buethe, City Clerk
City of La Vista
8116 Park View Blvd.
City of La Vista, NE 68128
pbuethe@cityoflavista.org

AUXILIARY AIDS AND SERVICES

Under the Americans with Disabilities Act (ADA), State and local governments must ensure effective communication with individuals with disabilities. Public entities are required to provide appropriate auxiliary aids and service, where necessary, to ensure that communications (such as all public information, discourse, and/or announcements) with individuals with disabilities are as effective as communications with others. Auxiliary aids and services include: Braille, large print formats, assistive listening devices (ALS), TTY/TTD access, closed captioning, interactive software for various disabilities, website accessibility implements, interpreters, readers, service animals, etc.

When selecting an auxiliary aid or service, a public entity should:

- Give primary consideration to the aid or service preferred by the individual because that individual is usually best able to identify the communication barriers that hamper participation.
- Allow people the opportunity to use their own assistive technology products to achieve effective communication.
- Consider the context in which the communication is taking place and its importance.

A public entity is not required to provide:

- The requested aid or service if there is another equally effective means of communication available; however, it must give primary consideration to the aid or service preferred by the individual.
- Auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or undue burden.

TO FIND LOCAL PROVIDERS OF SPECIFIC AUXILIARY AIDS AND SERVICES
CONTACT:

Nebraska Commission for the Blind and Visually Impaired

4600 Valley Road
Suite 100
Lincoln, NE 68510-4844
Phone: (402) 471-2891
Toll-free: (877) 809-2419
Fax: (402) 471-3009

<http://www.ncbvi.ne.gov/>

Nebraska Commission for the Deaf and Hard of Hearing

Omaha Office
1313 Farnam On-The-Mall
Omaha, NE 68102-1836
Phone: (402) 595-3991 v/tty
Fax: (402) 595-2509
Toll Free: 1-877-248-7836 v/tty
E-mail Address: ncdhh.omaha@nebraska.gov

<http://www.ncdhh.ne.gov/>

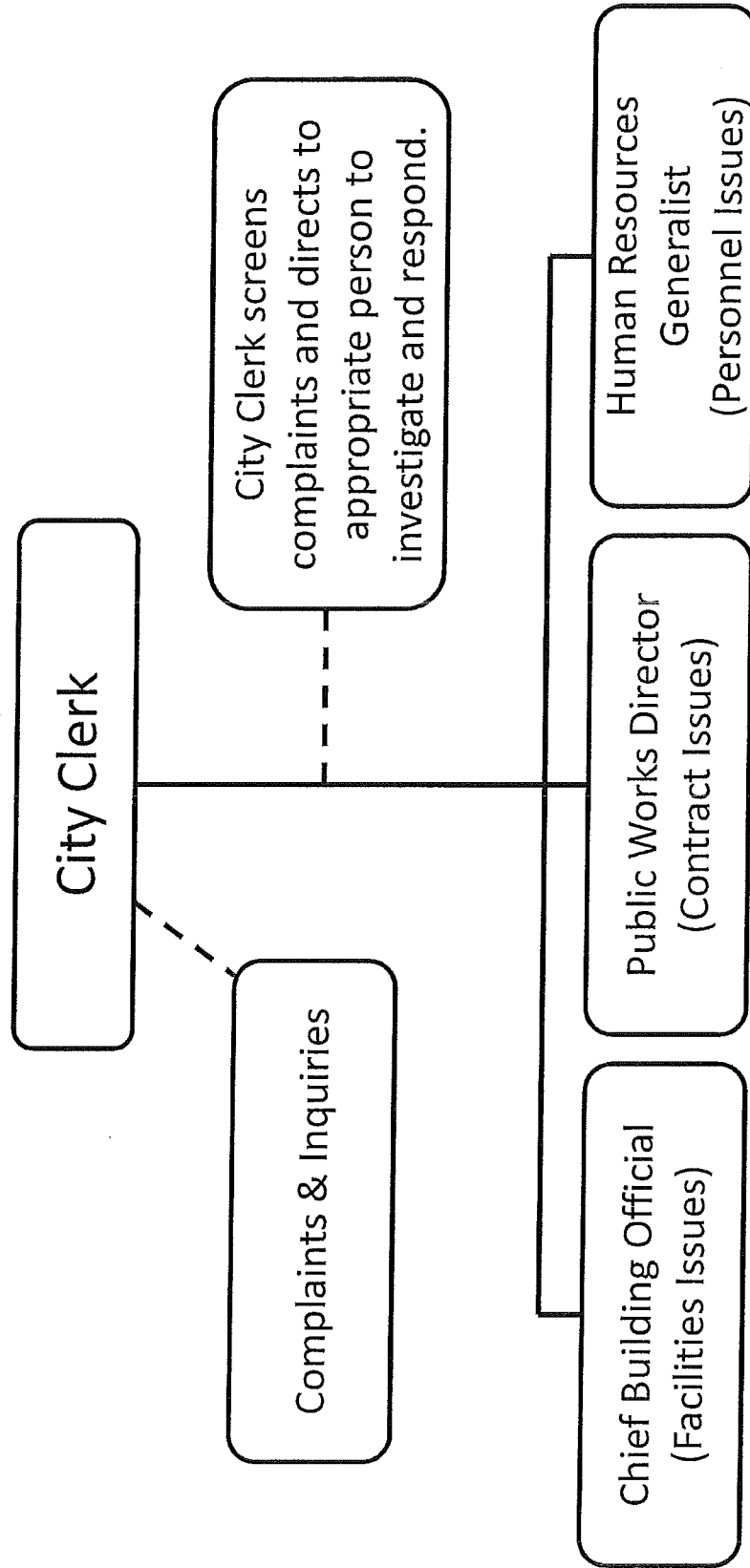
Nebraska Department of Health and Human Services

Eastern Service Area
Barry DeJong- Administrator
1313 Farnam
Omaha, NE 68102
Phone: (402) 595-2880

Lincoln Office
301 Centennial Mall South
P.O. Box 95206
Lincoln, NE 68509-5026
Phone: (402) 471-3121

<http://www.dhhs.ne.gov/>

City of La Vista
Civil Rights & ADA Compliance
Responsibility Flow Chart



RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A COUNCIL POLICY STATEMENT PERTAINING TO PROGRAMS, SERVICES AND ACTIVITIES OF THE CITY OF LA VISTA THAT ARE SUBJECT TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND THE CIVIL RIGHTS RESTORATION ACT OF 1987 AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS: Certain transportation facilities (roads, streets, trails, and others) in City of La Vista have been designated as being eligible for federal funds by the Federal Highway Administration in compliance with federal laws pertaining thereto;

WHEREAS: City of La Vista desires to continue to participate in Federal-Aid transportation construction programs;

WHEREAS: The Nebraska Department of Roads as a recipient of said Federal funds is charged with oversight of the expenditures of said funds;

WHEREAS: City of La Vista as a sub-recipient of said Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal and State law, the rules and regulations of the Federal Highway Administration, the requirements of the Local Public Agency (LPA) Guidelines Manual of the Nebraska Department of Roads and the Title VI – Civil Rights Policy of City of La Vista; and

WHEREAS: City of La Vista understands that the failure to meet all requirements for federal funding could lead to a project(s) being declared ineligible for federal funds, which could result in City of La Vista being required to repay some or all of the federal funds expended for a project(s).

NOW THEREFORE BE IT RESOLVED: The Mayor and City Council of La Vista, Nebraska does hereby adopt and bind itself to comply with all applicable federal law, including the rules and regulations of the Federal Highway Administration, all applicable state law and rules and regulations (Nebraska Administrative Code) and the requirements of the LPA Guidelines Manual of the Nebraska Department of Roads and the Title VI – Civil Rights of City of La Vista.

BE IT FURTHER RESOLVED: The Mayor and City Council of La Vista, Nebraska does hereby designate the following as responsible for the management of the Title VI – Civil Rights process: City Clerk

PASSED AND APPROVED THIS 18TH DAY OF MAY, 2010.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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**CITY OF LA VISTA
COUNCIL POLICY STATEMENT**

Programs, Services, and Activities – Title VI of the Civil Rights Act of 1964

**Issued:
Resolution No.**

Purpose

The City of La Vista (Local Public Agency), hereinafter referred to as the “LPA,” assures that no person shall on the grounds of race, color, national origin, age, disability/handicap or sex, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. The LPA further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

The Civil Rights Restoration Act of 1987, broadened the scope of Title VI coverage by expanding the definition of terms “programs or activities” to include all programs or activities of Federal Aid recipients, sub-recipients, and contractors/consultants, whether such programs and activities are federally assisted or not (Public Law 100259 [S.557] March 22, 1988.)

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the LPA hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this Federal financial assistance.

In the event the LPA distributes federal aid funds to a sub-recipient, the LPA will include Title VI language in all written agreements and will monitor for compliance.

The LPA’s City Clerk, is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulation(CFR) 200 and 49 Code of Federal Regulation 21.

**TITLE VI
NONDISCRIMINATION AGREEMENT
Nebraska State Department of Roads
and
City of La Vista**

Policy Statement

The City of La Vista (Local Public Agency), hereinafter referred to as the "LPA," assures that no person shall on the grounds of race, color, national origin, age, disability/handicap or sex, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. The LPA further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

The Civil Rights Restoration Act of 1987, broadened the scope of Title VI coverage by expanding the definition of terms "programs or activities" to include all programs or activities of Federal Aid recipients, sub-recipients, and contractors/consultants, whether such programs and activities are federally assisted or not (Public Law 100259 [S.557] March 22, 1988.)

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the LPA hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this Federal financial assistance.

In the event the LPA distributes federal aid funds to a sub-recipient, the LPA will include Title VI language in all written agreements and will monitor for compliance.

The LPA's City Clerk, is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulation(CFR) 200 and 49 Code of Federal Regulation 21.

Brenda Gunn

City Administrator

Date

Title VI Program

Organization and Staffing

Pursuant to 23 CFR 200, (LPA) has appointed a Title VI Coordinator who is responsible for Attachment 1, which describes the hierarchy for (LPA)'s Title VI Program, including an organization's chart illustrating the level and placement of Title VI responsibilities.

Standard DOT Assurances

49 CFR Part 21.7

The (LPA) hereby gives assurances:

1. That no person shall on the grounds of race, color, national origin, age, disability/handicap and sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the LPA regardless of whether those programs and activities are Federally funded or not. Activities and programs which the LPA hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:
 - Transportation Projects such as Street Improvements, Hike/Bike Trails, etc.
 - That the LPA agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
 - That the LPA shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all *Transportation Projects* and, in adapted form in all proposals for negotiated agreements:
2. The (LPA), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin, sex, age and disability/handicap in consideration for an award.
3. That the LPA shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the LPA shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where the LPA receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the LPA receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.

DRAFT

7. That the LPA shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the LPA with other parties: (a) for the subsequent transfer of real property acquired or improved under *Transportation Projects*; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under *Transportation Projects*.
8. That this assurance obligates the LPA for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the LPA or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the LPA retains ownership or possession of the property.
9. The LPA shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The LPA agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the LPA Department of Transportation under the *Transportation Projects* and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the *Transportation Projects*. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the LPA.

Implementation Procedures

This agreement shall serve as the LPA's Title VI plan pursuant to 23 CFR 200 and 49 CFR 21.

For the purpose of this agreement, "Federal Assistance" shall include:

- 1) grants and loans of Federal funds,
- 2) the grant or donation of Federal property and interest in property,
- 3) the detail of Federal personnel,
- 4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the LPA, or in recognition of the public interest to be served by such sale or lease to the LPA, and
- 5) any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

The LPA shall:

- a) Issue a policy statement, signed by the head of the LPA, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the LPA's organization and to the general public. Such information shall be published where appropriate in languages other than English.
- b) Take affirmative action to correct any deficiencies found by NDOR or the United States Department of Transportation (USDOT) within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the LPA shall be held responsible for implementing Title VI requirements.
- c) Designate a coordinator who has a responsible position in the organization and easy access to the head of the LPA. The coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
- d) Develop and implement a community outreach and public education program.
- e) Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigation. Identify each complainant by race, color, national origin or sex, the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the LPA's report of investigation, will be forwarded to NDOR's Highway Civil Rights Coordinator within 10 days of the date the complaint was received by the LPA.
- f) Collect statistical data (race, color, national origin, sex) of participants in, and beneficiaries of the programs and activities conducted by the LPA.
- g) Conduct Title VI reviews of the LPA and sub-recipient contractor/consultant program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.

- h) Conduct training programs on Title VI and related statutes.
- i) Prepare a yearly report of Title VI accomplishments for the last year and goals for the next year.
 - 1) Annual Work Plan
Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.
 - 2) Accomplishment Report
List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Coordinator and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews (internal or external) conducted by the Title VI Coordinator. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the LPA. Include a listing of complaints received against sub-recipients, as well as a summary of complaint and actions taken.

Discrimination Complaint Procedures – Allegations of Discrimination in Federally Assisted Programs or Activities

- 1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, the American with Disabilities Act of 1990, Section 504 of the Vocational Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987, as amended, may file a complaint with the LPA. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the LPA's Title VI Coordinator for review and action.
- 2. In order to have the complaint consideration under this procedure, the complainant must file the complaint no later than 180 days after:
 - a) The date of alleged act of discrimination; or
 - b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the LPA or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

- 3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the LPA, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the LPA's investigative procedures.

4. Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of procedures to be followed, and advise the complainant of other avenues of redress available, such as NDOR and USDOT.
5. The LPA will advise NDOR within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to NDOR:
 - a) Name, address, and phone number of the complainant.
 - b) Name(s) and address (es) of alleged discriminating official(s).
 - c) Basis of complaint (i.e., race, color, national origin or sex)
 - d) Date of alleged discriminatory act(s).
 - e) Date of complaint received by the LPA.
 - f) A statement of the complaint.
 - g) Other agencies (state, local or Federal) where the complaint has been filed.
 - h) An explanation of the actions the LPA has taken or proposed to resolve the issue raised in the complaint.
6. NDOR will forward the complaint to FHWA. FHWA Office of Civil Rights will determine the appropriate individual and/or organization to conduct the investigation.
7. Within 60 days, the Title VI Coordinator will conduct an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the LPA. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
8. Within 90 days of receipt of the complaint, the head of the LPA will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with NDOR, or USDOT, if they are dissatisfied with the final decision rendered by the LPA. The Title VI Coordinator will also provide NDOR with a copy of this decision and summary of findings upon completion of the investigation.
9. Any complaints received against the LPA should immediately be forwarded to NDOR for investigation. The LPA will not investigate any complaint in which it has been named in the complaint.
10. Contacts for the different Title VI administrative jurisdictions are as follows:

Nebraska Department of Roads
Human Resources, Title VI Program
1500 Highway 2, P.O. Box 94759
Lincoln, NE 68509-4759
(402) 479-4870

Federal Highway Administration
Nebraska Division Office
100 Centennial Mall North
Lincoln, NE 68508
(402) 437-5765

Sanctions

In the event the LPA fails or refuses to comply with the terms of this agreement, the NDOR may take any or all of the following actions:

- a) Cancel, terminate, or suspend this agreement in whole or in part;
- b) Refrain from extending any further assistance to the LPA under the program from which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LPA.
- c) Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the LPA.
- d) Refer the case to the Department of Justice for appropriate legal proceedings.

NEBRASKA DEPARTMENT OF ROADS:

Signature

Civil Rights Coordinator

Title

Date

CITY OF LA VISTA:

Brenda Gunn

City Administrator

Date

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (*Recipient*) or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (*Recipient*), or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (*Recipient*) shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the (*Recipient*) or the FHWA may direct as a means of enforcing such provisions including sanctions for non-

compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (*Recipient*) to enter into such litigation to protect the interests of the (*Recipient*), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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APPENDIX B

- A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the *(Name of Recipient)* will accept title to the lands and maintain the project constructed thereon, in accordance with *(Name of Appropriate Legislative Authority)*, the Regulations for the Administration of *(Name of Appropriate Program)* and the policies and procedures prescribed by FHWA, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the *(Name of Recipient)* all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto *(Name of Recipient)* and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the *(Name of Recipient)*, its successors and assigns.

The *(Name of Recipient)*, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, sex, age, and disability/handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed [,] [and] * (2) that the *(Name of Recipient)* shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.*

APPENDIX C

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the *(Name of Recipient)* pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by *(Name of Recipient)* pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of

Title VI of the Civil Rights Act of 1964), Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]*

That in the event of breach of any of the above nondiscrimination covenants, (*Name of Recipient*) shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (*Name of Recipient*) and its assigns.

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