


NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

Agenda Item # 20c

Date 10/21/20

 COPY

September 4, 2020

Fred Mytty
Dodge County Clerk
435 N Park
Fremont, NE 68025

RE: US-77 Relinquishment Agreement
S-77-3(1036) CN 22722 Fremont Southeast Beltway
S-77-6(1039) CN 22691A Fremont - US-30, Dodge Co.

Dear Mr. Mytty,

Enclosed are two original agreements and one copy for your files for the relinquishment of US-77 in Dodge Co. upon completion of the US-77 Fremont Southeast Beltway project.

Please mark the appropriate action on Page 4 and obtain the proper official's signatures on each original agreement and return both original agreements to me.

You will receive one original agreement after all NDOT signatures have been obtained.

Sincerely


Timothy W. Weander, P.E.
District 2 Engineer

file

2020 SEP - 8 AM 11:48
RECEIVED
Dodge County Highway Dept.

**NOTICE OF OFFER TO RELINQUISH JURISDICTIONAL CONTROL,
RESPONSE TO OFFER, PETITION OF COUNTY, WAIVER OF RIGHTS AND
AGREEMENT OF THE PARTIES**

This Notice of Offer to Relinquish Jurisdictional Control, Response to the Offer, Petition of County, Waiver of Rights, and Agreement of the Parties is between the State of Nebraska, Department of Transportation, hereinafter "State" and the County of Dodge, hereinafter, "County". The State and County are collectively referred to herein as "parties".

WHEREAS, in or about 2020, State completed the construction of the projects identified as the US-77/Cloverly Road, Inglewood Project and the Inglewood – Fremont Project, which included traffic signal, left turn lanes, concrete pavement repairs, bridge rehabilitation, milling, resurfacing, and

WHEREAS, the State has prepared for construction a project identified as the Fremont Southeast Beltway, which will begin construction in July, 2020 and will complete construction in Summer of 2023, and will connect Nebraska Highway 77 (US-77) to US Highway 275 (US-275) to the south and east of the City of Fremont and Village of Inglewood, and

WHEREAS, this Agreement is related only to the segments to be relinquished to Dodge County, and a separate agreement will be completed with the cities of Fremont and Inglewood, and

WHEREAS, State will relinquish to County herein the following highway segments:

- (a) The 0.22 mile segment of US-77 beginning 0.29 miles south of the intersection of US-77 and Boulevard Street (Reference Post (R.P.) 112.18), at the end of the cul-de-sac on US-77 constructed as part of the Fremont Southeast Beltway, to 0.09 miles south of the intersection of US-77 with Boulevard Street (R.P. 112.40) to the edge of thru pavement on the connection to the Fremont Southeast Beltway,
- (b) The 0.33 mile segment of US-77 beginning at the intersection of US-77 and Judy Avenue (R.P. 116.28), to the end of the radius for EB US-275 off ramp (R.P. 116.61) (collectively referred to as the "Relinquished Segments"), (See Exhibit "A" attached hereto and made a part of this Agreement), and

WHEREAS, the State will maintain the responsibility for the NB ramp to EB US-275, as shown in Exhibit "A", attached hereto and hereby made a part of this agreement; and

WHEREAS, the parties agree that the jurisdictional responsibility for the Relinquished Segments may now be shifted from the State to the County, as shown in Exhibit "A", attached hereto and hereby made a part of this agreement; and

WHEREAS, this relinquishment agreement between the County and State is required to effect this shift of jurisdictional responsibility; and

WHEREAS, the State is authorized to relinquish or abandon routes, fragments or sections of routes on the State Highway System in accordance with the authority set out in Neb. Rev. Stat. §§ 39-1309(2), and 39-1313 through 39-1315.01 and, § 39-1110;

WHEREAS, State is required under federal and state law to retain some control over the future use of the Relinquished Segments, as described herein, and

WHEREAS, this document is intended to: (1) provide notice to the County of State's offer to relinquish jurisdiction over the Relinquished Segments to County, (2) serve as the County's written acceptance or rejection of State's Offer; and, if the Offer is accepted, the Petition of the County and Agreement of the Parties; and (3) constitute the County's written waiver of certain rights under the statutes set out above, including the right to a hearing concerning the Relinquished Segments; and

WHEREAS, the State has reviewed the condition of the roadway and the adequacy of the highway structure(s). It is the intent of the State to relinquish the roadway in good condition; functionally adequate for the purposes for which it will be used by County. To that end, the State agrees to continue with the project, S-77-6(1039), CN22691A, Fremont – US-30, Dodge Co. (Relinquishment) that will address US-77 from R.P. 116.28 to R.P. 116.61 and be let and constructed prior to when the official relinquishment has been completed (currently scheduled for Fall 2023) to County, and

WHEREAS, after relinquishment, the County will have sole responsibility for the maintenance of the Relinquished Segments; and

WHEREAS, the change in Jurisdictional Responsibility will occur upon the filing of the necessary documents in the Office of the Register of Deeds of Dodge County as provided in Neb. Rev. Stat. §39-1314.

State's Offer to Relinquish the Relinquished Segments to County

NOW THEREFORE, based on these facts, State hereby offers to relinquish jurisdictional responsibility over the segments of US-77 identified above, as shown on the attached Exhibit "A", expressly conditioned upon the acceptance by the County of the terms and conditions, if any, set out below or on the attached Negotiated Memorandum of Understanding (MOU), incorporated herein as Exhibit "B". (The preceding sentence will be referred to herein as "State's Offer.")

The parties agree the phrase "Jurisdictional Responsibility" shall mean the responsibilities for design, construction, reconstruction, maintenance and operational activities of a roadway as those terms are used in Neb. Rev. Stat. §39-2105.

The parties agree that the Relinquished Segments as described herein will be removed from the State Highway System and relinquished by the State to the County and the State will submit a request to the Federal Highway Administration to reclassify the

Relinquished Segments on the National Functional Classification System. Revision of the National Classification System is contingent upon Federal Highway Administration approval.

The parties agree that, following execution of this agreement and pending formal transfer of Jurisdictional Responsibility of the roadway as provided for in this agreement, the County agrees to assume sole responsibility for operation and maintenance of the Relinquished Segments. Further, the County will assume all legal liability arising from the operation and maintenance of the Relinquished Segments, as provided above, and agrees to indemnify the State as to any claims arising out of or concerning County's operation and maintenance of the Relinquished Segments.

The parties agree that, following the completion of the Fremont Southeast Beltway project, the County will immediately assume sole responsibility for the operation and maintenance of the connection to Old Highway 275 from the thru pavement of the Fremont Southeast Beltway.

The State will retain legal title to the real estate; however, County will have jurisdictional responsibility over the Relinquished Segments. The parties agree that State expressly retains the following control and rights over the Relinquished Segments:

- (a) The right to review any sale of and to receive the compensation for the sale or lease of any part of the highway property, including access control acquired for prior projects
- (b) The right and obligation to review and approve any changes in outdoor advertising rights, in any area subject to control under Neb. Rev. Stat. § 39-201 et seq.
- (c) The right and obligation to review and approve any changes to any driveways or other facilities used to control access along the Relinquished Segments.
- (d) The right to retake possession of the Relinquished Segments if it is no longer used as a highway, street, or road

The State requests that the County respond to State's Offer by either accepting or declining the offer of relinquishment, in the manner provided below.

The County's Response to State's Offer

The County has considered the merits of State's Offer. The County understands that it is allowed four months to consider State's Offer and to respond to State's Offer by filing a petition to accept relinquishment of the Relinquished Segments, if it so chooses. The County understands that if the roadway is not relinquished, the State retains jurisdictional responsibility and authority for the roadway. The County understands that it also may have the right to a public meeting before the State Highway Commission concerning the relinquishment.

After consideration of all its rights and the merits of State's Offer, the County hereby voluntarily waives its rights and hereby (check applicable box):

Accepts State's offer to relinquish jurisdictional control over the Relinquished Segments to the County.

Rejects State's offer to relinquish jurisdictional control over the above described Relinquished Segments to the County.

If County has accepted State's Offer, this document shall be considered the County's Petition to State that the County desires to accept the relinquishment by State of the Relinquished Segments and to assume jurisdictional responsibility for the Relinquished Segments including, but not limited to the future reconstruction, operation and maintenance as a part of County's street system.

Pursuant to Neb. Rev. Stat. §39-2112, the acceptance of this Offer to Relinquish will also constitute the County's request to the State to reclassify the Relinquished Segments within its' corporate limits to be changed on the State Functional Classification System.

If State's Offer is accepted, County understands that State will immediately proceed to complete the process of relinquishment of the Relinquished Segments to the County, pursuant to Neb. Rev. Stat. §39-1314.

If State's Offer is accepted, County understands that, pending formal transfer of jurisdictional control, the County will have sole responsibility for the maintenance and operation of the Relinquished Segments upon execution of this agreement.

Following the completion of the formal relinquishment the County will have sole jurisdictional responsibility for the Relinquished Segments as described above and as set out in Neb. Rev. Stat. §39-2105.

If State's Offer is accepted, County and State agree that this document will be a valid binding contract, for all purposes including Neb. Rev. Stat. §39-1315.01, and the parties further agree that State has met the requirements of this section or that this section of law does not apply.

IN WITNESS WHEREOF, the parties hereto having lawful authority, have caused this document to be executed by their proper officials as of the dates below indicated.

EXECUTED BY THE STATE this ____ day of _____, 20__.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

Director-State Engineer

Recommended:

District Engineer

EXECUTED BY THE COUNTY this ____ day of _____, 20__.

County of Dodge

Chair of the County Board

Attest:

County Clerk

**DESCRIPTION OF RELINQUISHMENT
OF PORTIONS OF STATE HIGHWAY US-77**

NEBRASKA DEPARTMENT OF TRANSPORTATION (State)

Pursuant to Neb. Rev. Stat. § 39-1314

As required by Neb. Rev. Stat. § 39-1314, this document sets out the description of State's proposed relinquishment of portions of Nebraska Highway 77 (US-77) (the Relinquished Segments).

- (a) The 0.22 mile segment of US-77 beginning 0.29 miles south of the intersection of US-77 and Boulevard Street (Reference Post (R.P.) 112.18), at the end of the cul-de-sac on US-77 constructed as part of the Fremont Southeast Beltway, to 0.09 miles south of the intersection of US-77 with Boulevard Street (R.P. 112.40) to the edge of thru pavement on the connection to the Fremont Southeast Beltway,
- (b) The 0.33 mile segment of US-77 beginning at the intersection of US-77 and Judy Avenue (R.P. 116.28), to the end of the radius for EB US Highway 275 (US-275) off ramp (R.P. 116.61) (collectively referred to as the "Relinquished Segments"), (See Exhibit "A" attached hereto and made a part of this Agreement).

Jurisdictional Responsibility is being relinquished by this Agreement; Legal title to the real estate will not be conveyed to the County as a part of the proposed relinquishment.

The County will have sole jurisdictional responsibility for the Relinquished Segments from and after the recording of this document in the Office of the Register of Deeds for Dodge County, Nebraska.

Also, the Relinquished Segments will be removed from the State Highway System and relinquished to County of Dodge. The State Highway Commission has approved and the Governor has consented to the relinquishment of Relinquished Segments. The additional terms and conditions, if any, of this relinquishment are as follows: the State agrees to continue with the project, S-77-6(1039), CN22691A, Fremont – US-30, Dodge Co. (Relinquishment) that will address US-77 from R.P. 116.28 to R.P. 116.61 and be let and constructed prior to when the official relinquishment has been completed (currently scheduled for Fall 2023) to County.

Dated this _____ day of _____, 20__

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

Director-State Engineer

(NDOT SEAL)

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Subscribed and sworn to before me this _____ day of _____,
20_____.

Notary Public

(Notary Seal)

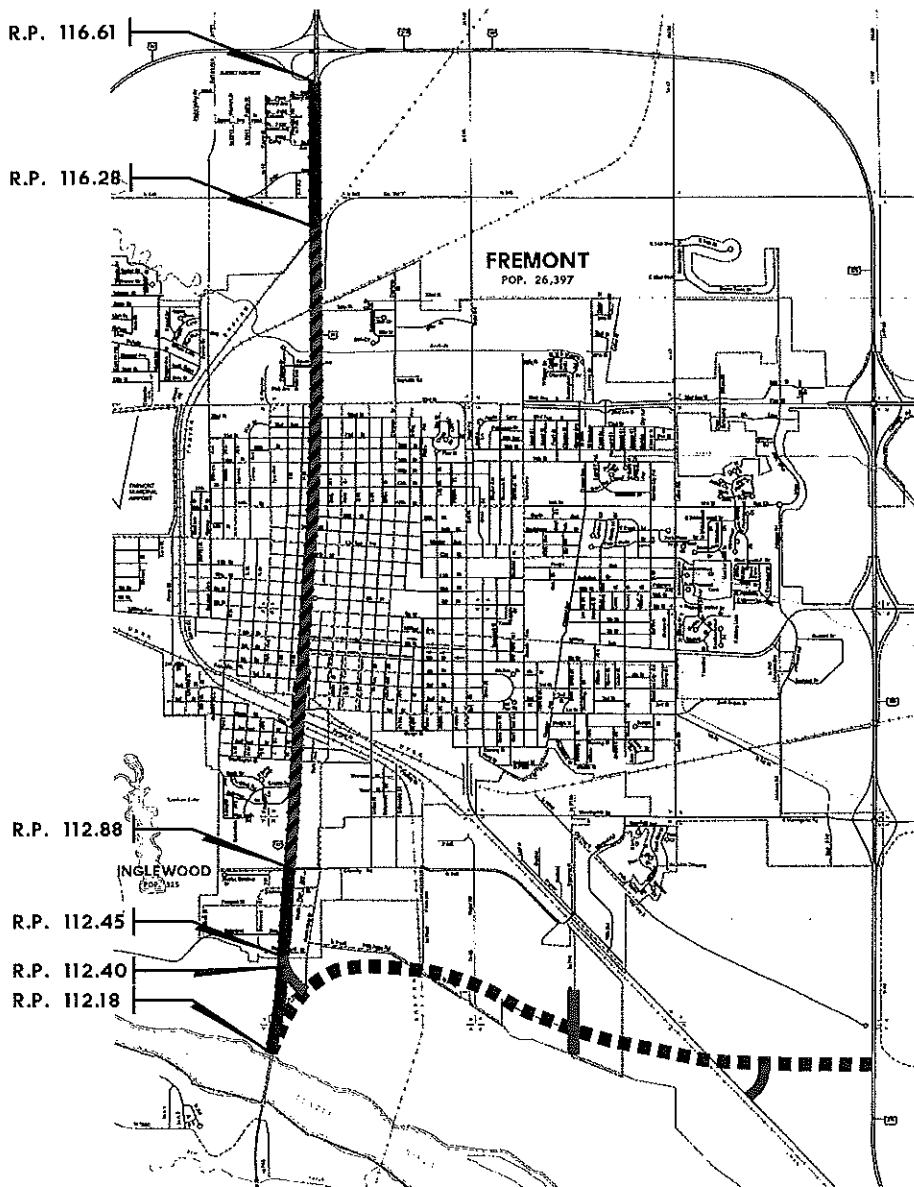
I hereby certify that the above is a true and correct copy of the Nebraska
Department of
Transportation Description of Relinquishment of State Highway US-77 to the
County of Dodge,
Dodge County, Nebraska

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

Please note that according to Neb. Rev. Stat. § 39-1314, no fee is to be charged
for the recording of this document.

FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA







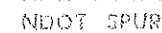


77-3(1036)

C.N. 22722

EXHIBIT "A"

LEGEND

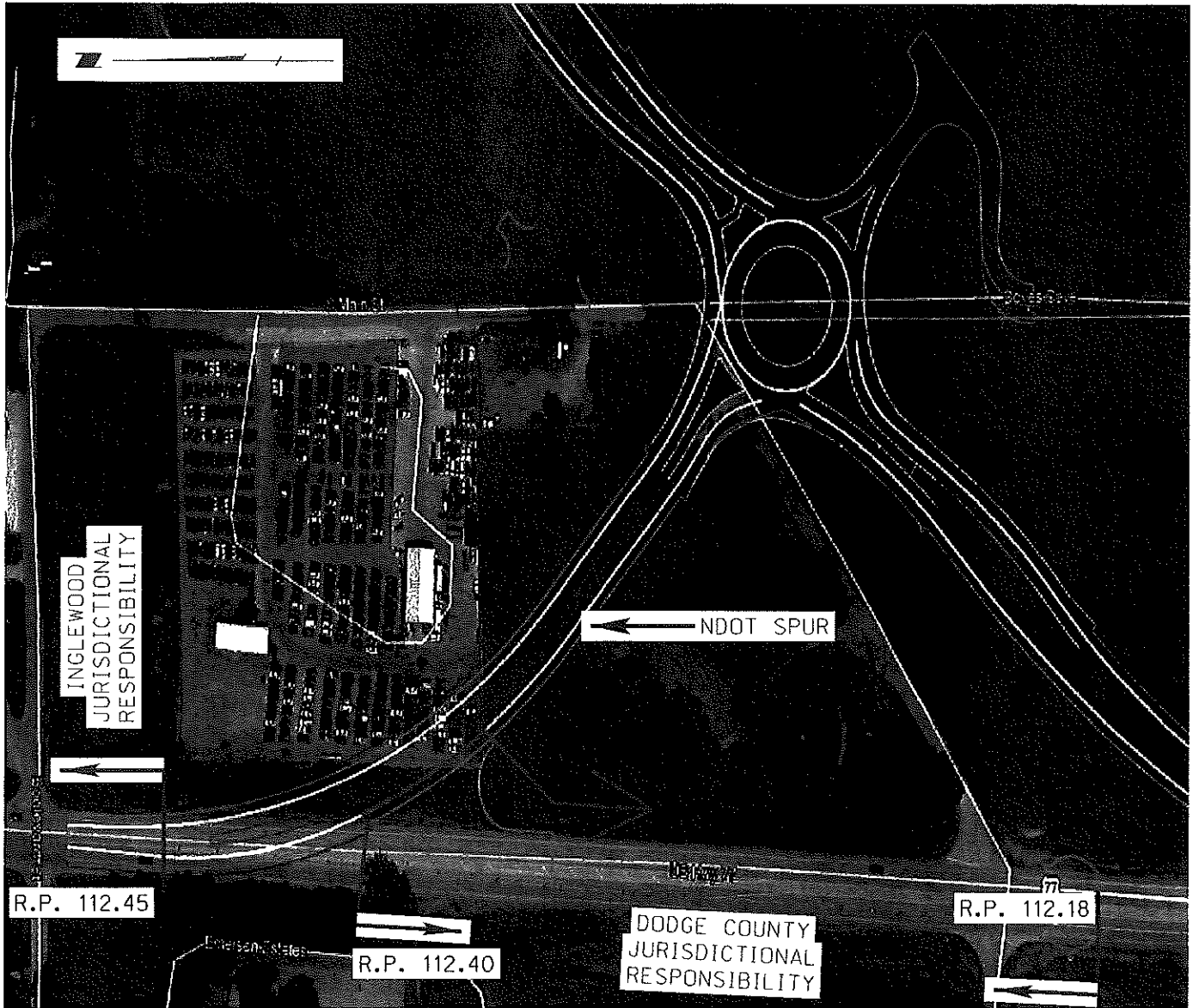
-  DODGE COUNTY (RELINQUISHMENT)
-  FREMONT (RELINQUISHMENT)
-  INGLEWOOD (RELINQUISHMENT)
-  DODGE COUNTY (JURISDICTIONAL RESPONSIBILITY)
-  FREMONT (JURISDICTIONAL RESPONSIBILITY)
-  NEW FREMONT SOUTHEAST BELTWAY
-  NDOT SPUR

FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA

C.N. 22722

P.N. 77-3(1036)



FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA

C.N. 22722

P.N. 77-3(1036)

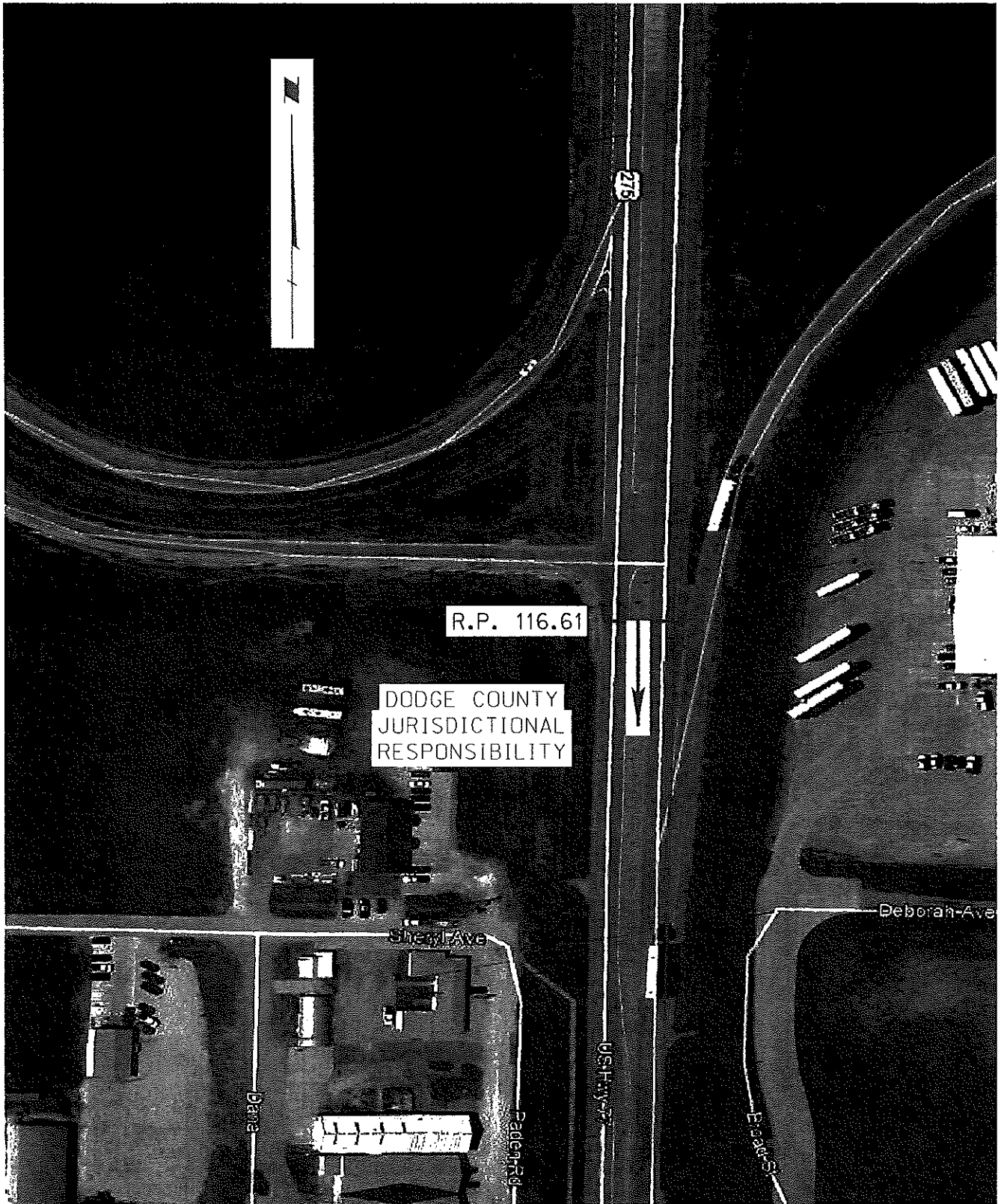


FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA

C.N. 22722

P.N. 77-3(1036)

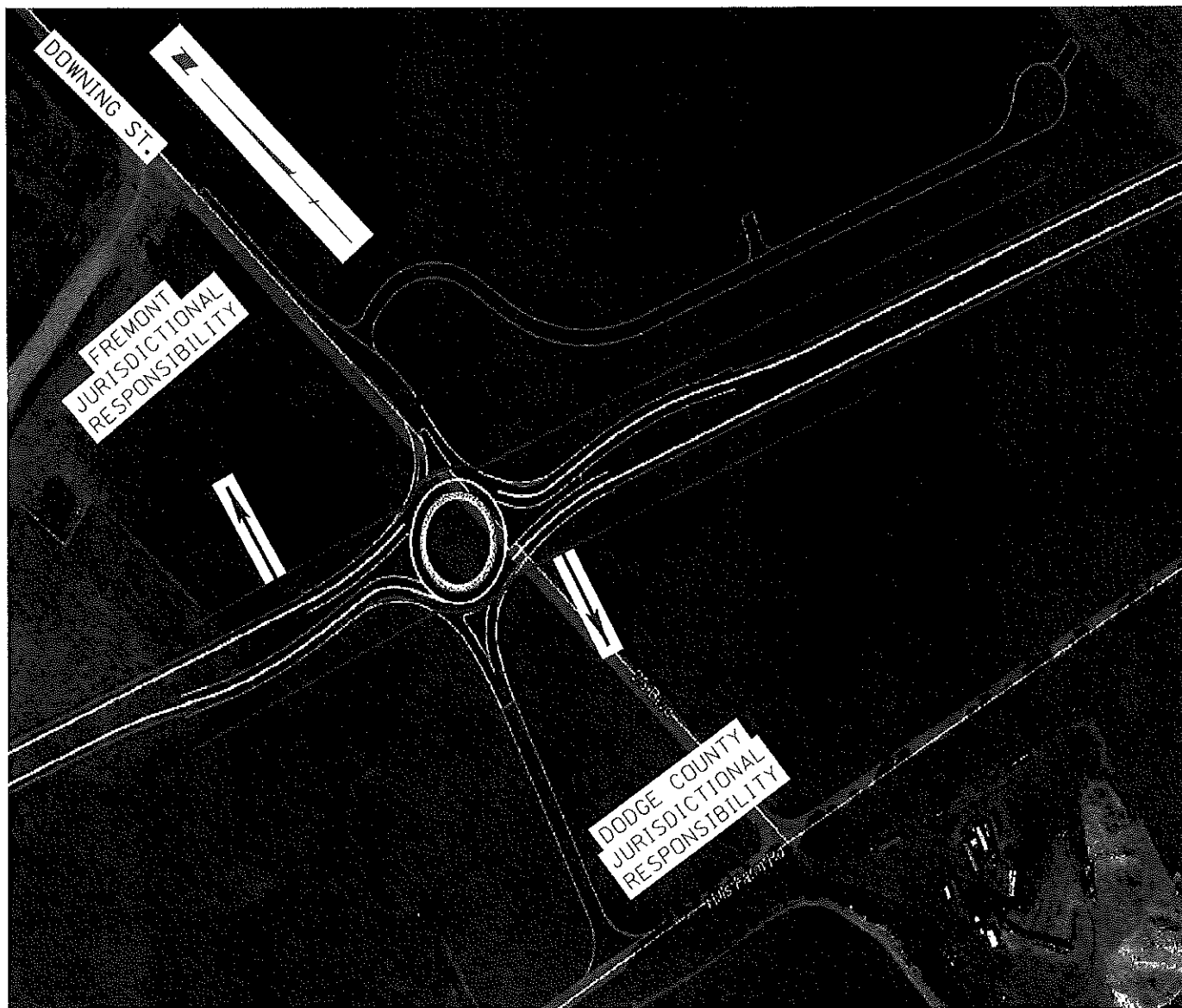


FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA

C.N. 22722

P.N. 77-3(1036)

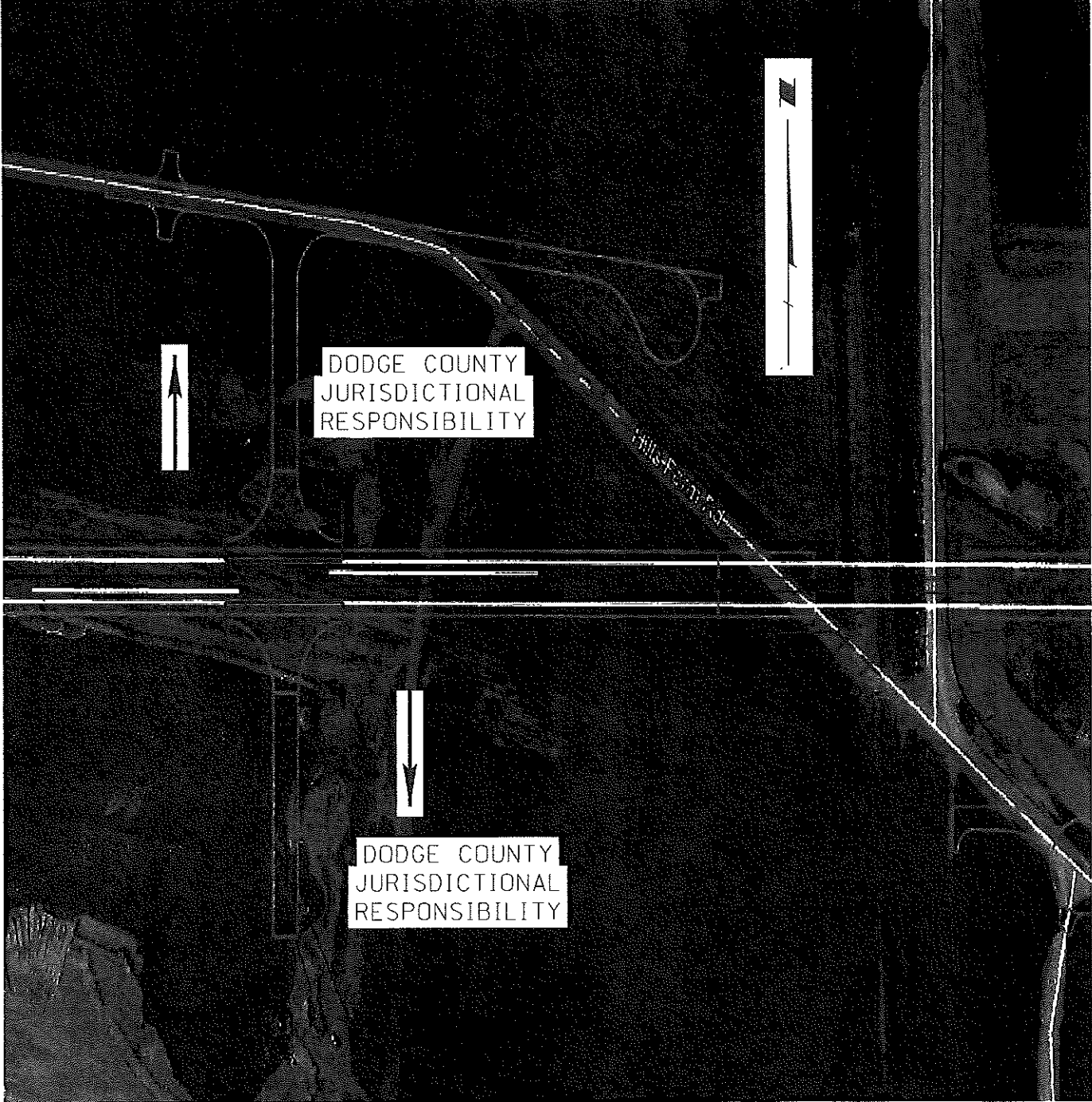


FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA

C.N. 22722

P.N. 77-3(1036)

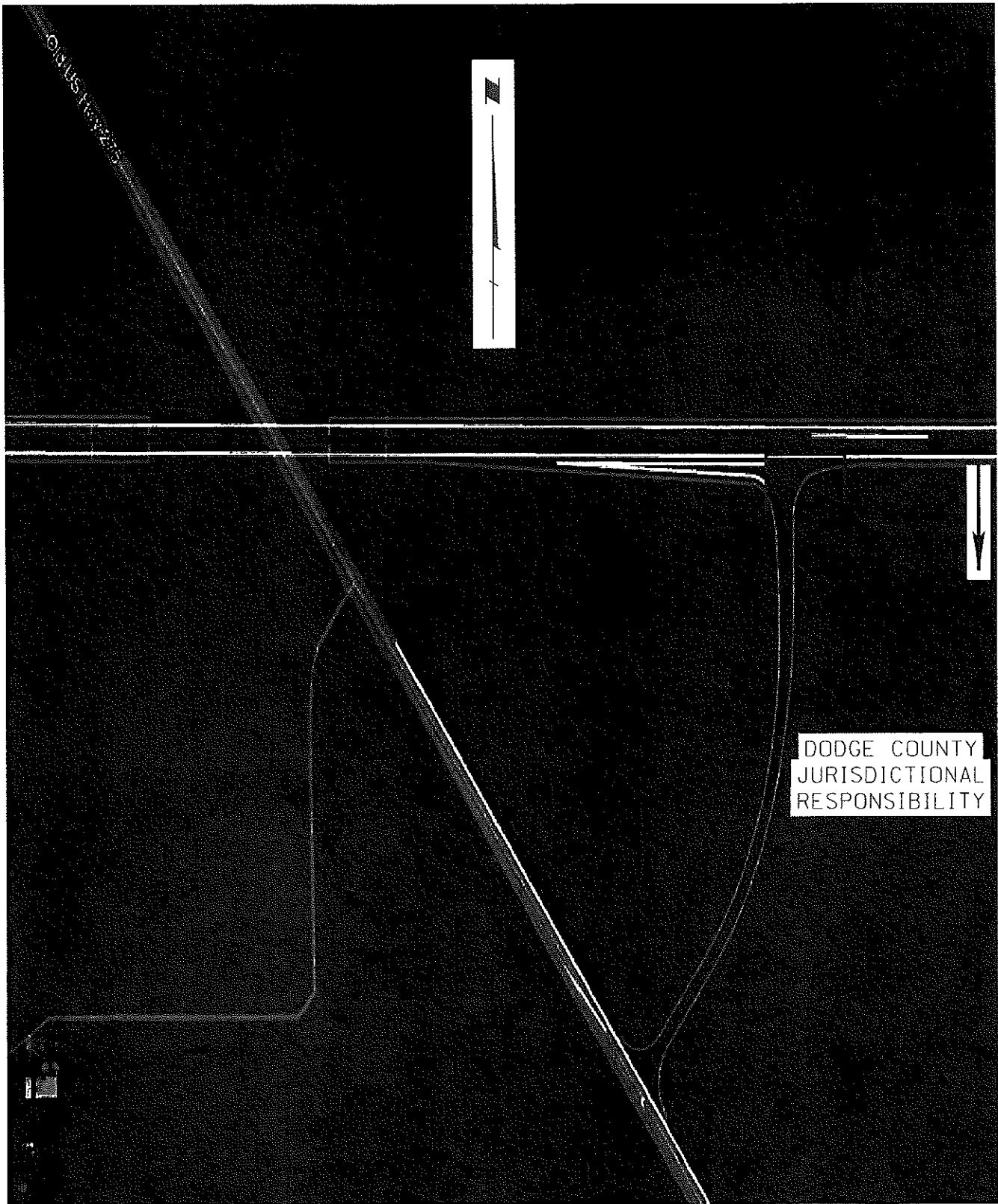


FREMONT SOUTHEAST BELTWAY

DODGE COUNTY
NEBRASKA

C.N. 22722

P.N. 77-3(1036)



Negotiated Memorandum of Understanding - Relinquishment

This Negotiated Memorandum of Understanding (MOU) is between the State of Nebraska, Department of Transportation (State) and the County of Dodge (County). State and County will be referred to collectively herein as the Parties.

Recitals

WHEREAS, State and County are beginning the statutory process of relinquishment of a State highway using a formal document entitled: "Notice Of Offer To Relinquish Jurisdictional Control, Response To Offer, Petition Of County, Waiver Of Rights And Negotiated MOU Of The Parties" (hereinafter referred to as the Relinquishment Agreement), and

WHEREAS, this Negotiated Memorandum of Understanding (MOU) is required to be completed as a part of the statutory relinquishment process (See, Neb. Rev. Stat. § 39-1314), and this MOU will be an exhibit to the Relinquishment Agreement, and

WHEREAS, § 39-1314 also provides that such MOU may be re-negotiable by County in the future based upon "a showing of a change in financial or other circumstances or for economic development purposes"; and

WHEREAS, State has formally offered to relinquish to County the portion of Nebraska Highway 77 (US-77) located within the Corporate limits of County (Reference Post (R.P.) 112.18 to 112.40 and from 116.28 to 116.61); and.

WHEREAS, the Parties intend that this MOU set out the facts and conditions of the relinquishment in order to meet the requirements of Section 39-1314.

Now therefore, in consideration of the facts, and the mutual promises of the Parties, the Parties agree as follows:

This MOU includes the background facts about US-77 and the negotiated terms and conditions of the Parties related to the relinquishment.

Background

1. **History of US-77.** US-77 was made a part of the State Highway System in or before 1926. State law provides that there should be a State highway connecting most Nebraska communities to the State Highway System. US-77 has served as the connection for County to US Highway 275 and State Highway 30 to the north. US-77 is a primary north-south route for traffic within and outside County and provides access to adjoining metropolitan areas. The land adjoining US-77 is substantially developed with commercial, industrial, and residential uses. State first constructed US-77 at this location in or about 1926. The following is a listing of the dates and types of projects completed by State on this segment since the original construction:

1926 Grading, Culverts, Bridge, Guardrail, Concrete Pavement, Gravel
 1933 Grading, Culverts, Bridge, Concrete Pavement
 1955 Grading, Culverts, Bridge, Concrete Pavement
 1973 Guardrail, Asphaltic Concrete Surface Course
 1982 Bridge, Guardrail, Asphaltic Concrete Surface Course, Surface Shoulders
 1995 Grading, Culverts, Landscape, Bridge, Guardrail, Electrical, Conc. Pavement
 1997 Grading, Culverts, Landscape, Bridge, Guardrail, Electrical, Conc. Pavement
 2000 Landscaping
 2005 Concrete Pavement Repair, Diamond Grinding, Joint and Crack Seal
 2008 PE and Install Centerline Rumble Strips
 2009 Asphaltic Concrete Surface Course Type SPF
 2013 Pavement Marking
 2014 Resurfacing Project, Pavement Marking

2. Jurisdictional Responsibility. As a State highway within a municipality, State and County have shared jurisdictional responsibility for US-77 with State having primary control, pursuant to Neb. Rev. Stat. § 39-2105. As set out above, State's investment of time and resources for the construction and maintenance of US-77 has been significant. US-77 now serves primarily metropolitan transportation needs, and even though it will no longer be on the State Highway System, US-77 will continue to be used by the traveling public to connect to the State Highway System.

3. Present Needs. County wishes to have more control over the construction, operation, use and maintenance of US-77. State believes that US-77 no longer provides as much of a statewide transportation function as it provided before. Accordingly, the Parties believe that it is in each of their best interests to shift jurisdictional responsibility for this segment of US-77 to County. County agrees to this shift of responsibility and welcomes the opportunity to control more directly the future transportation use of US-77.

4. County's On-Going Maintenance Responsibility. County agrees to properly repair, maintain, and replace, when necessary, US-77 in order to maximize the useful life of this transportation facility. The current NSI rating for this segment of US-77 is 86 from R.P. 112.18 to R.P. 112.40 and 95 from R.P. 116.28 to R.P. 116.61. County agrees to implement a maintenance plan for US-77 that will include, but not be limited to the following maintenance practices and strategies: Concrete pavement repairs, repair of inlets, throats, and lids, crack and joint sealing, fog sealing, bituminous patching, asphalt overlays, removal and reconstruction, and measures to maintain ride quality.

5. Federal-aid Funds in Prior Projects. It is believed by State that there have been prior federal-aid project(s) on the subject segment of US-77. Accordingly, the Federal Highway Administration (FHWA) must approve the relinquishment of this segment of US-77. Additionally, the future sale or lease of any part of the US-77 will require approval of State and FHWA, and potential repayment to FHWA or State, because of prior project funding with federal or state highway funds.

6. Property Interests and Retained Rights by State. Over the years, State has acquired land, control of access, outdoor advertising control and other property rights using state highway gas tax funding or federal-aid funding as a part of State's construction, reconstruction, operation and maintenance of US-77. State and Federal law allows State to transfer jurisdictional responsibility to US-77 to County only so long as County continues to use US-77 for highway, street or road uses. In the event that County wishes to discontinue street use of all or any part of the US-77 property, County is required by this MOU to convey the property back to State.

7. State Obligations. State currently has in excess of a billion dollars of existing needs on the 10,000 mile State Highway System. State does not have sufficient funding presently or in the foreseeable future to contemplate any significant additional reconstruction of US-77. Any future proposed improvements to US-77 will have to compete with all State's other highway improvement needs throughout the State. The State is constructing the Fremont Southeast Beltway project (CN 22722, NH-77-3(1036) that will take Highway traffic off the existing US-77 and route them around Fremont and Inglewood to US Highway 275 (US-275). The State has agreed to continue with the project, S-77-6(1039), CN22691A, Fremont – US-30, Dodge Co. (Relinquishment) that will address US-77 from R.P. 116.28 to R.P. 116.61 and be let and constructed prior to when the official relinquishment has been completed (currently scheduled for Fall 2023).

Additional Relinquishment Terms and Conditions

8. The following terms and conditions apply to this relinquishment, in addition to the conditions set out above. The language of the Relinquishment Agreement governs over any contradictory language set out in this MOU.

9. The following definition of relinquishment shall apply herein: The conveyance of a portion of a highway right-of-way or facility by a state highway agency to another Government agency for highway use. (See, 23 CFR § 620.203(b).)

10. In accordance with the terms and process of the Relinquishment Agreement and this MOU, State will relinquish to County the part of US-77 located within the County limits, from R.P. 112.18 to R.P. 112.33 and from R.P. 116.28 to R.P. 116.61.

11. Title to the relinquished highway will not be conveyed by State to County as described in the Relinquishment Agreement. The conveyance of land will be expressly conditioned on the continued use of the property for public highway, road and street uses, as required by federal CFR.

12. State expressly retains the following access control and rights over US-77 and all US-77 property:

- (a) The right to review any sale of and to receive the compensation for the sale or lease of any part of the highway property, including access control acquired for prior projects

- (b) The right and obligation to review and approve any changes in outdoor advertising rights, in any area subject to control under Neb. Rev. Stat. § 39-201.01 et seq., and the Administrative Rules of the Nebraska Department of Transportation, Title 410, Chapter 3, Sign Permits.
- (c) The right and obligation to review and approve any width or location changes to driveways or other facilities used to control access along US-77
- (d) The right to retake possession of US-77 if it is no longer used as a highway, street, or road

13. The Parties agree that County will have all other jurisdictional control over US-77, except as otherwise provided herein, so long as County continues to use the relinquished highway as a highway, street or road.

14. County understands that it will be solely responsible for providing all needed maintenance for the relinquished part of US-77, as described in more detail above.

15. The Parties understand that they will cooperate with each other to meet all federal and state laws that apply to the use, leasing, sale or alteration of property interests in and to the relinquished highway.

16. In the event that in the future County proposes to re-convey the relinquished portion of US-77 back to State, County understands that it will return the portion of US-77 to State in essentially the same configuration and condition as it was prior to the transfer of title to County.

17. County agrees to construct future improvements in a way that also recognizes the nature, speed and type of traffic found on this urban corridor. Further, County understands that no new access breaks in the existing control of access will be allowed without meeting NDOT and FHWA requirements, and that any new outdoor advertising devices will not be erected and maintained unless they conform to State's Outdoor Advertising programs, and that the land relinquished will continue to be used for transportation purposes.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement pursuant to lawful authority as of the date signed by each party.

EXECUTED BY THE COUNTY this _____ day of _____, 20____.

Attest:

COUNTY OF DODGE

County Clerk

Chair of the County Board

EXECUTED BY THE STATE this _____ day of _____, 20____.

Attest:

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION
Kyle Schneweis, P.E.

Director

Recommended:

District Engineer