



MUNICIPALITY PROGRAM AGREEMENT
STATE PROJECTS

PROJECT NO. S-L55W(1022)
CONTROL NO. 13224A
CITY OF LINCOLN
STATE OF NEBRASKA, DEPARTMENT OF ROADS
IMPROVING LINK 55W - LINCOLN

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 a portion of State Link 55W at the location as shown on Exhibit "A"; and

WHEREAS, State intends that the improvement be developed and constructed under the designation of Project No. S-L55W(1022); 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 Agreement is related to the portion of State Link 55W located within Municipality's corporate limits; and

WHEREAS, the project is located in a Municipal Separate Storm Sewer System (MS4) area; and

WHEREAS, in the interest of public safety and convenience, the State has determined it is necessary to establish a detour during the improvements on State Link 55W, as shown on Exhibit "B" attached; 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

Project No. S-L55W(1021)
Control No. 13224A
Improving Link 55W - Lincoln

WHEREAS, City Council has authorized the Mayor to sign this agreement, as evidenced by the Resolution of City Council, as shown on Exhibit "C"; 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. The Chairperson is authorized by the City Council to execute this Agreement, as evidenced by the Resolution of the City Council, attached as Exhibit "C" and incorporated herein by this reference.
- 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 and incorporated herein by this reference, and in accordance with plans and specifications and the provisions of this Agreement. This project's improvements (R.P. 0+00 – R.P. 2+24), are within the Lincoln corporate limits, and will consist of concrete pavement repair, milling and resurfacing, and full pavement replacement.

Due to future projects, the following locations will entail a more minimal pavement strategy:

- R.P. 0+00 – R.P. 0+30 (US-77 – Salt Creek Bridge), this section of project will be a maintenance project and will be needed for the future NDOR west by-pass project that will entail full pavement replacement. As of now a minimal maintenance project will suffice.

- R.P. 0+96 – R.P. 1+58 (Fiserv Dr. – Salt Valley View) will be the location of the future, City of Lincoln, raise roundabout project. This section of project will be redone with a minimal milling and resurfacing to preserve L55W for the near future.

The full pavement replacement will be performed at the remaining locations on the project:

- R.P. 0+30 – R.P. 0+96 (Salt Creek Bridge – Fiserv Dr.)

- R.P. 1+58 – R.P. 2+24 (Salt Valley View – Hwy. N-2); with the portion from R.P. 1+94 to R.P. 2+16 (Beal Slough Bridge – Pioneers Blvd.) being exempt, due to city construction of this section of the project in 2012.

The existing highway is a 4-lane divided road consisting of curbed sections as well as rural sections. The rural sections will reside south of the Old Cheney intersection and consist of head to head traffic in either the NB or SB lanes. A detour will have to be in place for the urban sections of the project that reside north of the Old Cheney intersection to Highway N-2 (R.P. 1+11 – R.P. 2+24), where only a single direction of traffic will be allowed access, as shown on Exhibit “B”, attached and hereby made a part of this agreement. The detour route will have traffic travel along highway US-77; W. Van Dorn Street, and Highway N-2. Curb ramps will be constructed at Old Cheney Road to meet state and federal standards.

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 property rights for 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. UTILITY RELOCATION WORK.
- 3.6 State has statutory authority under Neb. Rev. Stat 39-1346 to designate the municipal street shown on Exhibit "B" as a detour for the State Highway System.
- 3.7 The State Project Manager and Municipality's Street Superintendent will inspect and document the conditions of the municipal street to be designated as a state highway detour prior to its use as a detour route. In conformance with Neb. Rev. Stat. §39-1347, the State agrees to maintain the municipal street during its use as a detour and to return said municipal street to the Municipality at the conclusion of its use as a detour in as good condition as existed prior to when it was designated as a state highway detour, except for ordinary wear and tear.
- 3.8 State will notify the Municipality in writing when the State assumes jurisdictional responsibility for the municipal street and to notify the Municipality in writing when the municipal street is returned to the jurisdictional responsibility of the Municipality.
- 3.9 State will bear the cost of changes required to municipal street to prepare it for use as a detour for state highway traffic and that these changes will be made without cost to the Municipality.
- 3.10 State will bear the cost of the operation and maintenance of the municipal street as a detour for highway traffic while the municipal street is designated as a detour for state highway traffic.

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 Municipality approval or Municipality 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 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.
- 4.5 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.
- 4.6 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.
- 4.7 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.

- 48 If the Municipality procures consultant services for preliminary engineering and construction engineering for nonbetterment rehabilitation of municipally owned and operated utilities by the Municipality, the Municipality agrees to comply with Chapter 4 of the "Nebraska Department of Roads' LPA Guidelines Manual for Federal-Aid Projects "
- 4.9 As part of State's project, State was required by law to construct Municipal Separate Storm Sewer System ("MS4") facilities in accordance with State's MS4 Program. State's MS4 Program may be found in Chapter 3 of the Drainage Design and Erosion Control Manual at: <http://www.transportation.nebraska.gov/roadway-design/dd-ec-manual.htm>. After construction, and in accordance with Neb.Rev.Stat. § 39-1339, Municipality will be obligated to identify all applicable MS4 maintenance requirements, and operate and maintain all MS4 components constructed with this project. Municipality agrees to maintain all MS4 components in accordance with State's MS4 Program. Attached hereto as Exhibit "D", incorporate herein by this reference, is a listing of MS4 facilities to be constructed with this project. Municipality shall follow the Chapter 3 maintenance requirements for those facilities. Municipality may seek State's approval for Municipality to use Municipality's MS4 maintenance guidance or requirements, if applicable.

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 of encroachments from public ROW, or correction or alteration in the public ROW, as necessary for the construction of the aforesaid project.
- 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. Municipality shall not issue a building permit for an adjacent property which requires work on the state highway right of way unless State has given advanced written approval of the proposed plans.

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

THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 8. TRAFFIC SIGNAL EQUIPMENT

THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 9. PERMISSION TO USE STATE RIGHT OF WAY.

THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

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

State will construct this project at no cost to Municipality. Municipality shall bear its own costs in performing its duties under this Agreement.

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.
- 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, sex, age, disability, or national origin 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 race, color, sex, age, religion, disability 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 race, color, sex, age, religion, disability 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 Link 55W 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 _____, 2016.

WITNESS:

CITY OF LINCOLN

City Clerk

Mayor

EXECUTED by State this _____ day of _____, 2016.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Michael H. Owen, P.E.

Roadway Design Engineer

RECOMMENDED:
Thomas Goodbarn, P.E.

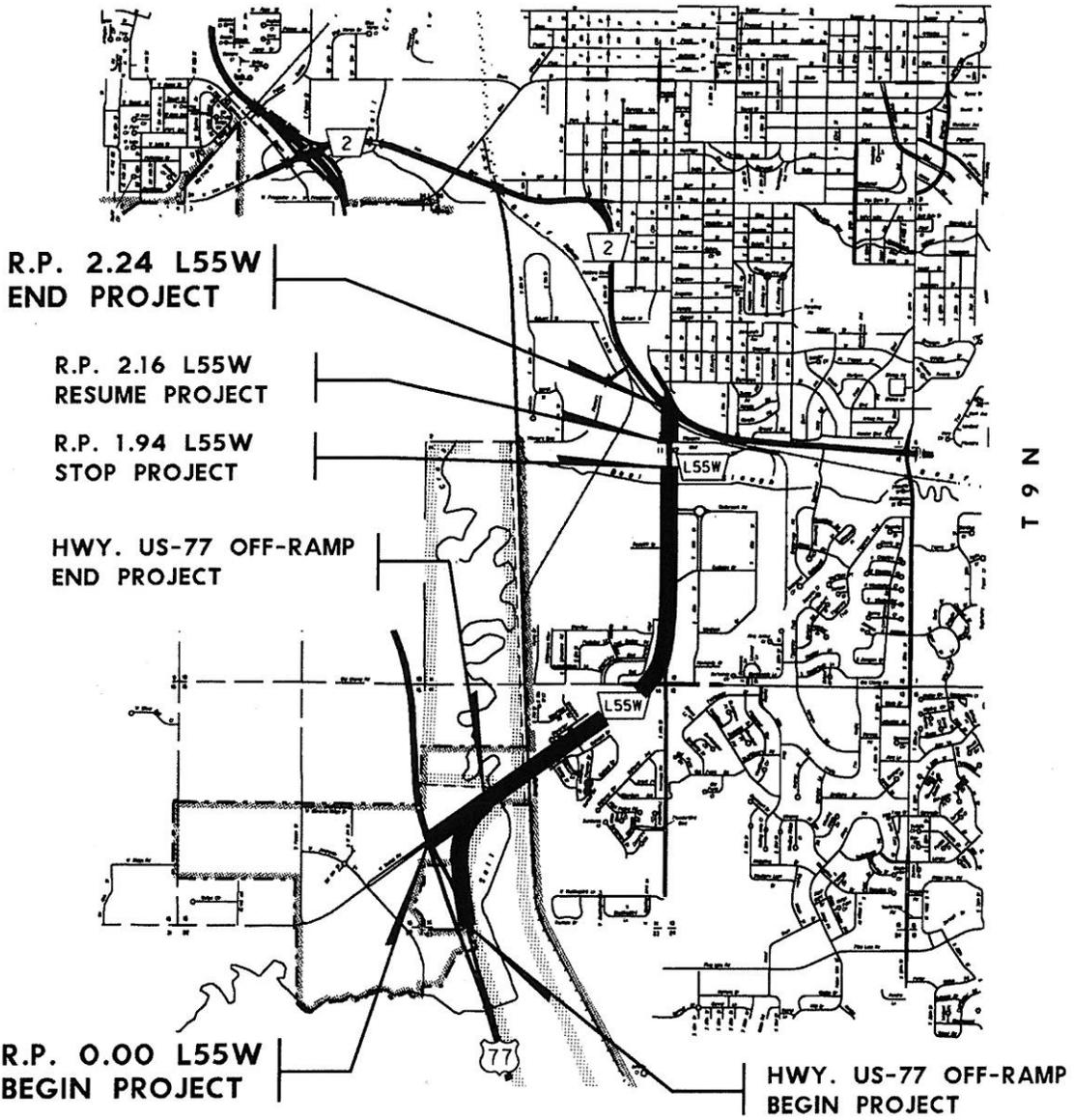


District 1 Engineer

LINCOLN
LANCASTER COUNTY
NEBRASKA



R 6 E

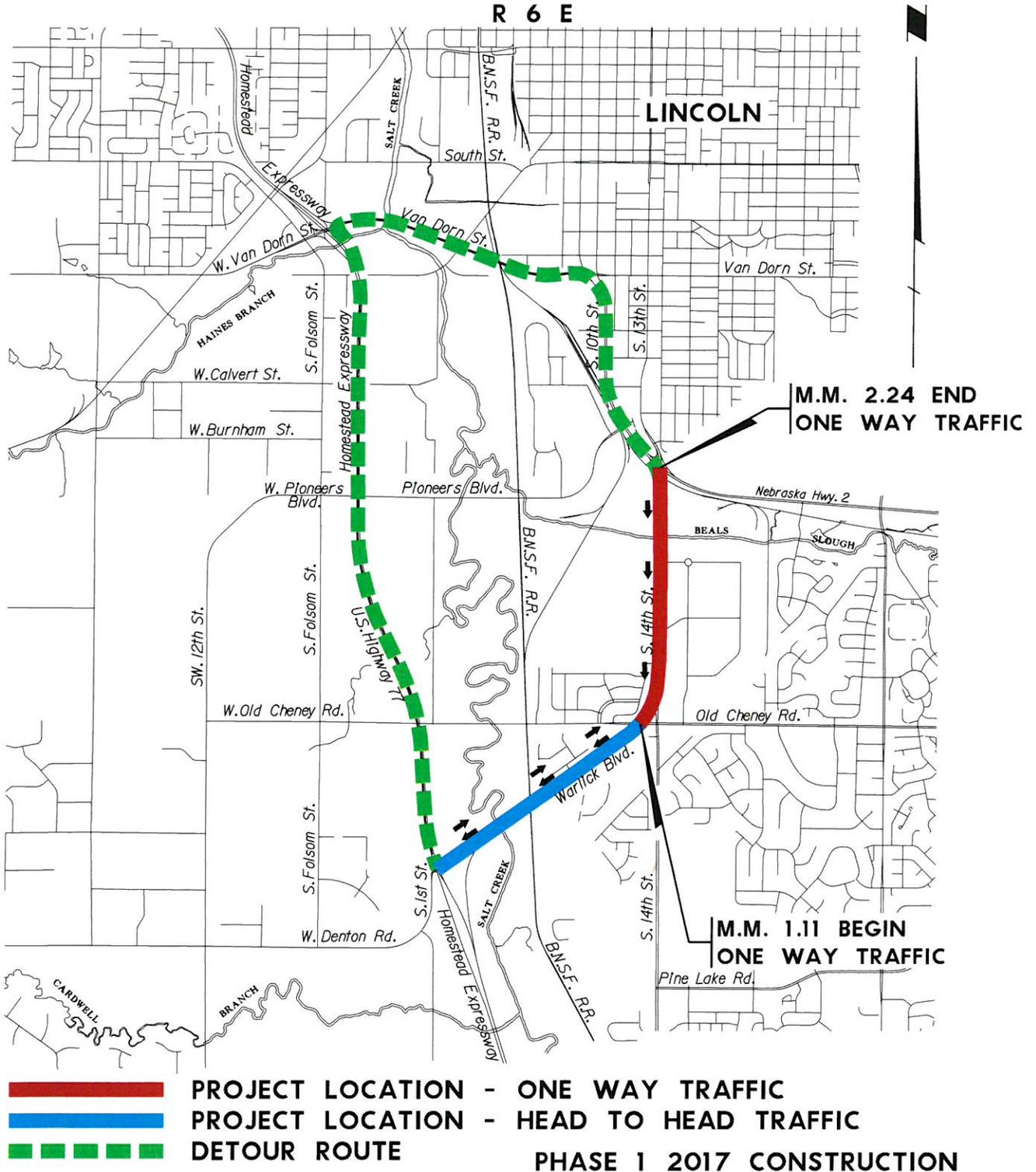


LINCOLN

LANCASTER COUNTY NEBRASKA

R 6 E

T 9 N



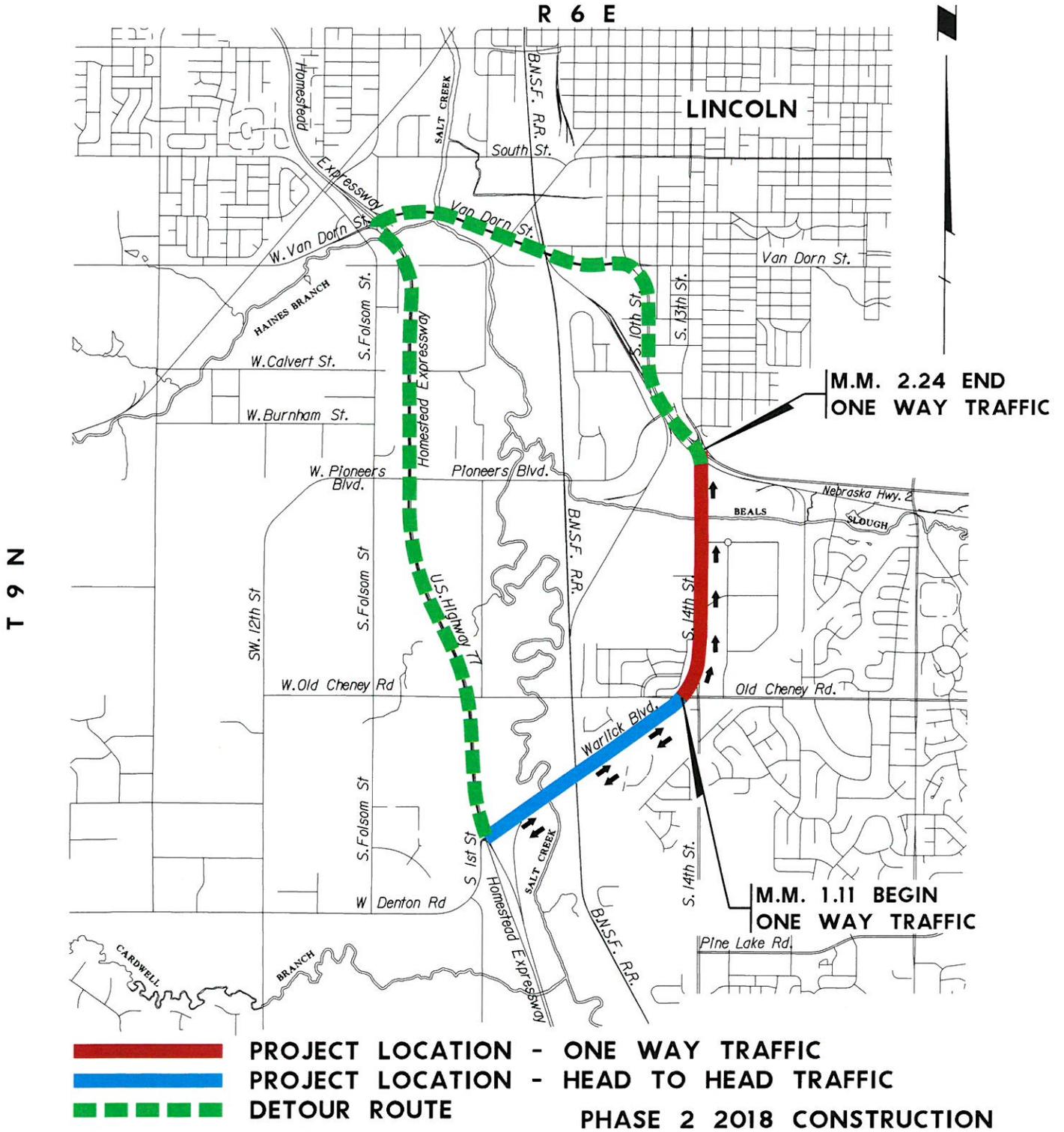
L55W(1022)

C.N. 13224A

EXHIBIT "B"

LINCOLN

LANCASTER COUNTY NEBRASKA



L55W(1022)

C.N. 13224A

EXHIBIT "B"

NDOR Recommendations for Projects Incorporating Municipal Separate Storm Sewer System (MS4) Components

NDOR will coordinate the Municipal Separate Storm Sewer System (MS4) design components to be constructed as a part of this project with Municipal representatives. MS4 components are a part of the storm sewer system for which the Municipality, under Nebraska Revised Statute, is responsible to operate, maintain, and repair.

It is NDOR's recommendation that storm water inlets, diversion structures, manholes, underdrains and outlets be inspected and maintained on a regular basis. NDOR recommends the following as a suggested schedule for maintenance of the MS4 components.

Maintenance and Inspection Performed Quarterly or Following Major Rainfall Events:

MS4 inlets and manholes should be inspected each quarter or within two days after a major rainfall event ($\frac{1}{2}$ inch or greater) or snow melt event to ensure the inlets and manhole drain water is not visible at or above the surface of the filter bed. If water is visible at or above the surface of the filter bed, an investigation to determine cause should occur, and in the event that the media is restricting flow, it should be cleaned.

Periodic Maintenance and Inspection

The MS4 components should be inspected and, if necessary, maintained on a quarterly basis for the first year following completion of construction. The frequency of inspections may be reduced to an annual basis following the first year. Frequency of inspection should be established based on the results of the previous inspections. Sediment and trash build up should be kept to less than six inches on top of the filter media. The following are suggested inspection activities:

- Inspect MS4 inlets and manhole for trash and debris at the inlets, outlet and any diversion structure and remove accumulated trash and debris as needed.
- Inspect MS4 inlets and manhole for sediment buildup on the filter bed surface and remove the sediment when the depth exceeds 6 inches.
- Inspect for any damage, cracking or deterioration of concrete and repair as needed.

Maintaining Water Level Below the Surface of Filter Bed

In the event that an inlet or manhole, when cleaned of sediment and debris, fails to drain water below the surface of the filter bed, the Municipality should consider removal and replacement of gravel filter bed and cleanout of the 6" drain pipe.

EXHIBIT "D"

Sheet 1 of 2

MS4 Water Quality Components Proposed as a part of this Project:

- Infiltration Trench
- Quarterly inspection from End of Construction to 2 years.
- Inspection includes:
 - Surface ponding for extended period of time.
 - Check observation wells 3 days after major rainfall event (greater than ½”).
 - Inspect Infiltration Trench for Sediment buildup on trench surface. Remove Sediment as needed.
 - Inspect Trench and area inlet for any trash or debris. Repair any erosion.
 - Inspect and maintain pretreatment stormwater BMP in accordance w/ their respective design guidelines.
- Annual Inspection (After first 2 years from end of construction).
- Inspection includes:
 - Surface ponding for extended period of time.
 - Check observation wells 3 days after major rainfall event (greater than ½”).
 - Inspect Infiltration Trench for Sediment buildup on trench surface. Remove Sediment as needed.
 - Inspect Trench and area inlet for any trash or debris. Repair any erosion.
 - Inspect and maintain pretreatment stormwater BMP in accordance w/ their respective design guidelines.