

MUNICIPALITY PROGRAM AGREEMENT
STATE PROJECTS

PROJECT NO. NH-L55X(103)
CONTROL NO. 13194
CITY OF LINCOLN
STATE OF NEBRASKA, DEPARTMENT OF ROADS
IMPROVING SALT CREEK BRIDGE

COPY

THIS AGREEMENT is between City of Lincoln, a municipal corporation of the State of Nebraska ("Municipality"), and State of Nebraska, Department of Roads ("State"), collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, State intends to improve Salt Creek Bridge on State Highway L55X at the location as shown in Exhibit "A"; and

WHEREAS, State intends that the improvement be developed and constructed under the designation of Project No. NH-L55X(103); and

WHEREAS, the improvement is located within the designated urban area of Lincoln, Nebraska, and funds administered by State have been made available for the construction of improvements such as this; and

WHEREAS, this improvement is located on a portion of State Highway L55X within City's corporate limits; and

WHEREAS, Parties intend that this Agreement describe certain roles and responsibilities applicable to this project; and

WHEREAS, Federal Regulations provide that Municipality shall not profit or otherwise gain from local property assessments that exceed Municipality's share of project costs; and

WHEREAS, City Council has authorized the Mayor to sign this agreement, as evidenced by the Resolution of City Council, attached as Exhibit "B"; and

WHEREAS, the project work within the corporate limits is described below in Section 2.

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

SECTION 1. DURATION OF THE AGREEMENT

1.1 Effective Date -This Agreement is effective immediately on the date it is fully executed by the Parties.

Project No. NH-L55X(103)
Control No. 13194
Salt Creek Bridge in Lincoln

- 1.2 Renewal, Extension or Amendment** -This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.
- 1.3 Identifying Date** - For convenience, this Agreement's identifying date will be the date the State signed the agreement.
- 1.4 Duration** - This Agreement will remain in full force and effect for future responsibilities of Municipality described herein, such as for parking, encroachments and maintenance, unless such responsibilities have been rescinded by State. State will treat the remainder of this Agreement as inactive upon the happening of either (1) the waiver of an audit review, or (2) the final completion of an audit review by the State or its authorized representative and the resolution of all issues identified in the audit report.
- 1.5 Termination** - Further, State reserves the right to terminate the agreement as provided herein.

SECTION 2. DESCRIPTION OF THE WORK WITHIN THE CORPORATE LIMITS

The Parties agree State will develop plans and specifications and cause the project to be constructed at the location shown on Exhibit "A", attached, which is hereby made a part of this agreement, in accordance with plans and specifications and the provisions of this agreement, as authorized for Mayor's signature by City Council, and as evidenced by the Resolution of City Council, attached as Exhibit "B" and hereby made a part of this agreement. Generally the improvements to be constructed with this project include the following: This project within the corporate limits will consist of redecking Salt Creek Bridge (Structure SL55X00177) , replacing the approaches, miscellaneous bridge repairs, and removal of the median barrier within the limits of the project. Traffic will be placed in a head to head configuration during a portion of the project, for the remainder of the construction, traffic will be reduced to one lane in each direction.

SECTION 3. STATE RESPONSIBILITIES

State shall:

- 3.1 Prepare at its sole discretion, plans and specifications for State's proposed subject project. State will deliver these plans and specifications to Municipality prior to construction. State has sole authority to modify the plans or specifications as necessary to complete the proposed improvements.
- 3.2 Acquire all Right of Way (ROW) for the project that will not be acquired by Municipality.

- 3.3 Advertise and conduct a letting and receive bids on the proposed improvement. State has the sole authority to determine, and award the contract to, the lowest responsible bidder. State shall sign the construction contract.
- 3.4 Supervise and cause completion of the construction of the improvement as shown in the construction contract documents and modifications thereto. State has sole authority to execute any contractor change orders-supplemental agreements required for construction of the project within Municipality's corporate limit. State will notify the Municipality of any contractor change orders-supplemental agreements that increase Municipality's cost.
- 3.5 Reimburse, when applicable, Municipality for the nonbetterment relocation of municipally owned utility facilities as provided in SECTION 10. UTILITIES.

SECTION 4. MUNICIPALITY RESPONSIBILITIES

Municipality shall, with respect to the portion of the project within its corporate limits, and at no cost to State:

- 4.1 Regulate, to the extent Municipality has authority to do so, all future development and use of property adjoining the public ROW as described in SECTION 6.
MUNICIPALITY'S DUTIES AND RIGHTS REGARDING RIGHT OF WAY.
- 4.2 Require that all future entrances from private property to the highway ROW within the limits of this project receive approval of the Director-State Engineer, Department of Roads or authorized representative, pursuant to Neb. Rev. Stat. § 39-1332 prior to City approval or City issuing a building permit for the site.
- 4.3 Cause the removal of all advertising signs from the existing highway ROW.
Municipality also agrees to cause the removal from the existing highway ROW of other privately owned encroachments, facilities, objects, structures, or things, and to keep the existing and new highway ROW free of future encroachments, facilities, objects, structures, or things, except those authorized by permit from Municipality and approved by State and Federal Highway Administration.
- 4.4 Cause the removal, alteration, or relocation of pipe lines, poles or other underground or overhead services not owned by Municipality and located within the corporate limits as necessary for the construction of the project.
- 4.5 Comply with, for project work performed by Municipality, the provisions of the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§ 48-1101 - 48-1126, and all

regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27, as set forth in the

SECTION 17. TITLE VI NONDISCRIMINATION CLAUSES.

- 4.6 Perform the present and future duties assigned to Municipality under this Agreement at its sole cost except when costs are specifically reimbursable under this agreement.
- 4.7 Obtain approval of State, with Federal Highway Administration concurrence, prior to making or causing changes in the roadway geometrics, either during project construction or after the project is completed. Changes that require prior approval include but are not limited to: access control, driveways, median breaks, parking restrictions or any other traffic control items.
- 4.8 Amend ordinances, as necessary, to establish pavement or ground elevations shown in the plans when proposed construction involves a change in elevations established by a pre-existing ordinance.
- 4.9 Establish, enforce, and continue in effect an ordinance for the following conditions or restrictions within the project limits: No Parking

SECTION 5. CONSTRUCTION SCHEDULE

State will determine the construction schedule for this project.

SECTION 6. MUNICIPALITY'S DUTIES AND RIGHTS REGARDING RIGHT OF WAY

- 6.1 Encroachments: Municipality and State will cooperate to cause the removal from public ROW, or correction or alteration in the public ROW, as necessary for the construction of the aforesaid project, all pipe lines, poles or other underground or overhead services not owned by Municipality and located within the corporate limits.
- 6.2 Adjacent Development: Municipality understands that State highway ROW shall be held inviolate for State highway purposes pursuant to Neb. Rev. Stat. § 39-1359, and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of State. Municipality will regulate, to the fullest extent allowed by law, the private or non-transportation related public development of property adjoining the public ROW, to prevent future encroachment or uses of the public ROW, except by written consent of State. City shall not issue a building permit for an adjacent property which requires or indicates in the building plans; work on the state highway right of way prior to obtaining State's written approval of the plan.

- 6.3 Special Assessments: Municipality shall not use special assessments to defray Municipality's costs under this agreement unless Municipality has received, in advance, written consent from State's Right of Way Division Manager.

SECTION 7. ROADWAY LIGHTING SYSTEM

- 7.1 Ownership: The project roadway lighting system is the property of State.
- 7.2 Electrical Energy: Municipality shall, without any cost to State, provide and pay for the electrical energy for all the luminaires of the roadway lighting system which may be constructed as a part of this project, including the electrical energy which may be required during the construction period of the project for lamp stabilization, luminaire adjustment, and system testing. Municipality shall provide electrical energy to maintain a uniform and constant light level for dusk-to-dawn lighting.
- 7.3 Repair and Maintenance Responsibilities: Municipality shall be responsible for the inspection, maintenance, and repair of the roadway lighting system, at Municipality's cost. Municipality's duties shall include, but are not limited to, the following:
- repair or replacement of all defective and burned out lamps;
 - routine cleaning of luminaires; and
 - repair or replacement of any part of the roadway lighting system.
- 7.4 Right to Recoup Costs: Municipality shall be responsible for collecting from the responsible party all Municipality's costs for repairing damage to the lighting system.
- 7.5 Specifications and Standards: Municipality agrees that repair or replacement parts furnished by Municipality in the maintenance or repair of the roadway lighting system shall comply with State specifications and standards.
- 7.6 Modifications: Municipality shall not make, or allow to be made, modifications to the roadway lighting systems without the written consent of State.

SECTION 8. TRAFFIC SIGNAL EQUIPMENT

THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 9. PERMISSION TO USE STATE RIGHT OF WAY

State hereby grants to Municipality permission to use the State ROW in the vicinity where roadway lighting system will be constructed, for ingress and egress for the purpose of operating, inspecting, repairing and maintaining the roadway lighting system in accordance with this Agreement. Municipality further agrees to comply with SECTION 12. TRAFFIC CONTROL.

SECTION 10. UTILITY RELOCATION WORK

10.1 Overview

The Parties understand that existing Municipality and non-Municipality owned utility facilities may conflict with State's project. . State will enter into a separate agreement(s) to establish the roles, duties, and financial responsibilities for the necessary relocation of utility facilities.

10.2 State Highway Right-of-Way

Municipality shall obtain a permit from the State for utility relocation work that occupies State Highway ROW.

SECTION 11. MUNICIPALITY'S FINANCIAL RESPONSIBILITIES

Municipality's cost of this project will be the sum of the following:

- 100% of the cost of work requested by Municipality (Section 11.1)
- 20% of all other costs of the project within the corporate limits (Section 11.2)

State's preliminary estimate of Municipality's cost is \$493,728, but Municipality's actual cost is likely to be greater than the preliminary estimate as the details of design are further developed. Municipality shall bear its own costs performing its duties under this Agreement.

11.1 THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK (there is no work requested by the Municipality).

11.2 Cost of the project within the corporate limits: Municipality will pay 20% of the costs of the part of the project that is located within Municipality's corporate limits including but not limited to the costs for: preliminary engineering, construction and construction engineering. The total cost of work within Municipality corporate limits is currently estimated to be \$2,468,640, with Municipalities share \$493,728.

11.3 Calculation of municipality costs: State shall calculate Municipality's project cost as follows:

11.3.1 Preliminary Engineering. Divide the Municipality's construction cost, as calculated in 11.3.2, by the project's total construction cost and multiply the result by project's total preliminary engineering cost.

11.3.2 Municipality's Construction Cost. Multiply the Municipality's share of 20% by the actual cost of construction of the project within the corporate limits. The actual cost of construction for work within the corporate limits is calculated by

multiplying unit prices by final quantities for work within the corporate limits. Unit prices and final quantities may be different than bid prices and estimated quantities as a result of field measurement and the contractor change order-supplemental agreement process.

11.3.3 Construction Engineering. Divide the Municipality's construction cost, as calculated in 11.3.2, by the project's total construction cost and multiply the result by project's total construction engineering cost.

11.4 **Payment by Municipality:** At times determined by the State, and after execution of this agreement, the State will invoice the Municipality for some or all of Municipality's cost share of the State-incurred preliminary engineering project costs. Upon award of the construction contract, the State will invoice the Municipality for Municipality's cost share of construction and construction engineering and any unbilled preliminary engineering expenses. The Municipality shall pay the State within 30 calendar days of receipt of invoice from the State. The final settlement between the State and the Municipality will be made following final audits and when the final costs have been determined by the State.

SECTION 12. TRAFFIC CONTROL

- 12.1 All traffic control devices will conform to the latest approved edition of the Manual on Uniform Traffic Control Devices and Nebraska Supplements thereto.
- 12.2 If Municipality is to perform or contract for any work on the state highway within the project limits, Municipality will develop a traffic control plan related to that work. The plan will be provided to State's Project Manager for approval and acceptance. Municipality will provide, operate and maintain Municipality's traffic control devices in accordance with its approved traffic control plan.
- 12.3 Municipality's work must comply with all traffic safety regulations, including those prescribed in the latest approved edition of the Manual of Uniform Traffic Control Devices and the Nebraska Supplement thereto. Municipality shall use caution when working in State ROW.

SECTION 13. PLANS AND SPECIFICATIONS

The plans and specifications for this project will be on file in the Lincoln central headquarters office of the Nebraska Department of Roads.

SECTION 14. TERMINATION

State has the sole discretion to suspend the work in part or in whole or to terminate this Agreement; such action on its part will in no event be deemed a breach of this Agreement by State. State will provide written notification to Municipality of such suspension or termination. Upon receipt of such notice Municipality will document in writing and submit to State the costs Municipality has incurred completing work under this Agreement prior to receipt of the notification from State. State in its sole discretion shall determine which of the costs submitted by Municipality are reimbursable by State. State shall notify Municipality in writing of such determination. Upon receipt of determination, Municipality will submit an invoice to State for the amount determined to be reimbursable.

SECTION 15. FAIR EMPLOYMENT PRACTICES ACT

Municipality agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. 48-1101 through 48-1126.

SECTION 16. DISADVANTAGED BUSINESS ENTERPRISES

16.1 Policy: Municipality and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

16.2 Disadvantaged Business Enterprises Obligation: Municipality and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, Municipality shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Municipality shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

Municipality acting as a sub-recipient of Federal-aid funds on this project agrees to adopt the Nebraska Disadvantaged Business Enterprise Unified Certification Program for the Federal-aid contracts Municipality executes on this project.

Failure of Municipality to carry out the requirements set forth above on any work performed by Municipality shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by State or such remedy as State deems appropriate.

SECTION 17. TITLE VI NONDISCRIMINATION CLAUSES

During the performance of this agreement, the Municipality, for itself, its assignees and successors in interest agrees as follows:

- 17.1 **Compliance with Regulations:** The Municipality shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- 17.2 **Nondiscrimination:** The Municipality, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Municipality shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- 17.3 **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Municipality for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Municipality of the Municipality's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- 17.4 **Information and Reports:** The Municipality shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by State 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 Municipality shall so certify to State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

17.5 Sanctions for Noncompliance: In the event of the Municipality's noncompliance with the nondiscrimination provisions of this agreement, State will 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 Municipality under this agreement until the Municipality complies, and/or
- (b) Cancellation, termination or suspension of this agreement, in whole or in part.

17.6 Incorporation of Provisions: The Municipality 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, order, or instructions issued pursuant thereto. The Municipality shall take such action with respect to any subcontract or procurement as State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: 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 Municipality may request State to enter into such litigation to protect the interests of State, and in addition, the Municipality may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 18. ENTIRE AGREEMENT

This instrument, and any supplements hereto, embodies the entire agreement of the Parties; however, provisions of prior agreement(s) between the Parties concerning the applicable segment of State Highway L55X shall remain in effect except to the extent the provisions of the prior agreement(s) conflict with this Agreement.

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

EXECUTED by Municipality this _____ day of _____, 2015.

WITNESS:

CITY OF LINCOLN

City Clerk

Mayor

EXECUTED by State this _____ day of _____, 2015.

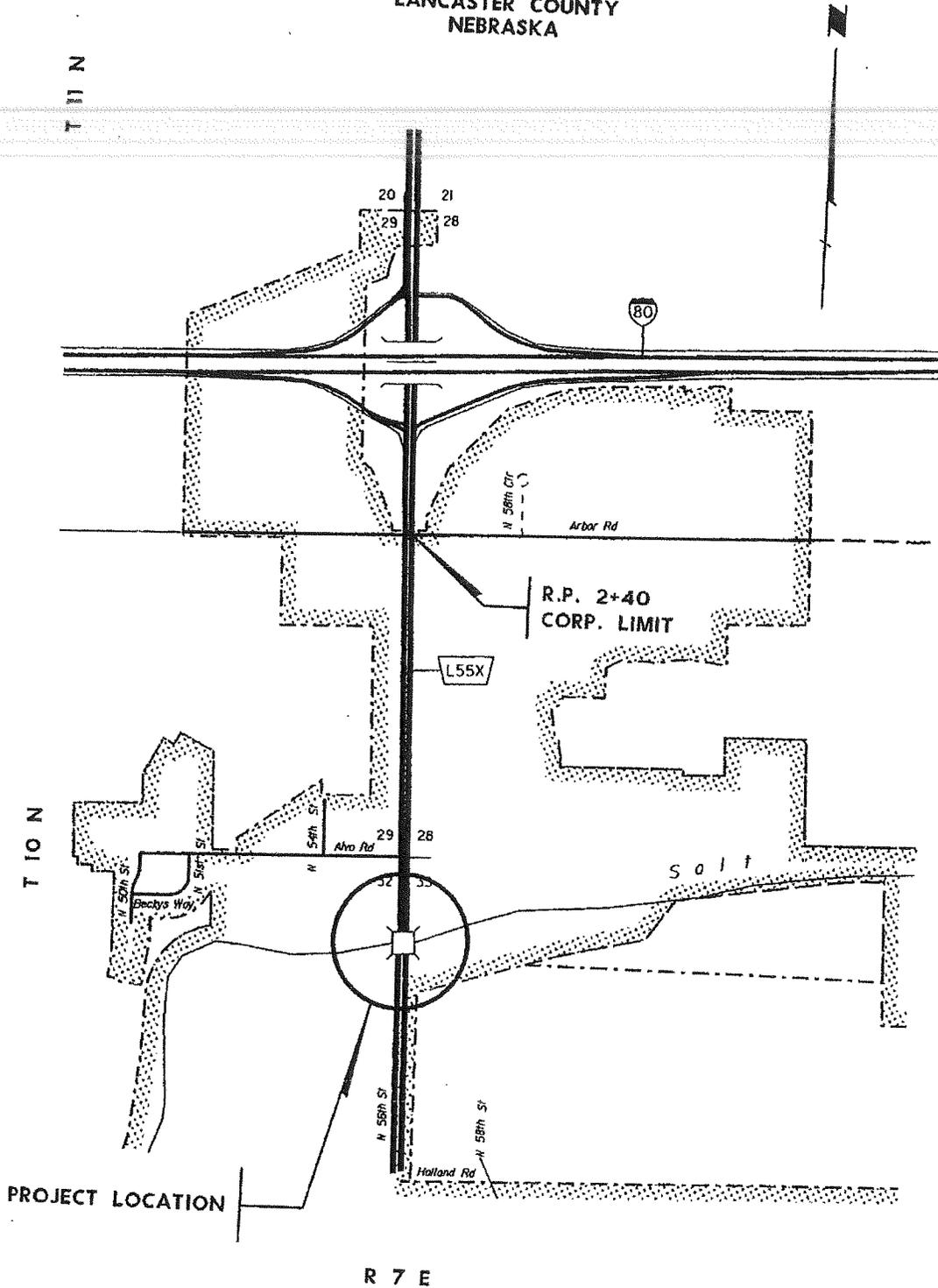
STATE OF NEBRASKA
DEPARTMENT OF ROADS
James J. Knott, P.E.

Roadway Design Engineer

RECOMMENDED:
Thomas Goodbarn, P.E.

District 1 Engineer

LINCOLN
LANCASTER COUNTY
NEBRASKA



L54X(103)

C.N. 13194

EXHIBIT "A"