

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
MAY 7, 2019 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
CITY OF LA VISTA & NEBRASKA DEPT. OF TRANSPORTATION-ACCEPTANCE OF RELINQUISHMENT AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER

**SYNOPSIS**

A resolution has been prepared authorizing the Mayor to execute a Relinquishment Agreement with the State of Nebraska, Department of Transportation (“NDOT”) setting forth the terms and conditions related to shifting the jurisdictional responsibility for State Highway 85, commonly known as 84<sup>th</sup> Street, from Harrison Street to Giles Road from the State of Nebraska to the City of La Vista.

**FISCAL IMPACT**

The City will no longer receive the annual payment from the NDOT for surface maintenance of 84<sup>th</sup> Street. *In the most recent agreement, that payment is \$8,400.* In addition, the City will become responsible for maintenance of the traffic signals on 84<sup>th</sup> Street.

**RECOMMENDATION**

Approval

**BACKGROUND**

Throughout the planning process for the redevelopment of the 84<sup>th</sup> Street corridor, the City has desired to obtain control of 84<sup>th</sup> Street to allow for changes that would support the new developments. In response to the City’s request, the NDOT has prepared an agreement and a Memorandum of Understanding that outline the details and various conditions associated with this transition. The proposed Agreement, including the Memorandum of Understanding, is provided herewith.

The NDOT will retain ownership of the right-of-way, which means that new access points will require approval from the NDOT. 84<sup>th</sup> Street will also remain on the National Highway System which requires the NDOT to monitor the condition of the roadway as part of its annual report to the FHWA. Advertising restrictions will remain but are typically no more restrictive than local regulations. The City will be able to adjust speed limits and conduct landscaping improvements subject to consideration of applicable safety regulations. The NDOT has agreed to continue to participate in the current 84<sup>th</sup> Street Rehabilitation project and will pay for the construction cost of the pavement patching and asphalt overlay on the four through-lanes.

**RESOLUTION NO. \_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT AND MEMORANDUM OF UNDERSTANDING WITH THE NEBRASKA DEPARTMENT OF TRANSPORTATION (NDOT) SHIFTING THE JURISDICTIONAL RESPONSIBILITY FOR STATE HIGHWAY N85 (84<sup>th</sup> STREET) FROM HARRISON STREET TO GILES ROAD.

WHEREAS, the City desires to enter into a relinquishment agreement with the Nebraska Department of Transportation (NDOT) to shift jurisdictional responsibility for State Highway N85 (84<sup>TH</sup> Street) Harrison Street to Giles Road from the State of Nebraska to the City of La Vista; and

WHEREAS, on May 15, 2018, the City Council approved Resolution No. 18-068 authorizing that a letter be sent to the NDOT requesting the relinquishment of La Vista's portion of State Highway N85; and

WHEREAS, the Relinquishment Agreement and Memorandum of Understanding detail the terms, conditions and responsibilities associated with this transaction;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, hereby authorize the Mayor to execute a Relinquishment Agreement and Memorandum of Understanding with the Nebraska Department of Transportation (NDOT) shifting the jurisdictional responsibility for State Highway N85 (84<sup>th</sup> Street) from Harrison Street to Giles Road.

PASSED AND APPROVED THIS 7TH DAY OF MAY, 2019.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

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

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

WHEREAS, Nebraska State Highway 85 (N-85) is a 5.01-mile long route on the State Highway System located in Sarpy and Douglas Counties, N-85 is also commonly known as part of 84<sup>th</sup> Street in the Omaha metropolitan area); and

WHEREAS, N-85 begins at its intersection with State Highway N-370 to the south (reference post 0+00) and extends to the north ending at Nebraska State Highway US-275 (reference post 5+01); and

WHEREAS, N-85 passes in or through the Cities of Papillion, La Vista, Ralston and Omaha; and

WHEREAS, the portion of N-85 located within the City of La Vista is the part from Giles Road to the south (Reference Post (R.P.) 2.51) to Harrison Street at the northern end (R.P. 3.51), (see Attachment "A", attached hereto and hereby made a part of this agreement); and

WHEREAS, the State is required under Neb. Rev. Stat. §39-2103 to connect the City with a rural state highway; and

WHEREAS, the requirement to provide state highway service to the City of La Vista, is satisfied by Nebraska's Interstate Highway 80 (I-80) and by N-85; and

WHEREAS, the State currently has jurisdictional responsibility over all of N-85 including the part located within the city limits of La Vista, See Attachment "A"; and

WHEREAS, N-85 effectively serves important metropolitan transportation needs, but no longer serves as much of a state-wide transportation purpose; and

WHEREAS, the Parties agree that the jurisdictional responsibility for the portion of N-85 now within the City limits should be shifted from the State to the City as shown in Attachment "A", and

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

WHEREAS, the State has determined that this portion, within the City of La Vista, is no longer needed for state highway purposes and therefore it is in the State's best interest to relinquish this portion of N-85 to La Vista; 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, this document is intended to: (1) provide notice to the City of the State's offer to relinquish jurisdiction over N-85 to City, (2) serve as the City's written acceptance or rejection of the State's Offer; and, if the Offer is accepted, the Petition of the City and negotiated Agreement of the Parties; and (3) constitute the City's written waiver of certain rights under the statutes set out above, including the right to a hearing concerning the relinquishment of N-85; 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 City. To that end, the State agrees to continue with the project, NH-85-2(1035), CN 22712, Giles Road – Harrison Street, in La Vista, with State and City cost participation. This project is to be let to bids, and inspected by the City and is currently scheduled for State's Fiscal Year 2020. The City will have sole responsibility for the maintenance of the relinquished segment of N-85, during the time pending the future reconstruction project; 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 Sarpy County as provided in Neb. Rev. Stat. §39-1314.

#### **State's Offer to Relinquish to La Vista the part of N-85 within the city limits**

NOW THEREFORE, based on these facts, the State hereby offers to relinquish to La Vista jurisdictional responsibility over the part of N-85 from R.P. 2.51 to R.P. 3.51 as shown on the attached Attachment "A", based upon the acceptance by the City of the negotiated terms and conditions, if any, set out on the Relinquishment Instrument, or the attached Negotiated MOU, incorporated herein as Attachment "B". (This paragraph will hereinafter be referred to 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 operation and maintenance of traffic signals at and between Harrison Street and Giles Road within the relinquished portion of N-85 will be the responsibility of the Municipality until defined in a separate MOU between the Parties and the City of Omaha.

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 City 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 City agrees to assume sole responsibility for the operation and maintenance of the relinquished segment. Further, the City will assume all legal liability arising from City's design, construction, operation or maintenance of the relinquished segment, as provided above, and will be responsible for any claims arising out of or concerning City's activities, including the design, construction, reconstruction, operation or maintenance of the relinquished segment.

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

In exchange for the City's agreement that State will only be responsible for the highway construction project described above, the State will convey title to the subject segment of N-85. Subject to the conditions of this agreement, the State's property rights will be transferred to the City. Attachment "C" shows the State's current property rights in this segment of N-85. In the event the City chooses to accept the relinquishment, the State will complete the cost participation of the future construction project described above.

### **The City's Response to the State's Offer**

The City has considered the merits of the State's Offer. The City 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 N-85, if it so chooses. The City understands that if the roadway is not relinquished, the State retains jurisdictional responsibility and authority for the roadway. The City 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 the State's Offer, the City hereby voluntarily waives its rights and hereby (check applicable box):

- ☐ Accepts the State's offer to relinquish jurisdictional control over the segment of N-85 from R.P. \_\_\_\_ to R.P. \_\_\_\_ to the City.
- ☐ Rejects the State's offer to relinquish jurisdictional control over the above described segment of N-85 to the City.

If City has accepted the State's Offer, this document shall be considered the City's Petition to the State that the City desires to accept the relinquishment of this segment of N-85 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 City's street system.

Pursuant to Neb. Rev. Stat. §39-2112, the acceptance of this Offer to Relinquish will also constitute the City'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, City understands that State will immediately proceed to complete the process of relinquishment of the above described segment of N-85 to the City, pursuant to Neb. Rev. Stat. §39-1314.

If State's Offer is accepted, City understands that, upon formal transfer of jurisdictional control, the City will have sole responsibility for the maintenance and operation of the relinquished portion of N-85 upon execution of this agreement.

If State's Offer is accepted, City and State agree that the State will provide a State cost share for the future project identified above. Upon the completion of the formal relinquishment and notwithstanding the pending one-time future construction project resurfacing, the City will have sole jurisdictional responsibility for the above described relinquished section as described above and as set out in Neb. Rev. Stat. §39-2105.

If State's Offer is accepted, City and State agree that this document, including the attached Negotiated MOU and all other attachments, will be a valid binding contract, for all purposes including Neb. Rev. Stat. §39-1315.01, and the parties agree that the provisions of §1315.01 shall 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 indicated below.

EXECUTED BY THE STATE this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Director-State Engineer

Recommended:

\_\_\_\_\_  
District Engineer

EXECUTED BY THE CITY this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

City of La Vista

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

## **Negotiated Memorandum of Understanding - Relinquishment**

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

### **Recitals**

WHEREAS, State and City 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 City, 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 City 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 City the portion of Nebraska State Highway 85 (N-85) located within the Corporate limits of City (Reference Post (R.P.) 2.51 to 3.51); 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 Highway N-85 and the negotiated terms and conditions of the Parties related to the relinquishment.

### **Background**

1. **History of N-85.** N-85 was made a part of the State Highway System in or before 1955. State law provides that there should be a State highway connecting most Nebraska communities to the State Highway System. N-85 has served as the connection for City to State Highway 275 to the north and to State Highway 370 to the south. Interstate 80 also connects City to the State Highway System. N-85 is a primary north-south route for traffic within and outside City and provides access to adjoining metropolitan areas. The land adjoining N-85 is substantially developed with commercial, industrial, and residential uses. State first constructed N-85 at this



location in or about 1960. The following is a listing of the dates and types of projects completed by State on this segment since the original construction:

1964 – 9” concrete paving, culverts, traffic signals, lighting.

1971 – Widened to a four lane divided roadway; 9” concrete paving, culverts,

1980 – Traffic signal installation at Brentwood Drive

1992 – Concrete repairs

1996 – Traffic signal modifications

1998 – Asphaltic concrete resurfacing of four lane divided roadway

2013 – Installation of countdown pedestrian heads

2019 – Resurfacing to be let by City and paid for by the State

2019 – Adaptive traffic signal control

**2. Jurisdictional Responsibility.** As a State highway within a municipality, State and City have shared jurisdictional responsibility for N-85 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 N-85 has been significant. N-85 now serves primarily metropolitan transportation needs, and even though it will no longer be on the State Highway System, N-85 will continue to be used by the traveling public to connect to the State Highway System.

**3. Present Needs.** City wishes to have more control over the construction, operation, use and maintenance of N-85. State believes that N-85 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 N-85 to City. City agrees to this shift of responsibility and welcomes the opportunity to control more directly the future transportation use of N-85.

**4. City’s On-Going Maintenance Responsibility.** City agrees to properly repair, maintain, and replace, when necessary, N-85 in order to maximize the useful life of this transportation facility. The current NSI rating for this segment of N-85 is 86.5. City agrees to implement a maintenance plan for N-85 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, 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 N-85. Accordingly, the Federal Highway Administration (FHWA) must approve the relinquishment of this segment of N-85. Additionally, the future sale or lease of any part of the N-85 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 N-85. State and Federal law allows State to transfer jurisdictional

responsibility to N-85 to City only so long as City continues to use N-85 for highway, street or road uses. In the event that City wishes to discontinue street use of all or any part of the N-85 property, City 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 Highway N-85. Any future proposed improvements to N-85 will have to compete with all State's other highway improvement needs throughout the State. However, State has a planned resurfacing of N-85 that will be completed with State and City funds in the near future in order to place N-85 in an improved condition as a part of the consideration for this relinquishment.

### **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 City the part of N-85 located within the City limits, from R.P. 2.51 to R.P. 3.51.

11. Title to the relinquished highway will be conveyed by State to City 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 N-85 and all N-85 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 N-85
- (d) The right to retake possession of N-85 if it is no longer used as a highway, street, or road

13. The Parties agree that City will have all other jurisdictional control over Highway N-85, except as otherwise provided herein, so long as City continues to use the relinquished highway as a highway, street or road.

14. City understands that it will be solely responsible for providing all needed maintenance for the relinquished part of N-85, 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 City proposes to re-convey the relinquished portion of N-85 back to State, City understands that it will return the portion of N-85 to State in essentially the same configuration and condition as it was prior to the transfer of title to City.

17. The parties understand that after this one-mile segment of Highway 85 is relinquished, La Vista plans to make improvements to this segment to beautify the area as an entry point into the city. The improvements are expected to include the following:

- (a) Replacement of the concrete box culvert located at approximately mile post 3.07 with a four-lane bridge that consists of arch-type artistic non-structured members over the roadway segment, with the arches lit with multicolored lights for nighttime effect.
- (b) Construction and operation of a trail with park benches along both sides of the roadway.
- (c) Plantings and vegetation, including trees, in the roadway median and along the trail and roadway segments.
- (d) Additional pedestrian road crossings may be constructed.
- (e) "Welcome to La Vista" signs will be constructed on the north and south ends of the relinquished segment, to be located on property acquired by La Vista from private, and where reasonable, public entities such as NDOT.

La Vista agrees to construct these improvements, or similar improvements, in a way that also recognizes the nature, speed and type of traffic found on this urban corridor. Further, La Vista 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 CITY this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

CITY OF LA VISTA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

EXECUTED BY THE STATE this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

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

\_\_\_\_\_  
Recommended:

\_\_\_\_\_  
Director

\_\_\_\_\_  
District Engineer

**R.P. 2+51**

# ATTACHMENT "A"







## 050

SEC.15-T14N-R12E

TRACT 115  
KELLY McMAHON CONST. INC.  
PARKVIEW HEIGHTS  
(EXC. LOTS 1, 13 & 19)

TRACT 169  
NORTHWESTERN BELL TELEPHONE CO.  
PT. NE<sup>4</sup> SEC. 15

SEC.10-T14N-R12E

DOUGLAS CO.  
F-237(6)

TRACT 170  
FRED J. GEILER  
PT. SE<sup>4</sup> SE<sup>4</sup> SEC. 10

TRACT 117  
FAIRVIEW HEIGHTS INC.  
SE<sup>4</sup>SE<sup>4</sup>SEC.10

TRACT 116  
DECKER ENTERPRISES, INC.  
NW<sup>4</sup> SEC. 14

 R.O.W. RETURNED TO WILDEWOOD DEVELOPMENT CO.

SEC.14-T14N-R12E


SEC.10-T14N-R12E

NOTE-ALL COMPS. OF ORIG. PURCHASE &  
RESALE OF R.O.W. MADE OFF ORIG. C.  
R.O.W SOLD TO REALTY DEVELOPMENT CORP.  
77AC. *12*

RALSTON

DOUGLAS CO.	
F-237(6)	17

TRACT 122  
MARGARET C. SIMES, TRUSTEE  
P.T.E<sup>2</sup> NE<sup>4</sup> SEC. 10

Maint. Ease. 0.12Ac 

TRACT 118  
WILDEWOOD DEVELOPMENT COMPANY  
PT. W<sup>2</sup>SW<sup>4</sup>SEC.11

BLK.53

TRACT 124  
GERALD WALASEK  
LOT 11, BLK. 11, BALST