

RESOLUTION 2024-1

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE
NEBRASKA DEPARTMENT OF TRANSPORTATION FOR:**

Installation and Operation of Automated License Plate Reader on State Highway

Whereas: The City and State wish to enter into an Agreement for the Installation and Operation of Automated License Plate Readers (ALPRs) on State Highway within City; and

Whereas: This Agreement is intended to set out the various responsibilities and duties of the City and State regarding the installation, operation and maintenance of the ALPRs; and

Whereas: The City understands that it must strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the installation, operation and maintenance of ALPRs.

Be it resolved: the following is the official action taken by the City Counsel of Gothenburg, Nebraska:

1. The Mayor is hereby authorized and directed to execute said Agreement on behalf of the City of Gothenburg and the City Clerk is authorized to attest said execution.
2. This resolution will be marked Attachment A, and a copy attached to the Agreement.

PASSED AND APPROVED THIS 6th DAY OF FEBRUARY, 2024



A handwritten signature in black ink, appearing to be 'L. J. ...', written over a horizontal line.

Mayor

ATTEST:

A handwritten signature in black ink, appearing to be 'Mary Bwanga', written over a horizontal line.

City Clerk

State/City Agreement
Installation and Operation of Automated License
Plate Reader on State Highway

This Agreement is between the State of Nebraska, Department of Transportation (State), and the City of Gothenburg, Nebraska (City), and the Gothenburg Police Department. This Agreement includes local law enforcement to confirm their understanding of the statutory and contractual obligations under this Agreement. The parties to this Agreement may be collectively referred to as the Parties.

Preliminary Statements

Whereas, the Police Department is the local law enforcement agency of the City, and for purposes of this Agreement, the City and its Police Department will be referred to as "City", and

Whereas, under the Automatic License Plate Reader Privacy Act (the "Act") (Neb. Rev. Stat. §§ 60-3201 to 60-3209), City is allowed to install, operate, and maintain an automatic license plate reader system ("ALPR System") so long as it is operated for the purposes allowed and as provided in the Act.

Whereas, City is currently planning to install, operate and maintain an ALPR System on or along the State Highway at or near the location specified below in this Agreement, and

Whereas, part of an ALPR System could potentially be installed on part of the State highway right-of-way, outside the traveled portion of the public property, and for this Agreement, the area of the State highway located outside of the traveled way will be referred to herein as the "State Highway."

Whereas, City has requested permission from State to install, operate and maintain part or all of City's ALPR System on the State Highway, and

Whereas, State is willing to allow City to install, operate and maintain some or all of its ALPR System on the State Highway so long as it is accomplished at no cost, obligation, or liability for the State, in accordance with the terms of the Act, and consistent with this Agreement, and

Whereas, the City Council authorizes its Mayor to sign this Agreement, as evidenced by the Resolution of the City Council dated the ___ day of _____, 202___, attached as Attachment A and made a part of this Agreement.

NOW THEREFORE, In consideration of these facts and the mutual consideration of the Parties, the Parties agree as follows:

Section 1. Purpose of the Agreement. The purpose of this Agreement is to authorize and provide the conditions for City to use and occupy the State Highway for the installation, operation, and maintenance of an ALPR System.

Section 2. Definition of "City's ALPR System". City's ALPR System includes but is not limited to all ALPR related equipment and materials installed by City on the highway including, but not limited to, ALPR devices, cameras, transmitters, receivers, antennas, power cables and equipment, communication

cables and equipment, attachment or connection devices, and other components, materials or equipment related to the ALPR System Project.

Section 3. Description of the Project. City proposes to Install, operate, and maintain City's ALPR System at the locations listed on Attachment B to this Agreement, not to exceed ten (10) total proposed locations.

Section 4. Duration of the Agreement. This Agreement will be effective beginning on the date it is signed by both Parties and will end on December 31st of the fifth year after the date when the Agreement was effective. Upon written requests by City, and upon written approvals by State, this Agreement may be renewed for up to two additional five-year terms.

Section 5. City's Duties. City agrees to the following terms, conditions, and obligations for City's ALPR System project in exchange for obtaining a limited right to use and occupy the State Highway at no charge:

5.1 Costs, obligations, and liability. City will be solely responsible for all costs, obligations, and liability arising out of (a) City's ALPR System, and (b) City's use and occupation of the State Highway. City shall notify its insurance carrier, or its official risk management entity, of City's obligations under this Agreement and City will ensure that it meets its obligations to be fully responsible for its use and occupancy of the State Highway as provided under this Agreement.

5.2 ALPR System Location Selection Process. In Attachment B, City has identified proposed locations for installation of City's ALPR System. City and State will work together in good faith to attempt to identify a location or locations acceptable to State for the placement of the ALPRs.

5.3 Compliance with the Act. City will be solely responsible for complying with all applicable terms of the Automatic License Plate Reader Privacy Act and any other State or Federal law related to City's use or occupancy of the State Highway and the operation of the ALPR System.

5.4 Obtain a Permit from State. Before taking possession of the State Highway for the installation of City's ALPR System, City must apply for and obtain a permit to use or occupy the State Highway from the State's local District Office using the State's standard permitting process.

5.5 ALPR Design, Structural Review, Environmental Review, Purchase, Installation, and Traffic Control. City will be solely responsible for the design and installation of City's ALPR System. If City's design includes attachment of any ALPR components to any State personal property or an attachment to the real estate, City must submit to State the opinion of a licensed structural engineer that the personal property or attachment has sufficient structural strength for installation of such device and shall obtain permission from State to use each such State item of personal property or attachment. City will be responsible for any environmental review or necessary permitting required for City's ALPR System Project. City will be responsible for any traffic control related to the installation, operation, repair, and maintenance of the ALPR System, and such Traffic Control shall conform with the Manual on Uniform Traffic Control Devices and all State's typical requirements for traffic control for projects or operations of this type. State encourages City to place ALPR System attachments outside of the clear zone

designated for the respective State Highway on which it will be installed. However, placement of ALPR System attachments within the clear zone, while meeting all other requirements of this Section, is not considered negligence by City.

5.6 Notice to State of Start of Work on the State Highway. City shall give State's District Engineer two weeks written notice of the date City or City's representatives will first use or occupy the State Highway as a part of City's project to install City's ALPR System. City will notify State's District Engineer anytime post-installation work, other than routine inspection or simple repair, will be completed on the State Highway. City will notify State when City's installation, repair or maintenance projects are completed.

5.7 Ownership, Inspection, Operations, Maintenance, and Data. City will own the ALPR System and will also be solely responsible for all post installation duties related to City's ALPR System including but not limited to the inspection, operation, repair, restoration, replacement, maintenance, and control of data.

5.8 Damage to ALPR Property. City will be responsible for any work to repair or replace damage to the ALPR system caused by highway traffic, pedestrians, or others, including damage caused by vandalism or acts of nature. City may take collection actions against any wrongdoer who has damaged City's ALPR System. City agrees to coordinate its collections efforts with State whenever City knows that the State Highway real or personal property was also damaged by the same person or during the same incident.

5.9 Protection of State Highway. City agrees to protect the State Highway real or personal property from damage or destruction arising out or related in any way to City's use or occupancy of the State Highway under this Agreement. When damage or destruction of highway property occurs related to the ALPR System or City's use or occupancy of the State Highway, City shall promptly replace, repair, or restore the State Highway to its pre-existing condition, clean and neat, and safe for public use, in a manner and to a condition acceptable to State. The State Highway includes all real and personal property and includes fixtures and appurtenances, including, but not limited to, highway pavements, paved or unpaved shoulders, turf or other ground cover, vegetation including trees and bushes, curbs, curb ramps, sidewalks, retaining walls, bricks, pavers, surfacing, bridges, drainage culverts, storm sewers, traffic signs and signals, highway lighting and any other structures and attachments of any kind on the State Highway.

5.10 Duty to Notify State. City agrees to notify State when City becomes aware of any condition, issue or concern on the State Highway that was caused or developed in any way related to City's use or occupation of the State Highway under this Agreement.

5.11 Interference with State's Highway Devices. City will be responsible for assuring that the installation or use of City's ALPR System will not interfere in a significant way with the signals or operation of any State electronic devices located on or in proximity to the State Highway. City agrees to work with State in good faith to resolve any electronic interference issues related to City's ALPR System.

5.12 Removal of City's ALPR System at end of Agreement. City will be responsible for the removal of any part of City's ALPR System from the State Highway within one month after termination or ending of this Agreement, except State may require faster removal when justified for the safety of highway users or for highway projects. City will restore the State Highway to a clean, neat, and safe condition, essentially to the same condition as it was prior to the installation of City's ALPR System.

5.13 State Construction or Maintenance Projects. City agrees to promptly remove at its own cost any part of City's ALPR System found to conflict with any future State project to reconstruct, maintain, or repair the segment of highway where City's ALPR System is located. State will assist City in relocating any component that must be removed to some other location on the State Highway not in conflict with such project. City further agrees to cooperate with State and to temporarily remove City's ALPR System as needed, in good faith, for other State purposes.

5.14 Negligence. Each Party agrees to be responsible for that Party's own negligence or intentional acts, and for the negligence or intentional acts of any employees, contractors, representatives, or any person or entity working with or for that Party's benefit, related to City's ALPR System or the use or occupancy of the State Highway under this Agreement. Further, this Agreement is not intended to shift from City to State any duties or any responsibility, liability or costs arising out of City's ALPR System or City's use or occupation of State Highway under this Agreement.

5.15 Liability for Improper Use of ALPR System. City's ALPR System installation and operation is solely a City project and is not a joint enterprise with State. City agrees to be solely responsible for any claims or liability related to the alleged improper placement or use of the ALPR System or the ALPR System data. City agrees to properly protect all data collected including, but not limited to, personally identifiable information. City agrees to defend the State at City's sole cost, and pay any judgment against State, in the event a claim of any type is brought against City and/or State related to the City's installation, operation or maintenance of the ALPR System on the State Highway.

Section 6. State's Limited Responsibility. City and State agree as follows:

6.1 ALPR System Project. State will have no duty, liability, or responsibility with respect to City's ALPR System including but not limited to the design, purchase, installation, operation, repair, or maintenance of City's ALPR System.

6.2 Proposed Locations. State will assist City in good faith to attempt to find a location, or locations, where City's ALPR System may be installed on the State Highway. State reserves the right to deny access to the State Highway if, after a good faith attempt to find a location to install City's ALPR System, a location acceptable to State cannot be found, in State's sole discretion.

6.3 Cooperation. State will cooperate in good faith with City when requested concerning any issues of City related to the use or occupancy of the State Highway with City's ALPR Project. State's cooperation with City will not be found to create a duty of care on behalf of State to

anyone related to City's ALPR System or City's use or occupancy of the State Highway. It is understood that State's representatives will not have any training, expertise or obligation with respect to City's ALPR System or related to City's use or occupancy of the State Highway.

Section 7. Termination. This Agreement will be terminated under the following conditions:

- 7.1 Change of Law.** The Act is changed in a way that will directly or indirectly restrict or prohibit in a significant way the use of the State Highway for the ALPR System as contemplated under this Agreement.
- 7.2 Removal or Discontinuance of Use.** City removes the ALPR System or discontinues use of the State Highway for the operation of an ALPR System for six-months or longer.
- 7.3 Failure to Follow the Terms of the Act.** Breach of the terms of this act, or failure to follow the terms of the Act, after notice from State, and a failure by City to cure the alleged breach within the time allowed in the notice of breach.
- 7.4 By Order of Court.** A court with appropriate jurisdiction finds the installation or operation of the ALPR System is contrary to Nebraska law.

Section 8. Drug Free Workplace. The City shall have an acceptable and current drug-free workplace policy on file with the State.

Section 9. Fair Employment Practices. If City performs any part of the work on this project itself, City shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb. Rev. Stat. §§ 48-1101 to 48-1126.

Section 10. Disabilities Act. The City agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

Section 11. Lawful Presence in USA and Work Eligibility Status Provisions. The City agrees to comply with the requirements of Neb. Rev. Stat. §§ 4-108 to 4-114 with its ALPR System project, including, but not limited to, the requirements of § 4-114(2) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work-eligibility status of new employees physically performing services within the State of Nebraska.

EXECUTED by the City this _____ day of _____, 2024.

ATTEST: CITY OF GOTHENBURG

City Clerk

Mayor

I am the Chief Law Enforcement Officer of City. I understand the terms and conditions of this Agreement and hereby agree to require the Police Department to conform to the Act and to the terms and conditions set out in this Agreement.

Gothenburg Police Chief

Date

Executed by the State this _____ day of _____, 2024.

STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION
Vicki Kramer

Director

RECOMMENDED:
Gary Thayer, P.E.

District 6 Engineer

ATTACHMENT A

RESOLUTION 2024-1

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Whereas: This Agreement is intended to set out the various responsibilities and duties of the City and State regarding the Installation, operation and maintenance of the ALPRs; and

Whereas: The City understands that it must strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the installation, operation and maintenance of ALPRs.

Be it resolved: the following is the official action taken by the City Council of Gothenburg, Nebraska:

- 1. The Mayor is hereby authorized and directed to execute said Agreement on behalf of the City of Gothenburg and the City Clerk is authorized to attest said execution.**
- 2. This resolution will be marked Attachment A, and a copy attached to the Agreement.**

PASSED AND APPROVED THIS 6th DAY OF FEBRUARY, 2024

Mayor

ATTEST:

City Clerk

ATTACHMENT B

Proposed Locations:

Description of the proposed locations along the State Highway where City requests City's ALPR system be installed, in order of priority, not to exceed ten (10) locations.

State Highway # 47

- 1) Street Light Pole 89 feet south of 27th Street, west side of Hwy. 47
(40° 56'39.49" N -100° 09'46.83" W)
- 2) Street Light Pole 34 feet south of Platte River Drive, west side of Hwy. 47
(40° 55'02.28" N -100° 10'00.82" W)
- 3) Street Light Pole 233 feet south of Platte River Drive, east side of Hwy. 47
(40° 55'00.29" N -100° 10'00.11" W)

State Highway #US 30

- 4) Street Light Pole 60 Feet East of 2nd Avenue, south side of US Hwy. 30
(40° 55'47.54" N -100° 19'11.92" W)
- 5) Street Light Pole 68 Feet East of Avenue L, south side of US Hwy. 30
(40° 55'22.24" N -100° 09'16.24" W)