APPENDIX L

Memorandum of Understanding Federal Highway Administration, Nebraska Division Western Area Power Administration, Rocky Mountain Region

MEMORANDUM OF UNDERSTANDING

FEDERAL HIGHWAY ADMINISTRATION, NEBRASKA DIVISION
WESTERN AREA POWER ADMINISTRATION, ROCKY MOUNTAIN REGION
PROJECT NO. RRZ-TMT-26-1(161)
CONTROL NO. 51299
BRIDGEPORT VIADUCT

THIS AGREEMENT is between the Federal Highway Administration ("FHWA") and Western Area Power Administration ("WAPA"), collectively referred to as the "Parties".

WITNESSETH

WHEREAS, the Nebraska Department of Transportation ("NDOT") intends to improve a portion of State Highway US-26 (US-26) that includes a viaduct over BNSF tracks on the west edge of Bridgeport. The preliminary preferred alternative would relocate a portion of US-26 south of the existing highway, at the location shown on Exhibit "A", and

WHEREAS, NDOT is preparing an Environmental Assessment (EA) for the project and the Federal Highway Administration (FHWA) is the lead federal agency, and

WHEREAS, WAPA has an electrical substation that is located along US-26 in the vicinity of the proposed viaduct, and

WHEREAS, WAPA has requested to be a cooperating agency, and

WHEREAS, WAPA has power lines running south from the substation that will require adjustments to the poles to accommodate the proposed viaduct location shown in Exhibit "A" and WAPA has requested FHWA include this work in the EA, and

WHEREAS, this Memorandum of Understanding (MOU) establishes a Cooperating Agency relationship between FHWA Nebraska Division, and WAPA's Rocky Mountain Region for the purpose of preparing an EA for the project.

NOW THEREFORE, in consideration of these facts and mutual promises, the Parties hereto agree as follows:

SECTION 1. PURPOSES

The purposes of this MOU are:

1.1 To designate a Cooperating Agency in the Project EA process.

1.2 To provide a framework for mutual cooperation and coordination between FHWA and WAPA that will ensure successful completion of the Project EA in a timely, efficient, and thorough manner.

1.3 To recognize that the FHWA is the lead Federal agency with responsibility for the completion of the Project EA, FHWA's decision document, and all NEPA requirements, including consultation with American Indian Tribes and other federal agencies.

1.4 To recognize and provide guidance for the development of a mutually respectful and effective Cooperating Agency relationship between the Parties which reflects their unique working relationship as it relates to the tasks at hand.

1.5 To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

SECTION 2. BACKGROUND

2.1 FHWA acknowledges that WAPA, as a Cooperating Agency, has jurisdiction by law and/or special expertise applicable to the EA effort, as defined at 40 CFR §§ 1508.1(e), (n), and (ee). This MOU describes responsibilities and procedures agreed to by the Parties.

2.2 NDOT intends to improve a portion of State Highway US-26 (US-26) that includes a viaduct over BNSF tracks on the west edge of Bridgeport. The preliminary preferred alternative would relocate a portion of US-26 south of the existing highway, at the location shown on Exhibit "A", attached and incorporated herein by this reference.

2.3 WAPA has an electrical substation that is located along US-26 in the vicinity of the proposed viaduct. WAPA has power lines running south from the substation that will require adjustments to the poles to accommodate the proposed viaduct location shown in Exhibit "A" and WAPA has requested FHWA include this work in the EA.

SECTION 3. ROLES AND RESPONSIBILITIES

3.1 FHWA's roles and responsibilities include:

3.1.1 As the lead Federal agency, FHWA retains final responsibility for the content of all planning and NEPA documents, which include the EA, any supplemental documents and the decision document. In completing these responsibilities, FHWA will meaningfully involve WAPA throughout the entire NEPA process,

including but not limited to identification of effects, determination of appropriate mitigation measures, and review of public comments.

3.1.2 To the maximum extent possible and consistent with FHWA's responsibilities as the lead Federal agency, FHWA will gain consistent involvement of WAPA, consider the comments, recommendations, data, and analyses provided by WAPA in the EA process, giving particular consideration to those topics on which WAPA is acknowledged to possess jurisdiction by law or special expertise.

3.1.3 To the fullest extent practicable, after consideration of the effects such releases may have on FHWA's ability to withhold this information from other parties, FHWA will timely provide WAPA with copies of documents underlying the analysis relevant to WAPA responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and the EA.

3.2 WAPA's roles and responsibilities include:

3.2.1 WAPA is a Cooperating Agency in this NEPA process and is recognized to have jurisdiction by law and special expertise on all subject matters for which it has statutory responsibility including but not limited to:

- Construction, operation, and maintenance of high voltage transmission lines

3.2.2 WAPA will provide information, comments, and technical expertise to FHWA regarding those elements of the EA, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which FHWA requests its assistance. In particular, WAPA will provide information on impacts related to adjustments to WAPA's transmission lines.

3.2.3 Other such additional information that is relevant to planning issues or data needs.

3.2.4 Within the areas of their jurisdiction or special expertise, WAPA may participate in activities including, but not limited to providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve issues raised during scoping suggesting mitigation measures, and providing written comments on working drafts of the EA and supporting documents.

3.2.5 WAPA will have one member and an alternate appointed to represent its interests and work with the core and/or interdisciplinary team.

3.3 The joint roles and responsibilities of the Parties include:

3.3.1 The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements. Where procedural or substantive disagreement may impede effective and timely completion of the EA, the Parties agree to utilize the facilitation and conciliation procedures described below.

3.3.2 The Parties will make the best effort to comply with the Project schedule provided by FHWA.

3.3.3 Each Party agrees to fund its own expenses associated with EA process, except that NDOT may contract with WAPA for technical studies within its jurisdiction or special expertise, and WAPA may volunteer to provide financial assistance to FHWA to complete tasks associated with the EA.

SECTION 4. REPRESENTATIVES

To ensure coordination during the implementation of this MOU, the Parties have designated the following representatives:

Justin K. Luther, AICP
Program Delivery Team Lead
Federal Highway Administration
Nebraska Division
100 Centennial Mall N #200
Lincoln, NE 68508
402-742-8464
justin.luther@dot.gov

Dillon Dittmer, PWS
Environmental Protection Specialist
Federal Highway Administration
Nebraska Division
100 Centennial Mall N #200
Lincoln, NE 68508
402-742-8465
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Mark Suchy
Natural Resource Specialist
Rocky Mountain Region
Western Area Power Administration
5555 E Crossroads Blvd
Loveland, CO 80538
970-342-646
suchy@wapa.gov

The Parties may change their point of contact at any time by providing notice to the other Party. Any revisions must be added to the official file.

4.1 The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts and may agree to initiate an Alternative Dispute Resolution process. The Parties acknowledge that FHWA retains final responsibility for the decisions identified in the EA and FONSI.

4.2 The Parties agree that they may retain an independent facilitator to foster clear and efficient communication if they deem it necessary. The Parties will split the cost of facilitation equally.

SECTION 5. FUNDING

5.1 This MOU shall not obligate any partner to expend funds or involve the agencies in any contract or other obligations for the payment of money.

5.2 This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the agencies to this MOU will be handled in accordance with applicable laws, regulations and procedures including those for Government procurement and printing. This MOU does not establish authority for noncompetitive awards to WAPA of any contract or other agreement. Any contract or agreement for other services must fully comply with all applicable requirements for competition.

SECTION 6. RECORDS

6.1 Any records or documents generated as a result of this MOU shall become part of the official FHWA record maintained in accordance with FHWA record management policies.

6.2 The Cooperating Agencies will keep confidential and protect from public disclosure any and all documents related to or generated by this agreement. FHWA will determine their suitability for public review or release under the provisions of the Freedom of Information Act, Privacy Act.

SECTION 7. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS; SEVERABILITY CLAUSE

This MOU is subject to all applicable Federal laws, regulations, and rules, whether now in force or hereafter enacted or promulgated. Nothing in this MOU shall be construed as in any way impairing the general powers of FHWA under such applicable laws, regulations, and rules. If any term or provision of this MOU is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Meeting the terms of this MOU shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

SECTION 8. TERM, AMENDMENTS, AND TERMINATION

8.1 Term of MOU:

8.1.1 This MOU becomes effective upon the date last signed and executed by the duly authorized representative of the Parties to this MOU.

8.1.2 This MOU shall remain in effect for 5 years from the execution date unless terminated, extended, or cancelled prior to the expiration date.

8.2 Amendments:

8.2.1 The Parties may request changes to this MOU, which shall be effective only upon the written agreement of all Parties.

8.2.2 Any changes, modification, revisions, or amendments to this MOU shall be incorporated by written instrument, executed, and signed by all Parties, and will be effective in accordance with the terms and conditions contained herein.

8.3 Termination:

8.3.1 This MOU may be unilaterally terminated at any time by any one of its participants, following at least 30 days written notice to the other participants.

8.3.2 During this 30-day period, the Parties will enter negotiations to resolve the disagreement(s). If the disagreement(s) are unresolved by the end of the 30-day period, the MOU will terminate. In the event negotiations are progressing but are not concluded by the end of the 30-day period, the Party initiating the request to terminate may request termination be postponed for an additional 30-day period.

8.3.3 If not terminated earlier, this MOU will end when the Decision Record for the EA is executed by the FHWA Authorized Officer.

SECTION 9. ENTIRE AGREEMENT

This Agreement is the complete and exclusive statement of the arrangement between the Parties, and supersedes all proposals, oral or written, and all other communications between the Parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the Parties hereto. The terms of existing written agreements between the Parties remain in effect, unless expressly modified herein, or when the context of this Agreement clearly requires otherwise.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement pursuant to lawful authority as of the date signed by each party.

EXECUTED by the WAPA this ____ day of _____, 20____.

WESTERN AREA POWER ADMINISTRATION
Barton V. Barnhart

Digitally signed by Barton V. Barnhart
Date: 2023.11.03 16:06:55 -06'00'

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Senior Vice President and Rocky Mountain Regional Manager

EXECUTED by FHWA this 25th day of October, 2023.

FEDERAL HIGHWAY ADMINISTRATION
Richard Wayne Fedora, PE

RICHARD W FEDORA Digitally signed by RICHARD W FEDORA
Date: 2023.10.25 08:54:15 -05'00'

_____
Nebraska Division Administrator