

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

Agenda Item # 29e

Date 11/18/20

October 15, 2020

COPY

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

RE: US-275 Relinquishment

Dear Mr. Mytty,

Enclosed are two original agreements and one copy for your files for the relinquishment of US-275 in Dodge Co.

Please mark the appropriate action on Page 3 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 OCT 19 AM 9:41
RECEIVED
Dodge Co Highway Dept

Kyle Schneweis, P.E., Director

Department of Transportation

District 2 Headquarters
4425 South 108th Street
PO Box 45461
Omaha, NE 68145-0461

dot.nebraska.gov

OFFICE 402-595-2534 FAX 402-595-1720
NDOT.ContactUs@nebraska.gov

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

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

WHEREAS, State is in the process of developing a project to add two new lanes to Highway (US-275) in Dodge County, Nebraska; and

WHEREAS, US-275 currently passes through Scribner, Nebraska; and

WHEREAS, State in coordination with County will be constructing US-275 on a new alignment around the city of Scribner as a part of this project, which the new US-275 alignment is more specifically defined in Attachment "A" and will be referred to herein as the "Bypass"; and

WHEREAS, one of the conditions for State constructing a Highway US-275 Bypass around Scribner was the agreement of the County that when the Bypass is completed, County will accept from State relinquishment of jurisdictional responsibility for the part of US-275 identified in this relinquishment Agreement; and

WHEREAS, the State will connect County Road 14 to the Bypass as a part of the Construction of the State's Project. The State will tie in the east alignment of County Road 14 to maintain the existing intersection of existing US-275 and County Road 14, as shown on Attachment "A"; and

WHEREAS, the State, County, and the City of Scribner agrees that County Road 13 Boulevard will be annexed by City of Scribner. City of Scribner will pass a formal annexation resolution to extend its Corporate limits along County Road 13 Boulevard out to and intersecting with the new US-275 Bypass (as shown on Attachment "A"); State will connect County Road 13 Boulevard to the Bypass as a part of the Construction of State's Project and County Road 13 Boulevard will serve as the official street connecting Scribner to the State Highway System; and

WHEREAS, after the project is completed, State will operate and maintain the Bypass as a part of the State Highway System and County will operate and maintain the relinquished north and south segments; and

WHEREAS, the north portion of US-275 to be relinquished is the 0.18 mile portion located north of the Scribner northwest corporate limits from the Scribner Levee to County Road F (Pebble Street) (Reference Post (R.P.) 129.64 to R.P.129.82). In addition, the south portion of US-275 to be relinquished is the 0.31 mile portion located 0.17 miles south of Logan street at the southeast corporate limits of Scribner (R.P. 130.71) to County Road 14 (R.P. 131.02), (see Attachment A, attached hereto and hereby made a part of this agreement); and

WHEREAS, State will resurface the north portion from Scribner Levee to County Road F (R.P. 129.64 to R.P.129.82), and the south portion from Scribner southern corporate limits to County

Road 14 (R.P. 130.71 to R.P. 131.02) as part of the States project in the final construction year of State's Bypass Project, as shown on Attachment "A"; and

WHEREAS, the Parties agree that the jurisdictional responsibility for the portion of US-275 outside of City of Scribner limits should be shifted from the State to the County as shown in Attachment "A", attached hereto and hereby made a part of this agreement; and

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

WHEREAS, State has determined that the north and south portion, outside of Scribner Corporate Limits, in Dodge County, is no longer needed for state highway purposes and therefore it is in the State's best interest to relinquish this portion of US-275 to Dodge County. The portion within Scribner Corporate limits will be relinquished to the City of Scribner; and

WHEREAS, 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, this document is intended to: (1) provide notice to the County of the State's offer to relinquish jurisdiction over US-275 to County, (2) serve as the County's written acceptance or rejection of the State's Offer; and, if the Offer is accepted, the Petition of the County and negotiated 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 relinquishment of US-275; 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 to County the part of US-275
outside Scribner Corporate Limits**

NOW THEREFORE, based on these facts, the State hereby offers to relinquish to Scribner jurisdictional responsibility over the part of US-275 from R.P. 129.64 to R.P. 129.82 and R.P. 130.71 to R.P. 131.02 as shown on the attached Attachment "A", expressly conditioned upon the acceptance by the County of the terms and conditions, if any, set out below or on the attached Description of the Proposed Relinquishment. (The preceding sentence will hereinafter 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 segment 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 segment 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 segment. Further, the County will assume all legal liability arising from the operation and maintenance of the relinquished segment, as provided above, and to indemnify the State hereto as to any claims arising out of or concerning this relinquished segment.

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 the Offer by filing a petition to accept relinquishment of US-275, 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 segment of US-275 from R.P. 129.64 to R.P. 129.82 and R.P. 130.71 to R.P. 131.02 to the County.

Rejects State's offer to relinquish jurisdictional control over the above described segment of US-275 to the County.

If County has accepted the State's Offer, this document shall be considered the County's Petition to the State that the County desires to accept the relinquishment of this segment of US-275 and to assume jurisdictional responsibility for the relinquished segment including, but not limited to the future design, construction, reconstruction, operation and maintenance of this segment 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 segment within its corporate limits to be changed on the State Functional Classification System.

If State's Offer is accepted, County understands that State will proceed to complete the process of relinquishment of the above described segment of US-275 to the County, pursuant to Neb. Rev. Stat. §39-1314.

If State's Offer is accepted, County understands that, upon formal transfer of jurisdictional control, the County will have sole responsibility for the maintenance and operation of the relinquished portion of US-275 upon execution of this agreement.

If State's Offer is accepted, County and State agree that the State will

- (a) Cause the City of Scribner to pass a formal annexation resolution to extend its Corporate limits along County Road 13 Boulevard out to and intersecting with the new US-275 Bypass (as shown on Attachment "A"); State will connect County Road 13 Boulevard to the Bypass as a part of the Construction of State's Project and County Road 13 Boulevard will serve as the official street connecting Scribner to the State Highway System.
- (b) Resurface the north portion from Scribner Levee to County Road F (R.P. 129.64 to R.P.129.82), and the south portion from Scribner southern corporate limits to County Road 14 (R.P. 130.71 to R.P. 131.02) as part of the States project in the final construction year of State's Bypass Project. Upon the completion of the formal relinquishment the County will have sole jurisdictional responsibility for the above described relinquished section and, for all county road connections to the outside edge of the through travelled lane on the State's Bypass Project as described above and as set out in Neb. Rev. Stat. §39-2105.
- (c) During the planning of the Bypass project, it was agreed by County, State and City of Scribner that County Road F, Fairacres Road, County Road 13 Boulevard, and County Road 14 (as shown in Attachment "A") would intersect with the Bypass and therefore continue to provide access to US-275.

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 agree that the other requirements of this section of the law shall not apply. State will notify County in writing of the date when jurisdictional responsibility will be transferred from State to County.

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

EXECUTED BY THE STATE this ____ day of _____, 2020.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

Director-State Engineer

Recommended:

District Engineer

EXECUTED BY THE COUNTY this ____ day of _____, 2020.

Dodge County

Board Chairman

Attest:

County Clerk

**DESCRIPTION OF RELINQUISHMENT
PORTION OF STATE HIGHWAY US-275**

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 US-275 in the County of Dodge.

This segment of US-275 is on the US Highway System located in Scribner, and Dodge County, Nebraska. This proposed relinquishment involves the north 0.18 mile and south 0.31 mile portion located outside the corporate limits of the City of Scribner, from highway reference post 129.64 to 129.82 and reference post 130.71 to 131.02. The legal description of the part of US-275 proposed for relinquishment is set out on Attachment "A", a drawing showing the location of the relinquished segment of US-275.

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

Also, these portions of US-275 will be removed from the State Highway System and relinquished to Dodge County. The State Highway Commission has approved, and the Governor has consented to the relinquishment of US-275. The additional terms and conditions, if any, of this relinquishment are as follows:

County, State, and City of Scribner agree that City of Scribner will pass a formal annexation resolution to extend its Corporate limits along County Road 13 Boulevard out to and intersecting with the new US-275 Bypass (as shown on Attachment "A"); State will connect County Road 13 Boulevard to the Bypass as a part of the Construction of State's Project and County Road 13 Boulevard will serve as the official street connecting Scribner to the State Highway System.

The State will connect County Road 14 to the Bypass as a part of the Construction of the State's Project. The State will tie in the east alignment of County Road 14 to maintain the existing intersection of existing US-275 and County Road 14.

On the existing US-275 portion, the State will resurface the north portion from Scribner Levee to County Road F (R.P. 129.64 to R.P. 129.82), and the south portion from Scribner southern corporate limits to County Road 14 (R.P. 130.71 to R.P. 131.02) as part of the States project in the final construction year of State's Bypass Project.

Upon the completion of the formal relinquishment the County will have sole jurisdictional responsibility for all county road connections to the outside edge of the through travelled lane on the State's Bypass Project.

Dated this _____ day of _____, 2020.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

Director-State Engineer

(STATE SEAL)

STATE OF NEBRASKA)
) ss.
COUNTY OF DODGE)

Subscribed and sworn to before me this _____ day of _____, 2020.

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 US-275 to the County of Scribner,
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.

Negotiated Memorandum of Understanding - Relinquishment

This Negotiated Memorandum of Understanding (MOU) is between the State of Nebraska, Department of Transportation (State) and Dodge County (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 portions of US Highway 275 (US-275) located outside the Corporate limits of City of Scribner (Reference Post (R.P.) 129.64 to R.P. 129.82 and R.P. 130.71 to R.P. 131.02); 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-275 and the negotiated terms and conditions of the Parties related to the relinquishment.

Background

1. History of US-275. US Highway 275 is an expressway that connects Norfolk to Fremont. The US-275 corridor is part of the legislative intent for an ultimate design and construction of a four lane expressway system. The US-275 corridor is currently four lanes two miles south of Scribner. The segment referenced in this agreement has been selected for expansion from the existing two lane facility to a four lane corridor, including a new four lane bypass around Scribner. State law provides that there should be a State highway connecting most Nebraska communities to the State Highway System. State will perpetuate the connections of County Road F, Fairacres Road, County Road 13 Boulevard, and County Road 14 to allow access from the new US-275 bypass into Scribner. The segment of US-275 referenced in this agreement travels directly through Dodge County and City of Scribner that is developed with commercial, industrial, and residential uses. State first constructed US-275 at this location in or about 1935. The following is a listing of the dates and types of projects completed by State on this segment since the original construction:

1935 – 9" concrete pavement

1952 – Asphaltic concrete surfacing
1959 – Concrete pavement and asphaltic concrete surfacing work
1977 – Asphaltic concrete surfacing
1995 – Asphaltic concrete surfacing
2007 – Concrete repairs, asphaltic concrete, fog seal shoulders
2013 - Asphaltic concrete surfacing

2. Jurisdictional Responsibility. As a State highway within a municipality, State and County have shared jurisdictional responsibility for US-275 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-275 has been significant. US-275 now serves primarily transportation needs, and even though it will no longer be on the State Highway System, US-275 will continue to be used by Dodge County to connect their County Road system.

3. Present Needs. County and State agree that once US-275 is relocated as a Bypass around Scribner, the urban portion of existing US-275 will provide more of a local function, rather than 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-275 to County. County agrees to this shift of responsibility and welcomes the opportunity to control more directly the future transportation use of the portion of existing US-275 within its border.

4. County's On-Going Maintenance Responsibility. County agrees to properly repair, maintain, and replace, when necessary, relinquished US-275 in order to maximize the useful life of this transportation facility. State has determined that the existing surface has an optimum maintenance year of 2022. The State will resurface the north portion from Scribner Levee to County Road F (R.P. 129.64 to R.P. 129.82), and the south portion from Scribner southern corporate limits to County Road 14 (R.P. 130.71 to R.P. 131.02) as part of the States project in the final construction year of State's Bypass Project. The NSI rating for the two previously described segments of US-275 will be improved to 95 after the resurfacing. The pavement life will be extended due to the new US-275 bypass that will eliminate the majority of the traffic, including heavy trucks. The County agrees to implement a maintenance plan for relinquished US-275 that will include, but not be limited to the following maintenance practices and strategies: Concrete pavement repairs, crack and joint sealing, fog sealing, bituminous patching, 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-275. Accordingly, the Federal Highway Administration (FHWA) must approve the relinquishment of this segment of US-275. Additionally, the future sale or lease of any part of US-275 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-275. State and Federal law allows State to transfer jurisdictional responsibility (but not title) to US-275 to County only so long as County continues to use US-

275 for highway, street or road uses. In the event that County wishes to discontinue street use of all or any part of the US-275 property, County is required by this MOU to allow State to handle the sale, including the proceeds of the sale being paid 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 the urban portion of Highway US-275. Any future proposed improvements to US-275 will have to compete with all State's other highway improvement needs throughout the State.

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).) Title to the real estate under the highway will not be conveyed to County.

10. In accordance with the terms and process of the Relinquishment Agreement and this MOU, State will relinquish to County the part of US-275 located within the County limits, from R.P. 129.64 to R.P. 129.82 and R.P. 130.71. to R.P. 131.02.

11. Subject to paragraph 6 (above), this relinquishment is 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-275 and all US-275 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 et seq.
- (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-275
- (d) The right to retake possession of US-275 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 relinquished Highway US-275, 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-275, 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 no longer have jurisdictional responsibility over the relinquished portion of US-275, County understands that it will return the portion of US-275 to State in essentially the same configuration and condition as it was prior to the transfer of title to County.

17. During the planning of the Bypass project, it was agreed by State, County, and City of Scribner that County Road F (Pebble Street), Fairacres Road, County Road 13 Boulevard, and County Road 14 would intersect with the Bypass and full access would be provided to and from US-275. County agrees to own and maintain all County road connections the outside edge of the through travelled lane on the State's Bypass Project.

18. County and State and City of Scribner agree that City of Scribner will pass a formal annexation resolution to extend its Corporate limits along County Road 13 Boulevard out to and intersecting with the new US-275 Bypass (as shown on Attachment "A"); State will connect County Road 13 Boulevard to the Bypass as a part of the Construction of State's Project and County Road 13 Boulevard will serve as the official street connecting Scribner to the State Highway System.

19. The State will connect County Road 14 to the Bypass as part of the Construction of the State's Project. The State will tie in the east alignment of County Road 14 to maintain the existing intersection of existing US-275 and County Road 14, as shown on Attachment "A".

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 _____, 2020.

Attest:

DODGE COUNTY

County Clerk

Board Chairman

EXECUTED BY THE STATE this ____ day of _____, 2020.

Attest:

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

Director

Recommended:

District Engineer

