

Public Hearing: February 26, 2001

## F A C T S H E E T

**TITLE:** To authorize City participation in a State Department of Roads contract to rehabilitate a portion of Highway 2 from 56th Street East.

**SPONSOR:** Public Works/Utilities

**OPPONENTS:** Unknown

**STAFF RECOMMENDATION:** For

**OTHER DEPARTMENTS AFFECTED:**

None

**APPLICANT:** Public Works/Utilities

**REASON FOR LEGISLATION:** To authorize City participation in a State Department of Roads contract to rehabilitate a portion of Highway 2 from 56th Street East.

## D I S C U S S I O N

The State of Nebraska, Department of Roads is proposing to rehabilitate a portion of Highway 2 from 56th Street East. This agreement provides authority for the City to participate financially in the portion of the project that is within the City Limits. The work will include extending the length of left-turn pockets and the milling and overlaying of the roadway. The City funding will come from the arterial street rehabilitation project within the Capitol Improvement Program. This work is expected to be completed this construction season (2001).

**POLICY OR PROGRAM CHANGE:** No

**COST OF TOTAL PROJECT:** \$1,534,415.

**SOURCE OF FUNDS:**

**CITY:** \$420,041.

**NON CITY:** \$1,114,374.

**BENEFIT COST:**

**FACT SHEET PREPARED BY:**

Al Imig, Engineering Services

**REVIEWED BY:**

Director of Public Works/Utilities

A G R E E M E N T

PROJECT NO. S-2-6(1021), STATE CONTROL NO. 12515  
CITY OF LINCOLN  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
HIGHWAY N-2-56TH STREET EAST TO CORPORATE LIMITS

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by and between the City of Lincoln, a municipal corporation of the State of Nebraska,  
hereinafter referred to as the "City," and the State of Nebraska, Department of Roads,  
hereinafter referred to as the "State."

WITNESSETH:

WHEREAS, it is the desire of the parties that a portion of Highway N-2 in Lincoln be  
improved at the location as shown in Exhibit "A" attached, which is hereby made a part of this  
agreement, and

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

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

WHEREAS, it is the further desire of the City that the proposed urban construction be  
included in a project under the designation of S-2-6(1021), as evidenced by the Resolution of  
the City Council dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached hereto,  
identified as Exhibit "C," and hereby made a part of this agreement, and

WHEREAS, the description of the project is as follows:

Improve Highway N-2 in Lincoln from 56th Street east to the City's corporate limits by  
resurfacing and extending turn lanes.

NOW THEREFORE, in consideration of these facts and the mutual promises of the  
parties hereto, it is hereby agreed that the construction or reconstruction of the aforesaid  
highway between construction limits described in Exhibit "A" attached hereto, denoting Project  
No. S-2-6(1021), shall be accomplished according to and in the manner provided by plans and  
specifications to be prepared by the State, which are to be, by this reference, made a part of  
this agreement.

And the parties agree further as follows:

SECTION 1. The City agrees:

- (a) To pass and enforce an ordinance as required to effect the following restrictions within the project limits: No Parking
- (b) To prohibit filling stations, service stations or other business establishments being located in such a way that vehicles being served will be required to stand on said public highway right of way.
- (c) To require that all future entrances from private property to the public right of way within the limits of this project receive prior approval of the Director or his authorized representative.
- (d) To clear, at no cost to the State, the present right of way of this project of all advertising signs. The City also agrees, at no cost to the State, to clear any other privately owned facility or thing that may interfere with the construction, maintenance and operation of the improvement planned in this project, and to keep the old and new right of way free of future encroachments, except those authorized by permit from the City and approved by the State and Federal Highway Administration.
- (e) If the City performs any part of the work on this project itself, the City agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101 through 48-1126 (Reissue 1998), 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 Exhibit "B" attached hereto and hereby made a part of this agreement. The reference to "Contractor" in this exhibit shall mean the "City."
- (f) **MINORITY BUSINESS ENTERPRISES**
  - (1) **Policy**

The City and State further agree to ensure that minority business enterprises as defined in 49 CFR Part 23 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 minority business requirements of 49 CFR Part 23 are hereby made a part of and incorporated by this reference into this agreement.
  - (2) **Minority Business Enterprises Obligation**

The City and State further agree to ensure that minority business enterprises as defined in 49 CFR Part 23 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, the City shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

The City acting as a subrecipient of Federal-aid funds on this project agrees to adopt the minority business enterprise program of the State for the Federal-aid contracts the City enters into on this project.

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

- (g) Any changes in the roadway geometrics, either during project construction or after the project is completed, including but not limited to access control, driveways, median breaks, parking restrictions or any other traffic control items shall require prior approval of the State with Federal Highway Administration concurrence.
- (h) To provide, where the proposed construction involves a change in the grades established by City ordinance, that an amendment to said ordinance be passed, reestablishing said grades as shown in the plans without cost to the State.

SECTION 2. It is agreed and understood by the parties hereto that Federal-Aid Policy Guide, 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, as supplemented, revised or updated heretofore, is hereby expressly made a part of and incorporated into this agreement by this reference. By signing this agreement, the City agrees to adopt, on the improvement contemplated in this agreement the Nebraska Department of Roads' Policy for Accommodating Utilities on State Highway Right of Way issued by the State August, 1998, and its subsequent revisions or additions.

The City further agrees:

- (a) To comply with Neb.Rev.Stat. §39-1361 (Reissue 1998), and the rules and regulations of the Department of Roads before making or allowing to be made, any utility excavation, pavement cuts or performing other activity upon said highway, and shall be responsible to see that all such work is performed according to the rules and regulations of, and by authority of a permit granted by the Department of Roads of the State of Nebraska.
- (b) To furnish or cause to be furnished all of the labor, tools, equipment and materials for the rehabilitation of its municipally owned utilities as made necessary by the construction of this project.
- (c) To prepare and submit to the State upon receipt of preliminary construction plans for this project a plan and estimate detailing anticipated location and nonbetterment costs for the rehabilitation of all municipally owned utilities as made necessary by this project. It is mutually understood that all nonbetterment municipal utility rehabilitation costs within the corporate limits of the City will become a project cost, but that outside said City limits only the nonbetterment portion of the rehabilitation costs of facilities currently occupying private right of way will be reimbursed. The cost of nonbetterment rehabilitation of municipally owned and operated utilities within the corporate limits is currently unknown. Should this project necessitate the nonbetterment rehabilitation of any municipally owned and operated utilities, the parties hereto agree to enter into a supplemental agreement to provide for the construction of the nonbetterment utilities and the reimbursement to the City for the State's share of the costs of the rehabilitation of municipally owned and operated utilities. Said supplemental agreement shall be entered into prior to utility work beginning.
- (d) To pay the State within 30 days after receipt of a billing from the State, the City's share of the project cost. The City's share shall be 50 percent of the total actual cost of the project from 56th Street east to the City's corporate limits, which cost is currently estimated to be \$420,041.00. When a construction contract is awarded, the State will bill the City for 50 percent of all known State incurred expenses within the City's corporate limits. Thirty days prior to construction beginning, the State will bill the City for 50 percent of the amount reflected in the construction contract for that portion of the project within the City's corporate limits, plus 50 percent of the estimated cost of construction engineering and contingencies for that portion of the project within the City's corporate limits.

After all project costs are known, the City will be either billed for their share of the final cost or reimbursed, depending on whether the final cost overran or underran the original estimated cost.

SECTION 3. The Federal share of this project shall be reduced by any project specific local property assessments that exceed the appropriate local share on this project. This is subject to State review.

SECTION 4. All traffic control devices will conform to the latest approved edition of the Manual on Uniform Traffic Control Devices. If the City is to perform or contract for any work, they will develop a traffic control plan. The plan will be provided to the State's Project Manager for approval and acceptance. It will be the City's responsibility for the operation and maintenance of the approved traffic control plan.

SECTION 5. The City further agrees to comply with all traffic safety regulations, including those prescribed in the latest approved edition of the Manual of Uniform Traffic Control Devices and to use extreme caution when working in the State right of way and not block or encroach upon any traffic lane without first providing a flagperson to direct traffic.

SECTION 6. It is hereby agreed that plans and specifications for the above mentioned project will be on file in the office of the Department of Roads, Lincoln, Nebraska.

SECTION 7. The City and State will fully cooperate to cause the removal from public right of way, or correction or alteration in the public right of way, as necessary for the construction of the aforesaid project, of all pipe lines, poles or other underground or overhead services not owned by the City.

SECTION 8. The City agrees to participate toward the cost, as stated in Section 2, paragraph "d" of this agreement on that portion of the aforesaid project which was within the corporate limits of the City as they exist on the date that this Agreement is executed by the State.

SECTION 9. The State hereby agrees:

- (a) To prepare and convey to the City, prior to construction, plans for the proposed subject project.
- (b) To advertise and conduct a letting and receive bids on the contemplated improvement. The City agrees that the State will award the contract to the lowest responsible bidder and that said contract shall be signed only by the State.
- (c) To supervise and cause completion of the construction of the improvement as shown in the plans.

- (d) To acquire all additional right of way and do all things, in pursuance of the aforesaid project, not specifically assumed by the City.
- (e) To reimburse the City for the nonbetterment rehabilitation of municipally owned utility facilities as provided in Section 2(c).
- (f) To construct that portion of the project located outside the City limits without cost to the City, except as provided in Section 2(c).

SECTION 10. The parties hereto agree that the State shall make sole determination as to the scheduling of the construction for this project.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the City this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

CITY OF LINCOLN

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

STATE OF NEBRASKA  
DEPARTMENT OF ROADS

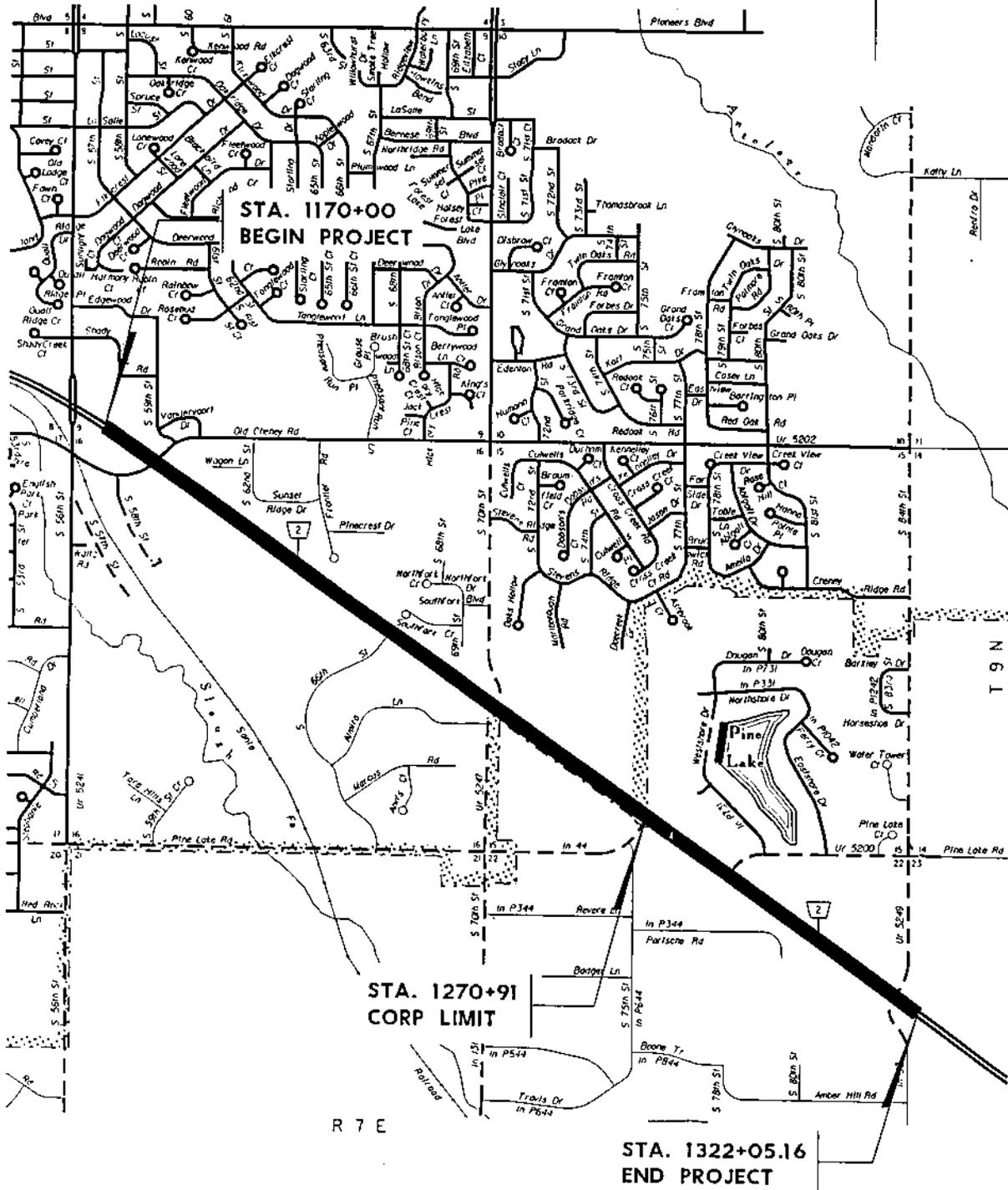
\_\_\_\_\_  
Deputy Director-Engineering

RECOMMENDED:

\_\_\_\_\_  
District Engineer

AGR34-HN

LINCOLN  
LANCASTER COUNTY  
NEBRASKA



2-6(1021)  
C.N. 12515

EXHIBIT "A"

## NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will 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 contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will 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 contractor will 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.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- (4) Information and Reports: The contractor will 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 the State Highway Department or the Federal Highway Administration 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 contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
  - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor will include the provisions of paragraph (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 contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration 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 contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.