

A G R E E M E N T

CITY OF LINCOLN
LINCOLN ELECTRIC SYSTEM
PROJECT NO. HSIP-5205(1)
CONTROL NO. 13147
UTILITY AGREEMENT

THIS AGREEMENT, made and entered into by and between Lincoln Electric System hereinafter referred to as the "Utility" and the City of Lincoln, hereinafter referred to as the "LPA".

WITNESSETH:

WHEREAS, the Project has plans for the relocation of the electrical distribution facilities that are in conflict with the intersection improvement at South Coddington and West Van Dorn, and

WHEREAS, said engineering will be undertaken under the project designation HSIP-5205(1), and

WHEREAS, the Utility owns and operates a power 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 LPA 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 LPA is willing to reimburse the Utility for its nonbetterment costs to rehabilitate its facilities when the Utilities facility is presently located outside of the old public right-of-way and on private property, and

WHEREAS, the LPA 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 LPA has prepared a tabulation of all the poles belonging to the Utility along and adjacent to this project, showing the poles which will have to be moved and indicating in the Remarks column by means of the word "Pay" that the moving of such poles will be eligible for payment from the LPA. A copy of that tabulation is attached hereto and made a part of this agreement.

SECTION 3. Prints of the construction plans for this project, showing the location of the poles referred in the above tabular form, have been forwarded to the Utility and are by this reference hereby made a part of this agreement.

SECTION 4. The Utility, upon receipt of construction plans, shall furnish detailed plans, specifications, and estimates based upon plans furnished by the LPA. If the Utility plans to use consultant engineering service for any part of the work, the Utility shall notify the LPA in advance of commencement of work. The LPA will inform the Utility of requirements and documentation needed for the consultant costs to be eligible for reimbursement. The Utility shall include the following with its plans, specifications, and estimates:

- A. Its tentative work schedule and construction phasing plan.
- B. A statement describing whether the work is to be done by force account, a continuing contract or if a contract is to be let. If the Utility plans to use a contractor under an existing written continuing contract, the Utility shall furnish the State a copy of all pertinent parts of the contract.
- C. A statement that plans, specifications, and estimates are part of this blanket State agreement.
- D. Betterment disclaimer or cost sharing percentage if Utility work includes a betterment.
- E. Explanation of why the Utility's costs are eligible for reimbursement.

Approval by the State and, when applicable, the Federal Highway Administration, of plans, specifications, and estimates constitutes a binding agreement between the parties for work made necessary by the individual projects. If applicable, the LPA will send plans to the Federal Highway Administration for review as part of the approval process. Any utility rehabilitation excluding utility engineering costs, done by the Utility prior to authorization by the LPA will be done at the expense of the Utility.

SECTION 5. The description of work to be performed and the estimate of costs prepared by the Utility have been approved by the LPA and are hereby made a part of this agreement. These items are attached as Exhibit "B". The total amount of this estimate is \$395,901.00 of which \$126,292.00 is the share of the cost chargeable to the LPA. It is expressly understood

that notwithstanding this estimate the LPA will reimburse the Utility for 100 percent of its actual nonbetterment expenses less any credits for salvaged or junked materials.

SECTION 6. The Utility agrees, as a part of the above described estimate to advise the LPA 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 estimate and be approved as a part of this agreement.

SECTION 7. 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 LPA will make progress payments, based upon satisfactory prosecution of work, for 95 percent of the amount billed. The LPA will limit its payments to 95 percent of the approved estimate referenced in Section 5 of this agreement pending the results of the final cost audit. The LPA will make every effort to pay the Utility within thirty days of receipt of the Utility's invoice.

SECTION 8. 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 LPA for concurrence prior to the soliciting of bids.
- B. Submit the bid proposal, plans and construction schedule to the LPA 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, provisions of the 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 LPA 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. §48-610 through 48-671 (Reissue 2004), as amended, and the same are incorporated herein by this reference.

SECTION 9. 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 10. In consideration of the payment as mentioned in Section 5 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 11. All traffic controls must comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). If the LPA furnishes the Utility a traffic control plan, the Utility must comply with the plan. The LPA has the right to shut down a Utility work area not in compliance with the Manual on Uniform Traffic Control Devices.

SECTION 12. 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 13. 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 14. The Utility agrees that the billing will be prepared and submitted in a manner to allow comparison with the approved estimate.

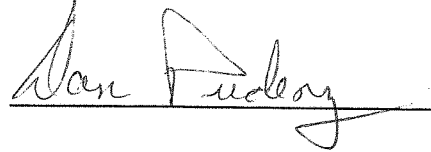
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the Utility this 13th day of October, 2014.

ATTEST:

LINCOLN ELECTRIC SYSTEM





EXECUTED by the LPA this _____ day of _____, 2014.

ATTEST:

CITY OF LINCOLN
Chris Beutler

Mayor

AGR167

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 Project Owner, 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 Project Owner, 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 Project Owner, 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 Project Owner 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 Project Owner, 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"



1040 O Street, P.O. Box 80869
Lincoln, NE 68501-0869

September 25, 2014

Roger Figard, City Engineer
Public Works Department
949 West Bond Street, Suite 200
Lincoln, NE 68521-3667

Subject: City Project 702661
Coddington Ave. & West Van Dorn St.

Dear Roger:

We have developed plans and an estimate to relocate the electrical distribution facilities that are in conflict with the intersection improvement at South Coddington & West Van Dorn Street. The estimated non-betterment cost to Public Works to perform this work is \$126,292 as shown on the attached Cost Estimate Summary. The remainder, \$269,609 will be borne by LES. This estimate is based on the plans that we received in May 2014 and the reimbursement policy that is currently in effect. The final charge will be based on the actual costs and could be affected by design changes or unusual delays.

Please review and approve the LES relocation plan. We understand that Public Works will work with the Local Project section of the Nebraska Department of Roads to prepare a blue cover reimbursement agreement for the LES relocation costs. Per Department of Roads request, I have enclosed a cost estimate for a replacement overhead system.

The scheduled work includes:

1. Install new underground distribution facilities outside the limits of construction on the southwest, northwest and northeast quadrants of the intersection.
2. Remove the wood poles and overhead conductors that are inside the limits of construction.
3. A replacement street light system will be installed as part of the road project. Those costs are not part of this agreement.

The current construction schedule indicates that LES will begin work in December 2014 after LES receives written authorization to proceed with substantial completion planned by April 1, 2015. This schedule is based on average weather conditions; bad weather would affect the LES construction schedule.

LES Design and Construction personnel will coordinate with the Public Works Project Manager.

Sincerely,

Steve Wallingford, Senior Engineer
System Planning
Telephone: (467-7680)

Enclosures

c: Dan Pudenz, Ron Kratzer, Craig Aldridge,

LES WO 5020416, Project UND.161.13.005

p: 402.475.4211
f: 402.475.0446
www.les.com

Lincoln Electric System
EXHIBIT "B"
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LINCOLN ELECTRIC SYSTEM
City Project: 702661
Coddington Av. & West Van Dorn St.
Cost Estimate Summary

9/25/2014

Estimated Replacement Cost	\$395,901
Credits:	
<u>Betterment Credit for larger cable (1)</u>	<u>\$16,645</u>
Total Credits	\$16,645
Estimated Non-Betterment Cost	\$379,256
Non-Betterment Ratio (2)	95.8%
Pay Pole Percentage (3)	33.3%
Estimated Charge to Public Works	\$126,292
Overall Percentage Charge to Public Works (4)	31.9%

NOTES:

- (1) Credit for extra cost of larger cable:
 The standard UG replacement cable for the existing 336 ACSR OH conductor is 750 AL.
 LES is installing larger 1000 AL cable, so a betterment credit is included for the extra cost of the larger cable.
- (2) Non-Betterment Ratio = Estimated Non-Betterment Cost / Estimated Replacement Cost
 (95.8% = \$379,256 / \$395,901)
- (3) Pay Pole Percentage, 7 of 21 poles in conflict are on easement. (7/21=33.3%)
- (4) LES to bill Public Works for 31.9% of actual total project cost after construction. (.391 = .333 x .958)

Date : 09/25/2014	Summary of Plan Costs vs Actual Costs	Userid: JAICHARD	Pg 1
Report: YPSR_OGD_PLAN_VU_APR_0_REPORT	per Value Category	System: PRL	/ 400

5020416 OH to UG Conv, Coddington & W Van Dorn			
Cat Description	APR Plan Costs	Actual	Costs
010 Stock Material	128,947.86		0.00
030 Labor	137,540.03		0.00
050 Contractor	33,040.00		35.00
070 Operations Overhead	32,746.00		0.00
080 AsG	59,478.63		0.00
100 Equipment in Plant	4,148.00		0.00
TOTALS	395,900.52		35.00
Pay Percentage 31.9%	126,292.27		11.17


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Work Order #      : 5020416
Resp Cost Ctr    : 53313
Designation #    : 28S21W
W.O. Description : OVERHEAD RELOCATION
WBS Element      :
Cust Cont Ret    : $0.00

Engineer's Name  : JBarbee
Const Type       : 10
LF               : M
Work Address     : CODDINGTON & W. VAN DORN
Cust Cont Inv    : $0.00
Credit to Cost Center : SDWP
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INVESTMENT

Material (9% Mat. OH % Applied)	\$28,384.88
Labor: 811 Hrs @ 68/hr	\$55,148.00
Employee Benefits Adder (0%)	\$0.00
Contracted	\$0.00
Miscellaneous	\$58,551.00
Subtotal - Dir Cost	\$142,083.88
Oper Overhead (11%)	\$15,629.23
SubTotal	\$157,713.10
A&G (18% LESS PS&I)	\$28,388.36
SubTotal	\$186,101.46
Cust Cont/Cont Capital	(\$0.00)
Total Work Order Charges	\$186,101.46
Equipment in Plant	\$3,616.68
Total Investment	\$189,718.14

RETIREMENT

Labor: 435 Hrs @ 68/hr	\$29,580.00
Employee Benefits Adder (0%)	\$0.00
Subtotal - Dir Cost	\$29,580.00
Oper Overhead (11%)	\$3,253.80
SubTotal	\$32,833.80
A&G (18% LESS PS&I)	\$5,910.08
SubTotal	\$38,743.88
Cust Cont/Cont Capital	(\$0.00)
Cost of Removal	\$38,743.88
Salvage	(\$291.97)
Net Retirement	\$38,451.91

OTHER WORK IN PROGRESS

Labor: 29 Hrs @ 68/hr	\$1,972.00
Credit to Cost Center	(\$0.00)
Total Cost of OWP	\$1,972.00

Total Work Hours: 1275 Hrs @ 68/hr	\$86,700.00
Total Work Order Cost	\$230,142.05

