

Agenda Item: 6.a.

## MEMORANDUM

TO: Program, Planning & Operations Subcommittee  
FROM: Dick Sklenar, Program Manager  
SUBJECT: NDOR/NRD Agreement for Relocation of Water Mains at Hwy 133  
DATE: October 26, 2012

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The District was notified by the Nebraska Department of Roads (NDOR) earlier this year regarding the realignment and improvements to Hwy. 133 south of Blair. The proposed project is to convert the remainder of Hwy. 133 to four lanes.

Washington County Rural Water #2 installed water mains at two locations that were adjacent and across Hwy. 133 in 2006, based on preliminary plans NDOR had at the time. The effort by the District at that time was to avoid future improvements and thus easements from adjacent property owners were acquired. Nevertheless, final plans indicated that all facilities installed by the District adjacent to the highway were impacted.

The Nebraska Department of Roads has agreed to pay for costs associated with the relocation of District owned facilities. The estimated cost for the relocation of water main facilities, appurtenances and engineering services is at this time at \$216,809. Attached is the agreement proposed by NDOR for this project.

**Management recommends to the Subcommittee that the General Manager be authorized to execute the Agreement between the Papio-Missouri River NRD and the Nebraska Department of Roads, Project #NH-133-3(103), regarding the relocation of Washington County Rural Water #2 facilities along Hwy. 133, subject to changes deemed necessary by the General Manager and approved as to form by the District's legal counsel.**

## AGREEMENT

STATE OF NEBRASKA, DEPARTMENT OF ROADS  
BLAIR SOUTH  
PROJECT NO. NH-133-3(103)  
CONTROL NO. 21791A  
ENGINEERING, CONSTRUCTION, AND CONSTRUCTION SERVICES

THIS AGREEMENT, made and entered into by and between PAPIO-Missouri River Natural Resource District hereinafter referred to as the "Utility" and the State of Nebraska, Department of Roads, hereinafter referred to as the "State".

WITNESSETH:

WHEREAS, the State has plans for the reconstruction and added capacity for Highway 133 in Washington County, Nebraska.

WHEREAS, said construction will be undertaken under the project designation NH-133-3(103), and

WHEREAS, the Utility owns and operates a water line facility along and adjacent to a portion of this project, some of which is resting outside of the limits of the old highway right of way and on private property, and

WHEREAS, because of the widened right of way which the State has acquired for the new construction, and because of the construction itself, it becomes necessary for the Utility to adjust some, if not all, of its facility along this project, and

WHEREAS, the Utility is willing to rehabilitate its facility where necessary in accordance with the conditions hereinafter provided in this agreement, and

WHEREAS, the State is willing to reimburse the Utility for its nonbetterment costs to rehabilitate its facilities when the water line facility is presently located outside of the old public right-of-way and on private property, and

WHEREAS, the State is willing to pay the Utility for eligible nonbetterment expenses incurred in connection with the rehabilitation of its facilities as provided by 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 Federal Highway Administration.

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1. The Utility hereby agrees to furnish, or cause to be furnished, all of the tools, labor, equipment and materials necessary for the rehabilitation of its facility as made necessary by construction.

SECTION 2. The description of work to be performed and the estimate of costs prepared by the Utility have been approved by the State and are hereby made a part of this agreement. These items are attached as Exhibit "B". The total amount of this estimate is \$216,809 of which \$216,809 is the share of the cost chargeable to the State. It is expressly understood that notwithstanding this estimate the State will reimburse the Utility for 100 percent of its actual nonbetterment expenses less any credits for salvaged or junked materials.

SECTION 3. The Utility agrees, as a part of the above described estimate to advise the State as to the method which will be used in accumulating the actual costs. If this method is prescribed by a Federal or State regulatory body, a statement to that effect shall be made by the Utility. If the accounting method is not prescribed by an agency of the State or Federal Government, it shall be described in the Utility's estimate and be approved as a part of this agreement.

SECTION 4. The Utility may submit progress billings for the portions of its rehabilitation that have been completed. The Utility agrees not to submit progress billings for amounts less than \$2,500.00. The State will make progress payments, based upon satisfactory prosecution of work, for 95 percent of the amount billed. The State will limit its payments to 95 percent of the approved estimate referenced in Section 2 of this agreement pending the results of the final cost audit. The State will make every effort to pay the Utility within thirty days of receipt of the Utility's invoice.

SECTION 5. If the Utility wants to let a construction contract, the Utility shall do the following:

- A. Comply with State public bidding statutes. If the Utility solicits bids from a list of known contractors, the list must be submitted to the State for concurrence prior to the soliciting of bids.
- B. Submit the bid proposal, plans and construction schedule to the State for approval prior to letting a contract.
- C. Require the contractor to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101 through 48-1126 (Reissue 2004), as amended, 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 "A" attached hereto and made a part of this agreement.
- D. Submit a copy of the bids received and the Utility's recommendation of award to the State for concurrence prior to any award.

- E. Require any contractor or subcontractor engaged under this agreement to fully comply with the provisions of the Nebraska Employment Security Law as provided by Neb.Rev.Stat. §48-601 through 48-671 (Reissue 2004), as amended, and the same are incorporated herein by this reference.

SECTION 6. 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.

SECTION 7. In consideration of the payment as mentioned in Section 2 of this agreement the Utility agrees to relinquish or subordinate sufficient property rights or interests that it may have in property upon which it has an easement or similar right that will be occupied by the proposed highway improvement as are necessary for the construction, operation and maintenance of the highway facility.

SECTION 8. All traffic controls must comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). If the State furnishes the Utility a traffic control plan, the Utility must comply with the plan. The State has the right to shut down a Utility work area not in compliance with the Manual on Uniform Traffic Control Devices.

SECTION 9. The Utility shall comply with the 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 "A" attached hereto and hereby made a part of this agreement.

SECTION 10. The Utility agrees that it and any contractor or subcontractor engaged under this agreement will fully comply with the provisions of the Nebraska Employment Security Law as provided by Neb.Rev.Stat. §48-601 through 48-671 (Reissue 2004).

SECTION 11. The Utility agrees that the billing will be prepared and submitted in a manner to allow comparison with the approved estimate.

## 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 ground of handicap, race, color 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.

EXHIBIT "A"

March 23, 2012

Mr. Rex Wilson, Utilities Coordinator  
Planning & Project Development Division  
Nebraska Department of Roads  
P.O. Box 94759  
Lincoln, NE 68509-4759

Subject: Project No. STPD-133-3(103)  
Control No. 21791a  
Location Blair South

**WILSON**  
Dear Mr. ~~Fisher~~:

Reference is made to your letter dated January 19, 2012 regarding the proposed widening of Nebraska Highway 133 and the associated utility relocations.

Attached for your review are:

DR Form 118, Mar 09 Utilities Questionnaire  
Preliminary Opinion of Probable Project Cost  
Marked up drawings indicating the relocations (3 sheets)

We respectfully request the relocation of the water mains be completed as a separate contract prior to the commencement of the roadway construction. The project can be bid, constructed, and completed prior to the start of the roadway project. This approach will allow the water main replacement work to be completed by a contractor familiar with water main construction and minimize conflicts during construction.

We have discussed the proposed relocation work with Mr. Al Schoemaker, City of Blair Public Works Director. We recommend the water main relocation work for the City and the P-MRNRD be combined into one construction project to economize the design and construction. The City is willing to be the lead agency for this work.

Please advise if you have any questions.

Sincerely,  
Papio-Missouri River NRD

Dick Sklenar  
Special Projects Manager

Attachments

**Exhibit "B"**

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT  
 WASHINGTON COUNTY RURAL WATER SYSTEM NO. 2

NEBRASKA HIGHWAY 133 WATER MAIN RELOCATIONS

OPINION OF PROBABLE CONSTRUCTION COST  
 March 22, 2012

Bid Item No.	Description	EST QTY	UNIT	UNIT PRICE	TOTAL
1	12 IN PVC, CL 200	1200	LF	\$25.00	\$30,000
2	12 IN PVC, CL 200 Restrained Joint	225	LF	30.00	\$6,750
3	4 IN PVC, CL 400	300	LF	6.50	\$1,950
4	1-1/2 IN PVC, CL	100	LF	2.00	\$200
5	20 IN Steel Encasement	140	LF	200.00	\$28,000
6	8 IN Steel Encasement	160	LF	150.00	\$24,000
7	12 IN Directional Bore	225	LF	100.00	\$22,500
8	12 IN Tapping Valve and Saddle	4	EA	4,500.00	\$18,000
9	4 IN Tapping Valve and Saddle	1	EA	3,000.00	\$3,000
10	12 IN Insert-A-Valve	4	EA	2,500.00	\$10,000
11	4 IN Insert-A-Valve	2	EA	1,200.00	\$2,400
12	12 IN MJ Plug	8	EA	100.00	\$800
13	4 In MJ Plug	2	EA	60.00	\$120
14	Side Cleanout	3	EA	1,000.00	\$3,000
15	Remove and Reset Meter Pit	3	EA	1,000.00	\$3,000
16	Seeding	2	AC	500.00	\$1,000
17	Silt Fence	1000	LF	3.00	\$3,000
18	Traffic Control	1	LS	2,000.00	\$2,000
Subtotal Construction:					\$159,720
Contingency (10%):					\$15,972
Total Construction:					\$175,692
DHHS review fee:					\$978
Engineering (15%):					\$26,354
Easements:					\$5,000
Administration:					\$8,785
Total Project Cost:					\$216,809

Recommended <i>[Signature]</i>
Date <u>10-18-12</u>
Approved <i>[Signature]</i>
Date <u>10-18-12</u>