

MUNICIPALITY FINANCIAL AGREEMENT **STATE PROJECTS**

STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION
CITY OF LEXINGTON
PROJECT NO. STP-30-3(119)
CONTROL NO. 61692
Project Location – US-30 AND US-283 IN LEXINGTON

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

WITNESSETH:

WHEREAS, State intends to improve a portion of State Highways US-30 ("US-30"), US-283 ("US-283") and US-283R ("US-283R") at the locations as shown on Exhibit "A"; and

WHEREAS, the improvement is located within and adjacent to the designated urban area of Lexington, Nebraska, and funds administered by State will be made available for the construction of this project; and

WHEREAS, this Agreement is related to the portion of the project on US-30 located within or adjacent to the Municipality's corporate limits; and

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

WHEREAS, upon State's acceptance of the project, Municipality will be solely responsible for the maintenance, repair and replacement, when necessary, of any curb ramps and drainage facilities along the project, in accordance with Neb. Rev. Stat. § 39-2105 and § 39-1339, including, but not limited to, subsection § 39-1339(4); and

WHEREAS, Municipality agrees that State incurred preliminary engineering costs will be reimbursed by the Municipality using the participation formulas described elsewhere in this Agreement. Preliminary Engineering costs could include, but are not limited to, the following activities: planning, engineering, traffic counts and study, public involvement and engagement, utilities, right of way, construction, material reproduction, printing and travel related costs

associated with the project. Municipality will reimburse State for Municipality's share of preliminary engineering costs incurred to date and future costs; and

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

WHEREAS, the City Council has authorized the Mayor to execute this Agreement, as evidenced by the Resolution of City Council dated the _____ day of _____, 20____, attached as Exhibit "B", and incorporated herein by this reference; and

WHEREAS, the project work within or adjacent to 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.
- 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

- 2.1 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. Generally, the improvements to be constructed within or adjacent to the corporate limits include the following:
- 2.1.1 Concrete repairs, resurfacing the roadways, and updating curb ramps.

SECTION 3. STATE RESPONSIBILITIES

State shall:

- 3.1 Prepare at its sole discretion, plans and specifications for State's proposed subject project. State will coordinate the development of the plans and specifications with Municipality. 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 non-betterment relocation of municipally owned utility facilities as provided in SECTION 10. UTILITY RELOCATION WORK.

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 Transportation 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.
- 4.8 If the Municipality procures consultant services for preliminary engineering and construction engineering for non-betterment rehabilitation of municipally owned and operated utilities by the Municipality, the Municipality agrees to comply with Chapter 4 of the "Nebraska Department of Transportation LPA Guidelines Manual for Federal-Aid Projects".
- 4.9 Upon State's acceptance of the project, Municipality will be solely responsible for the maintenance, repair and replacement, when necessary, of any curb ramps and storm

drainage facilities along the project, in accordance with Neb. Rev. Stat. § 39-2105 and § 39-1339, including, but not limited to, subsection § 39-1339(4).

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

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SECTION 9. PERMISSION TO USE STATE RIGHT OF WAY

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SECTION 10. UTILITY RELOCATION WORK

This section has intentionally been left blank.

SECTION 11. MUNICIPALITY'S FINANCIAL RESPONSIBILITIES

Municipality's cost of this project will be 50% of all costs of the project on US-30 from Reference Post (RP) 236.80 to RP 237.41, which represent the midpoints of the transitions from two thru-traffic lanes to four thru-traffic lanes at each side of the project. Municipality will not share in costs for work on US-283 and US-283R. State's preliminary estimate of Municipality's cost is \$731,000, but Municipality's actual cost is likely to be greater than the preliminary estimate as the details of design are further developed. Costs include those incurred to date and future costs. Municipality shall bear its own costs performing its duties under this Agreement.

11.1 *This section has intentionally been left blank*

11.2 Cost of the project within or adjacent to the corporate limits. The total cost of work is currently estimated to be \$3,445,000 with Municipality's share \$731,000. This includes, but is not limited to, the costs for: preliminary engineering, construction, and construction engineering.

11.3 Calculation of Municipality costs. A breakdown of Municipality's project cost is as follows:

11.3.1 Preliminary Engineering. Divide the Municipality's construction cost for US-30, as calculated in 11.3.2, by the project's total construction cost and multiply the result by project's total preliminary engineering cost. Municipality's share for preliminary engineering is estimated to be \$65,000.

11.3.2 Municipality's Construction Cost. The actual cost of construction for work on US-30 is calculated by multiplying unit prices by final quantities for work. 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. Municipality's share for construction is estimated to be \$635,000.

11.3.3 Construction Engineering. Divide the Municipality's construction cost for US-30, as calculated in 11.3.2, by the project's total construction cost and multiply the result by project's total construction engineering cost. The Municipality's share for construction engineering is estimated to be \$31,000.

11.4 Payment by Municipality: At times determined by State, and after execution of this Agreement, State will invoice the Municipality for some or all of Municipality's cost share of State-incurred preliminary engineering project costs.

Upon award of the construction contract, State will invoice the Municipality for Municipality's cost share of construction, construction engineering, and any unbilled preliminary engineering expenses. The Municipality shall pay State within 30 calendar days of receipt of invoice from State. The final settlement between State and the Municipality will be made following final audits and when the final costs have been determined by State.

SECTION 12. PROJECT TEMPORARY TRAFFIC CONTROL

- 12.1 All temporary 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 review and acceptance. Municipality will provide, operate and maintain Municipality's traffic control devices in accordance with its accepted 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 Transportation.

SECTION 14. PROJECT SCHEDULE ADJUSTMENTS AND TERMINATION

- 14.1 The planning, environmental, design and obtaining necessary funding for this project may be a complicated and time-consuming process. Project schedule adjustments should be expected.
- 14.2 State has the sole discretion to adjust the schedule in completing of the work in part or in whole and such action on its part will in no event be deemed a breach of this Agreement by State. State will provide Municipality with updates to the project schedule and, when Municipality is sharing in the project costs or has included additional work with State's project, State will discuss in detail adjustments made to the project schedule.
- 14.3 State has the sole discretion to terminate this Agreement for any reason, and 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 termination.

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 *(2023 NDOT Title VI Implementation Plan)*

17.1 Appendix A - During the performance of this contract, the Contractor, Consultant, or when applicable Municipality, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

17.1.1 Compliance with Regulations

The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

17.1.2 Nondiscrimination

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR 21.

17.1.3 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 leases of equipment, each potential subcontractor or supplier will be notified by the contractor of contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

17.1.4 Information and Reports

The Contractor will provide all information and reports required by the Acts, the Regulations, and directives 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 Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

17.1.5 Sanctions for Noncompliance

In the event of contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

17.1.5.1 withholding payments to the contractor under the contract until the contractor complies; and/or

17.1.5.2 cancelling, terminating, or suspending a contract, in whole or in part.

17.1.6 Incorporation of Provisions

The contractor will include the provisions of paragraphs 27.1.1 through 27.1.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

17.2 Appendix E – During the performance of this contract, the Contractor, Consultant, or when applicable Municipality, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

17.2.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

17.2.2 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- 17.2.3 Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 17.2.4 Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 17.2.5 The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 17.2.6 Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 17.2.7 The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- 17.2.8 Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- 17.2.9 The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 17.2.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 17.2.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to

ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

17.2.12 Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

SECTION 18. SEVERABILITY

The invalidity or unenforceability of any such clause, provision, section, or part shall not affect the validity or enforceability of the balance of the Agreement, which shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable clause, provision, section or part.

SECTION 19. COMPLETENESS

This Agreement is the complete and exclusive statement of the arrangement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the Parties hereto.

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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 _____ 20____.

WITNESS:

CITY OF LEXINGTON

City Clerk

Mayor

EXECUTED by State this _____ day of _____ 20____.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION
Brandie Neemann, P.E.

Roadway Design Engineer

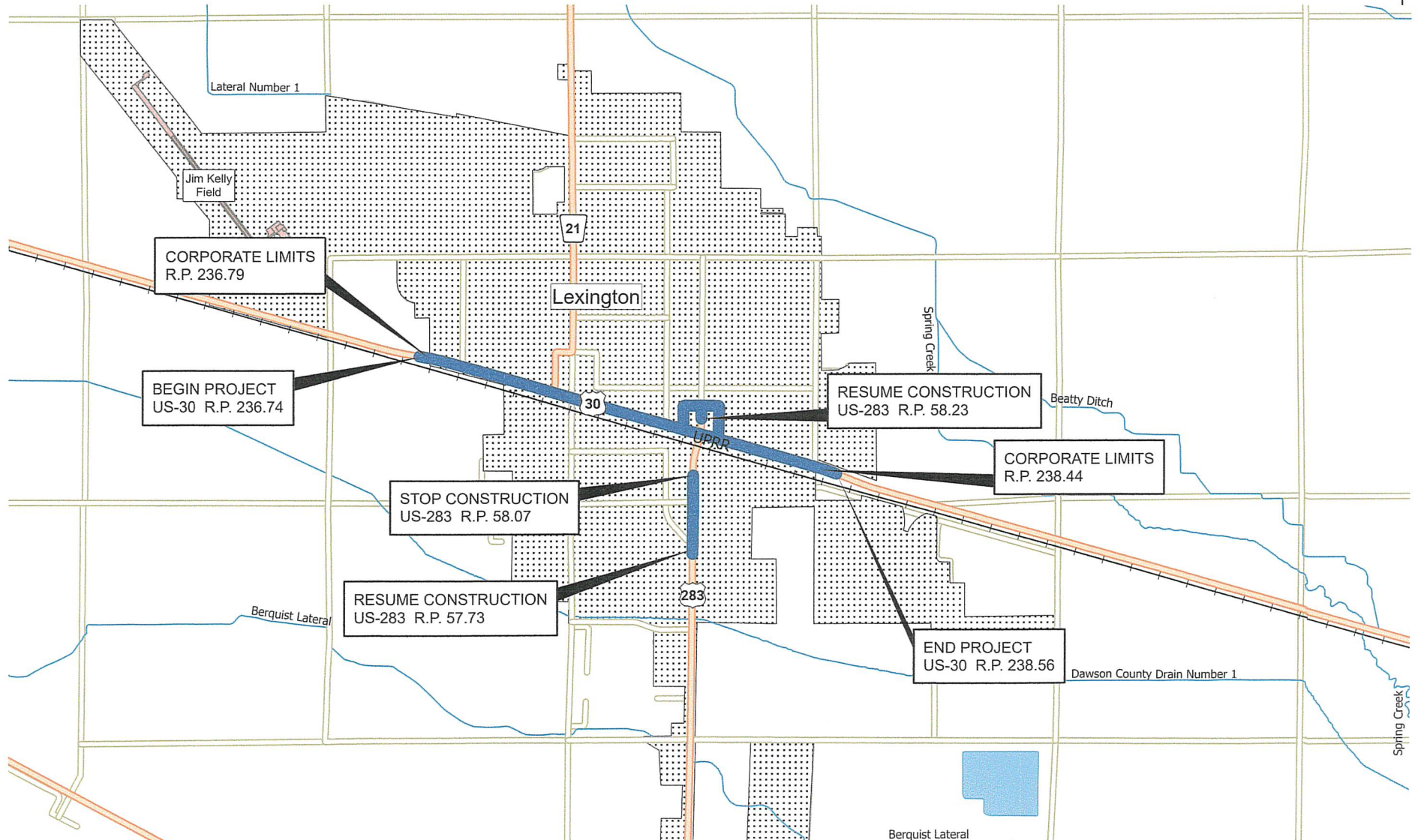
RECOMMENDED:
Gary Thayer, P.E.

Gary D. Thayer 12/4/2024
District 6 Engineer Date

LEXINGTON

DAWSON COUNTY

NEBRASKA



STP-30-3(119)
C.N. 61692

EXHIBIT "A"