

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "the City," and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "the County."

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.* (Reissue 2012), permits units of local government in the State of Nebraska to cooperate with other localities on the basis of mutual advantage and thereby provide services in a manner that will best serve local communities; and

WHEREAS, pursuant to *Neb. Rev. Stat.* §39-1702, the County has the authority to acquire, either temporarily or permanently, lands, real or personal property or any interest therein, or any easements deemed to be necessary or desirable for any present or future county road purposes by gift, agreement, purchase, exchange, condemnation, or otherwise; and

WHEREAS, pursuant to *Neb. Rev. Stat.* §15-229, the City has authority to acquire, either temporarily or permanently, lands, real or personal property, or any interests therein, or any easements deemed to be necessary or desirable for any present or future necessary or authorized public purpose within or without the city by gift, agreement, purchase, condemnation, or otherwise; and

WHEREAS, pursuant to Article VIII, Section 3 of the Charter for the City of Lincoln, the City Council has authority to grade partially, or to an established grade, curb, recurb, gutter, construct sidewalks, or otherwise improve or repair any street or public way at public cost; and

WHEREAS, Lancaster County and the City of Lincoln are responsible for providing road improvement and maintenance to the streets and roads located within their respective jurisdictions; and

WHEREAS, the County and the City agree that it is mutually beneficial for the City and County to cooperate in completing various road grading, road paving road maintenance, restoration, resurfacing and rehabilitation projects involving sections of roadway located both inside the corporate limits of the City of Lincoln and outside said limits and therefore solely within the County; and

WHEREAS, there are situations where the best practice involved with maintaining a given section of roadway dictates that maintenance work be continued beyond the territorial limits of the respective governmental entity initiating such work.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

- 1) Term and Termination. This Agreement shall be in full force and effect from

January 1, 2015 to December 31, 2015, and the Agreement shall automatically renew each year unless terminated by either party. Either party may terminate this Agreement in accordance with Paragraph 11 of the Agreement.

2) Purpose. The purpose of this Agreement is to provide for grading, paving, maintenance, restoration, resurfacing or rehabilitation on various sections of roadways proposed for grading, paving, maintenance, restoration, resurfacing, and/or rehabilitation by either the County or the City that are located partially within the territorial limits of both entities.

3) Responsibilities. The initiating entity, or the entity initiating said work, will have the following duties and responsibilities:

- A. The initiating entity shall supply the non-initiating entity with project plans, cost estimates and a project timeline or schedule prior to the obligation of any funds.
- B. The initiating entity shall be responsible for paying a contractor for the entire cost of the roadway work within the City and County. The initiating entity will invoice the other entity for the portion of the work within the other entity's territorial limits.
- C. The initiating entity will reimburse the other entity on a pro rata basis for any overpayment made upon final completion of the project when the estimated cost of the project is found to exceed the actual cost of the project.
- D. The initiating entity will send an additional bill to the non-initiating entity for said party's pro rata share of the actual cost of the project in the event the actual cost of the project exceeds the estimated cost originally paid by the non-initiating entity.
- E. The initiating entity shall be financially and administratively responsible for any right of way acquisition, be it temporary or permanent easement, necessary for construction of the roadway project(s).
- F. The initiating entity is responsible for ensuring that the roadway grading and maintenance work is designed and completed in accordance with the City of Lincoln Design Standards or Lancaster County Road Design Standards as well as Board of Public Roads Minimum Design Standards as determined by agreement of each entity's respective engineer.

The non-initiating entity, or the entity into whose territorial limits

the other entity wishes to extend its work, will have the following responsibilities:

- A. The non-initiating entity shall give permission to the initiating entity for the roadway grading, paving and maintenance work on various roadways within its territorial limits upon a case by case review of the non-initiating entity's respective engineer.
- B. The non-initiating entity will be responsible for continued maintenance of that portion of the roadway within its territorial limits following completion and written acceptance of the project(s).
- C. The non-initiating entity will be financially responsible for the project work completed in its territorial limits performed by the initiating entity pursuant to this Agreement. The initiating entity will invoice the non-initiating entity, in accordance with per unit costs established through standard procurement practices prior to beginning said work and the non-initiating entity shall make payment to the initiating entity for its share of the work.

4) Consideration. The mutual promises contained herein shall serve as consideration for this Agreement, and each party hereto hereby acknowledges the adequacy thereof. Each party to this Agreement grants its permission and authority to the other party to perform grading, paving, maintenance, restoration, resurfacing and rehabilitation work described herein on various roadways within the granting party's territorial limits subject to the approval of plans and costs estimates by the granting party's respective engineer prior to the work being performed. The County shall be responsible for the cost of the roadway grading and maintenance work in the County's jurisdiction and the City shall be responsible for the cost of the roadway grading and maintenance work in the City's jurisdiction. The County and City shall continue to be responsible for maintenance of their respective portions of the roadways following completion of the project(s).

5) Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County, and employees of the County shall not be deemed to be employees of the City.

6) Assignment. Neither the County nor the City shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this agreement. It is expressly understood and agreed to by the parties that the either party may contract for the services associated with completing the construction or maintenance of roadways outlined herein.

7) Hold Harmless. Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.

8) Subcontractors. Both parties agree to require any contractors or subcontractors, providing services under this agreement, to indemnify and hold both parties to this Agreement harmless to the same extent and as provided in Section 7, of this Agreement. Furthermore, both parties agree to require any contractors or subcontractors to name both parties hereto as additional insureds to the extent that said contractors or subcontractors are required to do so by the terms of the contract authorizing them to complete the work described in this Agreement.

9) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

10) Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither the County nor the City shall discriminate against any bidder, employee, applicant for employment, or any other person because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

11) Termination. This Agreement may be terminated at any time by either party giving sixty (60) days written notice.

12) This agreement constitutes the entire agreement between the parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

EXECUTED this ____ day of _____, 2015, by Lancaster County, Nebraska.

By: _____
Chair
Lancaster County Board of
Commissioners

APPROVED AS TO FORM:

This ____ day of _____, 2015.

for JOE KELLY
County Attorney

EXECUTED this ____ day of _____, 2015, by the City of Lincoln, Nebraska.

City of Lincoln

By: _____
Mayor Chris Beutler

APPROVED AS TO FORM:

This ____ day of _____, 2015.

City Attorney

