

# A G R E E M E N T

CITY OF LEXINGTON, NEBRASKA  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
PROJECT NO. URB-6561(2), STATE CONTROL NO. 61489  
JACKSON STREET URBAN RECONSTRUCTION - LEXINGTON

THIS AGREEMENT, made and entered into by and between the City of Lexington, Nebraska hereinafter referred to as the "City", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, certain streets in the City have been designated as being eligible for Surface Transportation Program (STP) Funds by the Department of Transportation, Federal Highway Administration, hereinafter called the FHWA, in compliance with Federal laws pertaining thereto, and

WHEREAS, STP Funds have been made available by Title 23 of the United States Code, providing for improvements on eligible City Streets, and

WHEREAS, the Federal share payable on any portion of a STP project will be a maximum of 80 percent of the eligible costs, and

WHEREAS, regulations for implementing the provisions of the above mentioned act provide that the Federal share of the cost of those projects will be paid only to the State, and

WHEREAS, the regulations further permit the use of funds other than State funds in matching Federal Funds for the improvements of those streets, and

WHEREAS, the State is willing to cooperate to the end of obtaining Federal approval of the proposed work and Federal Funds for the construction of the proposed improvement, with the understanding that no State Funds are to be expended on this project, and

WHEREAS, the City has designated an available fully-qualified public employee to act as "Responsible Charge" (RC) for the subject Federal-aid Transportation project, and

WHEREAS, the RC has successfully completed training required by the State to serve as an RC for the Federal-aid Transportation project, and

WHEREAS, the RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities and maintain the project's eligibility for Federal-aid Transportation project funding, and

WHEREAS, the City understands that it must comply with all terms of 23 C.F.R. 635.105 order for this Federal-aid transportation project to be eligible for Federal funding, and

WHEREAS, the City will support the RC and is ultimately responsible to ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

WHEREAS, if the City is to receive Federal participation for any portion of the work on the proposed project, it is necessary all phases of work comply with Federal requirements and procedures, and

WHEREAS, the State and the City agree the State will advertise, conduct a letting and receive bids for the project and will pay all eligible costs directly to the Consultant and Contractors, and

WHEREAS, the State's responsibility is to provide quality assurance and project oversight to ensure that the project is designed, constructed and managed according to federal rules and regulations. The State will notify the City when federal funding will be withheld or lost where such construction of the project was not prosecuted in accordance with the proposed plans, 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, the funding for the project under this agreement, includes pass-through monies from the Federal Highway Administration (FHWA). If a non-federal entity expends \$500,000 or more in total federal awards in a fiscal year, then the A-133 audit is required as explained further in this agreement, and

WHEREAS, the total cost of the project is currently estimated to be \$1,200,000, but such costs may increase or decrease due to variations between the estimated and actual project costs, and

WHEREAS, the City has earmarked and will place in its fiscal budget sufficient funds to pay all project costs not paid for by Federal funds; such costs are currently estimated to be

\$240,000, but such costs may increase or decrease due to variations between the estimated and actual project costs, and

WHEREAS, the project is described as follows:

Jackson Street from 8<sup>th</sup> Street to 13<sup>th</sup> Street is classified as Minor Arterial. The street section from 11<sup>th</sup> to 13<sup>th</sup> Street is a 30' section compared to a 40' section south of 8<sup>th</sup> Street. The City would like to remove the existing paving section full width and replace the segment with a 40' pavement section. In conjunction with the project, the City would like to install some additional storm sewer to improve drainage. Some right-of-way acquisition would be required from 11<sup>th</sup> to 13<sup>th</sup> Street to accommodate the additional paving width in that area.

WHEREAS, the City desires that this project be constructed under the designation of Project No. URB-6561(2), as evidenced by the Resolution of the City dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010, attached as EXHIBIT "A" and made a part of this agreement.

NOW THEREFORE, in consideration of these facts, the City and State agree as follows:

SECTION 1. Definitions. For purposes of this agreement, the following definitions will apply:

**Fully Qualified** means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified Local Public Agency "Responsible Charge" (RC's).

**Full-Time Public Employee** means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which Federal-aid is sought.

**Public Employee** means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

**Responsible Charge** means the public employee who is fully empowered by the City and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project from planning through construction project activities, including all environmental commitments. The RC is the day-to-day project manager, and the City's point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in the delegated technical tasks.

SECTION 2. Responsible Charge (RC)

- A. The City hereby designates Dennis Burnside as the RC for this project.
- B. Duties and Assurances of the City for this project.
  - 1. The City has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision making.
  - 2. The RC is a full-time employee of the City.
  - 3. The RC is fully qualified and has successfully completed required training to serve as an RC.
  - 4. The City shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.
  - 5. The City shall not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this agreement.
  - 6. The City shall provide necessary office space, materials and administrative support for the RC.
  - 7. The City shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.

8. The City shall take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.
  9. The City agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.
  10. The City shall comply with the conflict-of-interest requirements of 23 CFR 1.33.
  11. If the designated RC becomes no longer assigned to the project during the design phase, the City shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer and the LPD Project Coordinator; after such notification the City shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC becomes no longer assigned to the project in the letting or construction phases, the City shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Project Coordinator, and the State District Representative; after such notification, the City shall replace the RC no later than ten calendar days or sooner if possible. During any of the project phases, the State will require the City to sign a supplemental agreement designating the replacement RC.
  12. The City agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes meeting all post-construction environmental commitments. The City understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the County or its agents or representatives result in a finding that a project is ineligible for Federal funding, the City will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.
- C. The City understands that the following are the duties of the RC:
1. Serve as the City's contact for issues or inquiries for Federal-aid projects assigned by the City

2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.
4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a professional engineer licensed in the State of Nebraska (reference Neb. Rev. Stat. §81-3445).
6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the City, which includes the City's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.
9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
10. Keep the State informed of all project issues.
11. Arrange preconstruction conference.
12. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the City's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.
15. Ensure that proper construction management processes have been developed and implemented for the project.

16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.
18. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.

SECTION 3. The State shall present this project to the FHWA for its approval, if necessary.

SECTION 4. The City understands that payment for the costs of this project, whether they be services, engineering, Right-of-Way, utilities, material or otherwise, are the sole responsibility of the City where Federal participation is not allowable or available. Therefore, where the Federal government refuses to participate in the project or any portion of the project the City is responsible for full project payment with no cost or expense to the State in the project or portion of the project. Should the project be abandoned before completion, the City shall pay all costs incurred by the State prior to such abandonment.

Costs incurred by the State with respect to the entire project will be part of the cost of the project to be paid out of City and Federal funds. Costs incurred by the State attributable to this project will not include any administrative costs or expenses of administrative officials. The State may, at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the City agrees to pay such invoices with thirty days of their receipt. The City's share of the total project cost shall be all costs not paid for by Federal funds.

The criteria contained in Part 31 of the Federal Acquisition Regulations (48 CFR 31) shall be applied to determine the allowable costs incurred by the City under this agreement.

The City shall maintain all correspondence files, books, documents, papers, field notes, quantity tickets, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office at all reasonable times during the contract period and for three years from the date of final payment under this agreement; such records must be available for inspection by the State and the FHWA or any authorized representatives of the Federal government, and the City shall furnish copies to those mentioned in this section when requested to do so.

SECTION 5. The City shall have on file with the State an acceptable drug-free workplace policy.

SECTION 6. Because the City is to receive Federal Funds for any part of this project, the City shall perform the services for all phases of work, including, but not limited to preliminary

engineering, environmental studies, acquisition of Right-of-Way, construction (includes construction engineering), etc., according to Federal procedures and requirements. Although Federal Funds may be allocated to the project, all phases or certain phases of work will become ineligible for Federal Funds if Federal procedures and requirements are not met.

Prior to beginning any phase of work on the proposed project, the City shall contact the State's Local Projects Section Urban Engineer for direction and assistance to ensure that all project work will be accomplished according to Federal procedures and requirements.

SECTION 7. If the City performs any part of the work on this project itself, the City shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101, through 48-1126 (Reissue 1988), 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 DISCRIMINATION CLAUSES Section of this agreement. The reference to "Contractor" in this section means the "City".

SECTION 8. The funding for the project under this agreement includes pass-through federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 (signed into law by President Clinton on July 5, 1996) and the implementing regulations contained in OBM Circular A-133, the A-133 Audit is required if the non-federal entity expends \$500,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.

The City shall have its finance officer or auditor, review the situation to determine what the City must do to comply with this federal mandate. If applicable, the expenditures related to the FHWA should be shown in the Supplementary Schedule of Expenditures of the Federal Awards under U.S. Department of Transportation as a pass-through Nebraska Department of Roads, Federal CFDA Number 20.205. If an A-133 Audit is performed, the City shall send the audit report to the Nebraska Department of Roads, Highway Audits Manager, P.O. Box 94759, Lincoln, NE 68509-4759.

SECTION 9. The City agrees to follow the LPA Guidelines Manual throughout all phases of this project. The City shall have a RC of the project at all times. In the event that the LPA Guidelines Manual doesn't address clearly any part of the project work, the City shall seek clarification from the State's Local Project Sections urban Engineer or assigned project coordinator.

Section 10. The State and the City agree that the Federal share payable on this project will not exceed 80 percentum of the eligible engineering, Right-of-Way, utility and construction costs.



SECTION 11. The City shall provide the State with current project schedules, submittal dates and critical milestone dates. The City shall notify and keep the State informed on all project issues.

SECTION 12. The total cost of the project which includes: preliminary engineering, final design, Right-of-Way, nonbetterment utility rehabilitation, construction and construction engineering is currently estimated to be \$1,200,000. The City's share is to be 20 percent of all actual eligible costs which is estimated to be \$240,000. The State agrees to use the City's Federal Funds, for 80 percent of the actual eligible costs of the improvement which is estimated to be \$960,000. Both the City and State recognize this is a preliminary estimate and the final cost may be higher or lower. The final settlement between the State and the City will be made after final review and approval by the State and after an audit, if deemed necessary, has been performed to verify actual costs. The City shall reimburse the State for any overpayments discovered by the State or its authorized representative.

The City further agrees, that if reimbursement to the State is required on this project, and if the City is unable to or does not make reimbursement within 60 calendar days after the State notifies the City of such required reimbursement; the State by this agreement is authorized to withhold money from State Highway funds apportioned or to be apportioned to the City, in an amount equal to the required reimbursement to the State.

Project coordination and quality assurance review costs incurred by the State with respect to the entire project will be part of the cost of the project to be paid out of City and Federal Funds. The State may, at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the City agrees to pay such invoices within thirty days of receipt. The City's share of the total project cost will be all costs not paid for by Federal Funds.

The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR 31) will be applied to determine the allowability of costs incurred by the City under this agreement.

SECTION 13. The parties agree that preliminary engineering, which includes project design, plan development, environmental studies and final design, will be accomplished by the City or a State certified Consultant selected by the City. If a Consultant is to be selected, the method of procurement and evaluation must follow all guidelines and requirements outlined in the State's Federal Aid Guidelines Manual for LPA's. That State will review and approve the Request for

Proposals prior to advertising. Any PE work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal Aid.

It is understood by the parties that the State will rely on the professional performance and ability of the City or their Consultant. Any examination by the State, or acceptance or use of the work product of the City or their consultant will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of the City or their Consultant which would relieve the City from any liability or expense that would be connected with the City's sole responsibility for the propriety and integrity of the professional work to be accomplished by the City.

SECTION 14. The State will pay the contractor and consultant directly as follows.

- A. All project contractor construction costs will be paid directly to the contractor by the State. Progress invoices and final invoices shall be prepared by the City using **SiteManager software** and must be approved by the City Responsible Charge before payment to the Contractor can be made by the State.
- B. The City Responsible Charge shall submit the City approved **construction engineering** invoice and progress report to the State District Construction Representative for approval of payment, with a copy to the State's Local Projects Division Coordinator. The State District Construction Representative will forward the invoice and progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the consultant for the construction engineering.
- C. The City Responsible Charge shall submit the City approved **preliminary engineering** invoice and progress report to the State's Local Projects Division Coordinator. The Local Projects Division Project Coordinator will forward the approved preliminary engineering invoice and progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the consultant for the preliminary engineering.

SECTION 15. The City, with such assistance as may be required from the State, agrees to perform or caused to be performed a preliminary survey and all necessary plans, specifications and estimates for the proposed work. All plans, specifications, estimates must be presented to the State for approval to ensure adherence to Federal Standards. The City agrees to acquire any or all permits necessary to accomplish the project.

SECTION 16. The State agrees to receive and review all plans, specifications, estimates and surveys of the City to ensure they conform to Federal Standards and to advertise, conduct a letting and receive bids for this project. The selection of low bidders and the awarding of a contract or contracts shall be concurred in by the City and the contract shall be signed by the City.

SECTION 17. The City or its Consultant shall design the project according to the current AASHTO Policy on Geometric Design of Highways and Streets, the Nebraska Minimum Design Standards of the Board of Public Roads Classifications and Standards and to the Americans with Disabilities Act (ADA) Accessibility Guidelines. All plans, specifications, bid proposals, permits and any other contract documents must be submitted to and reviewed by the State prior to bid letting. Any deviations from the above publications must be approved by the State.

SECTION 18. ENVIRONMENTAL RESPONSIBILITY

The City shall be responsible to complete any federally required environmental actions, commitments, and documents for this project, and receive approval by the State and the FHWA **prior** to proceeding with appraising property, acquiring any right-of-way, or final design for the project.

When it is determined that a public hearing is a federal requirement for the project, the City shall offer an opportunity for a location or design hearing or combined location and design public hearing.

If a public hearing is required, the City shall contact the State's Public Hearing Officer (PHO) prior to doing any public hearing activity, so the PHO can advise the City of the proper procedures and policies for conducting the hearing. The City can contact the State's PHO by calling (402) 479-4871.

SECTION 19. The City shall be responsible for preparing and executing any railroad agreement or agreements required for this project. The City shall send a copy of the executed railroad agreements to the State prior to advertising the project for bids. Should the railroad agreement include work to be performed by the Railroad as part of the project, which is eligible for reimbursement, the City shall pay the Railroad and bill the State for reimbursement. The State will reimburse the City according to the payment section in this agreement.

SECTION 20. Any utility rehabilitations or installations made within the Right- of-Way on this project after execution of this agreement must be in accordance with the provisions of Federal-Aid Highway 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, or a State approved Utility Accommodation Policy. In order to receive Federal-Aid Funds for this improvement, the City shall follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way." Any work within the State Right-of-Way requires a permit. The City shall contact the State's District Engineer or Permits Officer to determine if a permit or permits is needed for the project and to make application for those permits if necessary.

All nonbetterment municipally owned and operated utility rehabilitation costs within the corporate limits of the City will become a project cost, but that outside the corporate limits, only the nonbetterment portion of the rehabilitation costs of facilities currently occupying private Right-of-Way will be reimbursed. Further, there will be no Federal reimbursement for private or nonmunicipally owned and operated utilities if they are located on public Right-of-Way, however, nonbetterment costs of privately owned and operated utilities will be reimbursed if they exist on privately owned Right-of-Way and it is necessary to rehabilitate the utilities due to this project. All such reimbursements will be based on items and estimates submitted by the utility and approved by the City and State. Should this project necessitate the nonbetterment rehabilitation of any privately owned and operated utilities, then the City shall send the State an estimate of those nonbetterment utility rehabilitation costs prior to the work being done. The City shall pay for utility nonbetterment rehabilitation and then bill the State for those eligible reimbursement costs. All reimbursements will be based on the actual costs of material, services and labor. This will be subject to audit, if the State deems that one is necessary.

SECTION 21. The Federal law governing acquisition and relocation on federally assisted projects is Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, commonly called just the Uniform Act. The City shall comply with the Uniform Act, and the State's Right-of-Way Acquisition guide for new LPA's.

The Uniform Act applies whenever Federal dollars are used in any phase of a project, such as planning, engineering, environmental studies, or construction. **The Uniform Act must be followed even if there is NO Federal funding in the Right-of-Way phase.** The State's Relocation Assistance Act, Neb. Rev. Stat. 76-214 through 76-1238 applies on all projects.

Prior to beginning Right-of-Way appraisals and acquisition, the City shall submit to the Local Projects Section Urban Engineer Right-of-Way plans, legal descriptions and an estimate for review and approval. If acceptable, the State will issue the City a Notice-to-Proceed with the Right-of-Way work phase.

The City shall present to the State, a Right-of-Way Certificate that certifies the City has complied with the Uniform Act requirements and that the project is ready for construction. The State will grant the City authorization to proceed with the construction phase of the project, if the documentation submitted by the City supports the Right-of-Way Certificate.

SECTION 22. The City at no cost to the project, shall clear the present Right-of-Way of this project of all advertising signs. The City at no cost to the project, shall 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 keep the old and new Right-of-Way free of future encroachments, except those authorized by permit.

SECTION 23. The City shall locate and reference or have located and referenced all section corners, quarter section corners and subdivision lot corners required for construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

SECTION 24. The Federal share of this project must 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 25. The City shall certify after accomplishment, that any Right-of-Way for this improvement not donated in compliance with FHWA guidelines will be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, 49 CFR 24, and the State's Right-of-Way Manual as approved by FHWA.

SECTION 26. The State shall advertise, conduct a letting and receive bids for the City on the contemplated improvement. Prior to advertising the project for bids, the City shall submit a Right-of-Way Certificate and the final plans package (100 percent plans, specifications, engineers' estimate, status of utilities, environmental permits and contract bidding documents) to the State's Local Projects Section Urban Engineer. The State will review the submitted items and proceed with advertising the project for bids. The selection of low bidders and awarding of a contract or contracts must be concurred in and signed by the City prior to State award.

SECTION 27. The State and City agree that the construction engineering, which is an eligible project expense and which includes construction management, staking, inspection and field testing, will be accomplished by City forces or a State Certified Consultant selected by the City.

The City agrees, if a Consultant is to be selected, that the method of procurement and evaluation and the resulting agreement between the Consultant and the City must conform to the State's standard practices and will be subject to State review and concurrence prior to

agreement execution between the City and the Consultant. **Any CE work performed prior to Federal authorization and receipt of a NTP will not be eligible for Federal funding.**

The inspection, sampling and testing of all materials must be done in accordance with the current State of Nebraska Standard Specifications for Highway Construction, the State Materials Sampling Guide, Quality Assurance Program for Construction, and the State Standard Methods of Tests ([www.transportation.nebraska.gov](http://www.transportation.nebraska.gov)) or applicable AASHTO or ASTM procedures. The City shall provide adequate quality control, construction administration on the project and will be responsible for the sampling and delivery of project materials for testing to a qualified laboratory. In all cases, the State will provide a State District Construction Representative designated by the State on a part-time basis, who will inspect the project, perform quality assurance, and ensure that the City is in compliance with the contract, plans, specifications, scope of work, regulations, statutes, etc., in order that Federal Funds may be expended on the project. Upon project completion, the City shall complete and sign a State DR Form 299, "Notification of Project Completion and Materials Certification" and provide it to the State District Construction Representative for further action.

The City by signing DR Form 299 certifies that all sampling and test results of materials used on the project, manufacturer's certificates of compliance and manufacturer's certified test reports meet contract requirements and are on file with the City and the City shall make them available for inspection to the State and the FHWA or their authorized representatives when requested in writing to do so.

The State District Construction Representative assigned to the project will conduct a final review of the project and will determine if the project is acceptable. If the State District Construction Representative determines the project is acceptable, the State District Construction Representative will sign the DR Form 299 and send it to the State District Engineer for signature. The State District Engineer will forward the form to the State's Local Projects Section Urban Engineer for signing, project closeout and final payment. If the State District Construction Representative determines the project is not acceptable, the State District Construction Representative will notify the City's RC in writing of what needs to be done to bring the project into compliance for acceptability before the State District Construction Representative will sign the DR Form 299 and recommend the project for closeout. The City shall contact the State's District Engineer for State District Construction Representative assignment. It is understood that any construction engineering services furnished by the State

will be part of the cost of the project and the State's expenses will be included as costs of the project, as specified in this agreement.

SECTION 28. The City understands and agrees that the sole duty of proper prosecution of the project, in accordance with the approved plans, belongs with the City, its RC and Contractors, and that failure to properly prosecute and construct the project in accordance with the approved plans may result in the loss of federal funding.

SECTION 29. Changes to the City streets which affect the function or operation of the improvement made either during construction or after the project is completed, will require prior approval of the State. Requests for changes during project construction must be made to the State Representative who will then forward it to the Local Projects Section Urban Engineer for final approval.

Upon project completion and final review, the City shall send one set of "As-Built" plans to the State's Local Projects Section Urban Engineer and one set to the State's District Engineer.

SECTION 30. Upon project completion, the City shall maintain the project at its own expense, and agrees to make provisions each year for the maintenance costs involved in properly maintaining this facility. The City shall also be responsible for any required environmental commitments and monitoring after the construction of the project. The City will release and hold harmless the State and FHWA from any suits brought against the State arising out of the City's construction and maintenance.

SECTION 31. Traffic control during project construction must conform with the Manual on Uniform Traffic Control Devices. Before final acceptance of the project by the State, all signing and marking must be in conformance with the current Manual on Uniform Traffic Control Devices.

SECTION 32. DISADVANTAGED BUSINESS ENTERPRISES

A. Policy

The City shall 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.

B. Disadvantaged Business Enterprises Obligation

The City and State shall 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, the City 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. 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 shall adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the City enters into on this project.

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.

### SECTION 33. NONDISCRIMINATION CLAUSES

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

- (1) Compliance with Regulations: The City 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.
- (2) Nondiscrimination: The City, 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 City 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.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the City of the City's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.



- (4) Information and Reports: The City 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 the 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 City shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this agreement, the 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 City under this agreement until the City complies, and/or
  - (b) cancellation, termination or suspension of this agreement, in whole or in part.
- (6) Incorporation of Provisions: The City shall 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 City shall take such action with respect to any subcontract or procurement as the 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 City may request the State to enter into such litigation to protect the interests of the State, and in addition, the City may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 34. It is mutually agreed that the final approval of the project will be made by the State and that final project close-out and final settlement cannot be made between the City and the State until the project has been approved by the State.

SECTION 35. This agreement contains the entire agreement of the City and State. No representations were made or relied upon by City or State other than those that are expressly set forth herein. No agent, employee or other representative of City or State is empowered to alter any of the terms in this agreement unless done in writing and signed by an authorized officer of the City and State.

IN WITNESS WHEREOF, the City and State 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 \_\_\_\_\_, 2010.

WITNESS:  
Joe Peplitsch

CITY OF LEXINGTON  
John Fagot

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Jim Wilkinson, P.E.

\_\_\_\_\_  
Local Projects Division Engineer

RECOMMENDED:  
Gary Thayer

\_\_\_\_\_  
District 6 Engineer

AGR12-PU