

AGREEMENT

CITY OF LINCOLN
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. LCLC-55(168), STATE CONTROL NO. 11215M
ANTELOPE VALLEY NORTH/SOUTH ROADWAY "P" STREET TO VINE STREET
NEW SIX LANE DIVIDED CONCRETE PAVEMENT

THIS AGREEMENT, made and entered into by and between the City of Lincoln, hereinafter referred to as the "City", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State",

WITNESSETH:

WHEREAS, certain streets in the City have been designated as being eligible for Highway Stimulus (HS) Funds by the Department of Transportation, Federal Highway Administration, hereinafter called the FHWA, in compliance with Federal laws pertaining thereto, and

WHEREAS, HS Funds have been made available by Title 23 of the United States Code, providing for improvements on eligible City Streets, and

WHEREAS, the Federal share payable on any portion of a HS project will be a maximum of 100 percent of the eligible costs, up to a maximum of \$4,570,000, and

WHEREAS, regulations for implementing the provisions of the above mentioned act provide that the Federal share of the cost of those projects will be paid only to the State, and

WHEREAS, the regulations further permit the use of funds other than State funds in matching Federal Funds for the improvements of those streets, and

WHEREAS, the State is willing to cooperate to the end of obtaining Federal approval of the proposed work and Federal Funds for the construction of the proposed improvement, with the understanding that no State Funds are to be expended on this project, and

WHEREAS, the State's responsibility is to provide quality assurance and project oversight to ensure that the project is designed, constructed and managed according to Federal rules and regulations. The State will notify the City when Federal funding will be withheld or lost, and

WHEREAS, if the City is to receive Federal participation for any portion of the work on the proposed project, it is necessary all phases of work comply with Federal requirements and procedures, and

WHEREAS, the City shall supervise the contract letting and ensure that the project receives the same degree of supervision and inspection as a project constructed under a contract let and directly supervised by the State, and

WHEREAS, Federal Regulations provide that the City shall not profit or otherwise gain from local property assessments that exceed the City's share of project costs, and

WHEREAS, the funding for the project under this agreement, includes pass-through monies from the Federal Highway Administration (FHWA). If a non-federal entity expends \$500,000 or more in total federal awards in a fiscal year, then the A-133 audit is required as explained further in this agreement, and

WHEREAS, the City desires that this project as shown on attached EXHIBIT "A" be constructed under the designation of Project No. LCLC-55(168), as evidenced by the Resolution of the City dated the _____ day of _____, 2009, attached as EXHIBIT "B" and made a part of this agreement, and

WHEREAS, the total cost of the project which includes: preliminary engineering, final design, Right-of-Way, nonbetterment utility rehabilitation, construction and construction engineering is currently estimated to be \$7,355,000, and

WHEREAS, the project is described as follows:

Construct a six lane divided roadway with turn lanes from the intersection of 19th and "P" Streets to five hundred feet north of the intersection of 19th and "Q" Streets. From this point a four lane divided roadway with turn lanes will be constructed with the alignment veering to the east approximately 350 feet and proceeding to Vine Street. This segment will have the capacity to expand to a six lane roadway. The project includes also construction of an enclosed storm drainage system, sidewalks as well as a traffic signal at the intersection of 19th and "Q" Streets.

NOW THEREFORE, in consideration of these facts, the City and State agree as follows:

SECTION 1. The State shall present this project to the FHWA for its approval, if necessary.

SECTION 2. The City understands that payment for the costs of this project, whether they be services, engineering, Right-of-Way, utilities, material or otherwise, are the sole responsibility of the City where Federal participation is not allowable or available. Therefore, where the Federal government refuses to participate in the project or any portion of the project the City is responsible for full project payment with no cost or expense to the State in the project or portion of the project. Should the project be abandoned before completion, the City shall pay all costs incurred by the State prior to such abandonment.

The City shall maintain all correspondence files, books, documents, papers, field notes, quantity tickets, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office at all reasonable times during the contract period and for three years from the date of final payment under this agreement; such records must be available for inspection by the State and the FHWA or any authorized representatives of the

Federal government, and the City shall furnish copies to those mentioned in this section when requested to do so.

SECTION 3. The City shall have on file with the State an acceptable drug-free workplace policy.

SECTION 4. Because the City is to receive Federal Funds for any part of this project, the City shall perform the services for all phases of work, including, but not limited to preliminary engineering, environmental studies, acquisition of Right-of-Way, construction (includes construction engineering), etc., according to Federal procedures and requirements. Although Federal Funds may be allocated to the project, all phases or certain phases of work will become ineligible for Federal Funds if Federal procedures and requirements are not met.

Prior to beginning any phase of work on the proposed project, the City shall contact the State's Local Projects Section Urban Engineer for direction and assistance to ensure that all project work will be accomplished according to Federal procedures and requirements.

SECTION 5. If the City performs any part of the work on this project itself, the City shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101, through 48-1126, 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 the DISCRIMINATION CLAUSES Section of this agreement.

SECTION 6. The funding for the project under this agreement includes pass-through federal monies from the FHWA. According to the Single Audit Act Amendments of 1996 (signed into law by President Clinton on July 5, 1996) and the implementing regulations contained in OBM Circular A-133, the A-133 Audit is required if the non-federal entity expends \$500,000 or more in total federal awards in a fiscal year. Non-federal entity means state and local governments and non-profit organizations.

The City shall have its finance officer or auditor, review the situation to determine what the City must do to comply with this federal mandate. If applicable, the expenditures related to the FHWA should be shown in the Supplementary Schedule of Expenditures of the Federal Awards under U.S. Department of Transportation as a pass-through Nebraska Department of Roads, Federal CFDA Number 20.205. If an A-133 Audit is performed, the City shall send the audit report to the Nebraska Department of Roads, Highway Audits Manager, P.O. Box 94759, Lincoln, NE 68509-4759.

SECTION 7. The City shall provide the State with current project schedules, submittal dates and critical milestone dates. The City shall notify and keep the State informed on all project issues. The City shall notify the State of all project coordination meetings. The State must be invited to

the project environmental scoping meeting, Plan-In-Hand field review, public meetings/hearings, preconstruction meeting and the final inspection.

SECTION 8. The total cost of the project which includes: preliminary engineering, final design, Right-of-Way, nonbetterment utility rehabilitation, construction and construction engineering is currently estimated to be \$7,355,000. The City's share is to be 100 percent of all preliminary engineering, right-of-way, construction engineering, and all expenditures above the allocated Highway Stimulus Fund apportion amount which is estimated to be \$2,785,000. The State agrees to reimburse the City, using Federal Funds, for 100 percent of the actual eligible costs of the improvement which is estimated to be \$4,570,000. Both the City and State recognize this is a preliminary estimate and the final cost may be higher or lower. Progress billings to reimburse the City may be submitted no more often than monthly. The State will reimburse 95 percent of the eligible 100 percent Federally Funded expenditures until the 5 percent retention reaches a maximum amount of \$25,000. Once the maximum retention is obtained, the State will reimburse 100 percent of the eligible 80 percent Federally Funded expenditures. The final settlement between the State and the City will be made after final review and approval by the State and after an audit, if deemed necessary, has been performed to verify actual costs. The City shall reimburse the State for any overpayments discovered by the State or its authorized representative.

The City further agrees, that if reimbursement to the State is required on this project, and if the City is unable to or does not make reimbursement within 60 calendar days after the State notifies the City of such required reimbursement; the State by this agreement is authorized to withhold money from State Highway funds apportioned or to be apportioned to the City, in an amount equal to the required reimbursement to the State.

Project coordination and quality assurance review costs incurred by the State with respect to the entire project will be part of the cost of the project to be paid out of City and Federal Funds. The State may, at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the City agrees to pay such invoices within thirty days of receipt. The City's share of the total project cost will be all costs not paid for by Federal Funds.

The criteria contained in Part 31 of the Federal Acquisition Regulations System (48 CFR 31) will be applied to determine the allowability of costs incurred by the City under this agreement.

Final payment consisting of the retention withheld minus the State incurred expenses will not be reimbursed to the City until the City has filed a completed State DR Form 299 with the

State, and both the City and the State have signed it. Once the DR Form 299 is signed by the City, no reimbursement requests will be accepted by the State and the FHWA.

SECTION 9. The parties agree that preliminary engineering, which includes project design, plan development, environmental studies and final design, will be accomplished by the City or a State certified Consultant selected by the City. If a Consultant is to be selected, the method of procurement and evaluation must follow all guidelines and requirements outlined in the State's Federal Aid Guidelines Manual for LPA's. That State will review and approve the Request for Proposals prior to advertising. Any PE work performed prior to Federal authorization and receipt of a Notice to Proceed will not be eligible for Federal Aid.

It is understood by the parties that the State will rely on the professional performance and ability of the City or their Consultant. Any examination by the State, or acceptance or use of the work product of the City or their consultant will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of the City or their Consultant which would relieve the City from any liability or expense that would be connected with the City's sole responsibility for the propriety and integrity of the professional work to be accomplished by the City.

SECTION 10. The City or its Consultant shall design the project according to the current AASHTO Policy on Geometric Design of Highways and Streets, the Nebraska Minimum Design Standards of the Board of Public Roads Classifications and Standards and to the Americans with Disabilities Act (ADA) Accessibility Guidelines. All plans, specifications and bid proposals, permits and any other contract documents must be submitted to and reviewed by the State prior to any bid letting by the City. Any deviations from the above publications must be approved by the State.

SECTION 11. ENVIRONMENTAL RESPONSIBILITY

The City shall be responsible to complete any federally required environmental actions, commitments, and documents for this project, and receive approval by the State and the FHWA **prior** to proceeding with appraising property, acquiring any right-of-way, or final design for the project.

When it is determined that a public hearing is a federal requirement for the project, the City shall offer an opportunity for a location or design hearing or combined location and design public hearing.

If a public hearing is required, the City shall contact the State's Public Hearing Officer (PHO) prior to doing any public hearing activity, so the PHO can advise the City of the proper

procedures and policies for conducting the hearing. The City can contact the State's PHO by calling (402) 479-4871.

SECTION 12. Any utility rehabilitations or installations made within the Right- of-Way on this project after execution of this agreement must be in accordance with the provisions of Federal-Aid Highway 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, or a State approved Utility Accommodation Policy. In order to receive Federal-Aid Funds for this improvement, the City shall follow the current "Policy for Accommodating Utilities on State Highway Right-of-Way." Any work within the State Right-of-Way requires a permit. The City shall contact the State's District Engineer or Permits Officer to determine if a permit or permits is needed for the project and to make application for those permits if necessary.

All nonbetterment municipally owned and operated utility rehabilitation costs within the corporate limits of the city will become a project cost, but that outside the corporate limits, only the nonbetterment portion of the rehabilitation costs of facilities currently occupying private Right-of-Way will be reimbursed. Further, there will be no Federal reimbursement for private or nonmunicipally owned and operated utilities if they are located on public Right-of-Way, however, nonbetterment costs of privately owned and operated utilities will be reimbursed if they exist on privately owned Right-of-Way and it is necessary to rehabilitate the utilities due to this project. All such reimbursements will be based on items and estimates submitted by the utility and approved by the City and State. Should this project necessitate the nonbetterment rehabilitation of any privately owned and operated utilities, then the City shall send the State an estimate of those nonbetterment utility rehabilitation costs prior to the work being done. The City shall pay for utility nonbetterment rehabilitation and then bill the State for those eligible reimbursement costs. All reimbursements will be based on the actual costs of material, services and labor. This will be subject to audit, if the State deems that one is necessary.

SECTION 13. The Federal law governing acquisition and relocation on federally assisted projects is Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly called just the Uniform Act. The City shall comply with the Uniform Act, and the State's Right-of-Way Acquisition guide for new LPA's.

The Uniform Act applies whenever Federal dollars are used in any phase of a project, such as planning, engineering, environmental studies, or construction. **The Uniform Act must be followed even if there is NO Federal funding in the right-of-way phase.** The State's Relocation Assistance Act, Neb. Rev. Stat. 76-214 through 76-1238 applies on all projects.

Prior to beginning Right-of-Way appraisals and acquisition, the City shall submit to the Local Projects Section Urban Engineer Right-of-Way plans, legal descriptions and an estimate for review and approval. If acceptable, the State will issue the City a Notice-to-Proceed with the right-of-way work phase.

The City shall present to the State, a Right-of-Way Certificate that certifies the City has complied with the Uniform Act requirements and that the project is ready for construction. The State will grant the City authorization to proceed with the construction phase of the project, if the documentation submitted by the City supports the Right-of-Way Certificate.

SECTION 14. The City at no cost to the project, shall clear the present Right-of-Way of this project of all advertising signs. The City at no cost to the project, shall clear any other privately owned facility or thing that may interfere with the construction, maintenance and operation of the improvement planned in this project, and keep the old and new Right-of-Way free of future encroachments, except those authorized by permit.

SECTION 15. The City shall locate and reference or have located and referenced all section corners, quarter section corners and subdivision lot corners required for construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

SECTION 16. The Federal share of this project must be reduced by any project specific local property assessments that exceed the appropriate local share on this project. This is subject to State review.

SECTION 17. The City shall certify after accomplishment, that any Right-of-Way for this improvement not donated in compliance with FHWA guidelines will be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, 49 CFR 24, and the State's Right-of-Way Manual as approved by FHWA.

SECTION 18. The City shall advertise and conduct a letting and receive bids for the contemplated improvement. Prior to advertising the project for bids, the City shall submit a Right-of-Way Certificate and the final plans package (100 percent plans, specifications, engineers' estimate, status of utilities, environmental permits and contract bidding documents) to the State's Local Projects Section Urban Engineer for review. The State will review the submitted items and give the City direction on proceeding with advertising the project for bids. Upon direction from the State for the City to advertise, the City shall not open the bids for a minimum of 21 calendar days after the first advertisement is published in the newspapers. The City shall submit its selection of low bidder and supporting documents to the State for concurrence prior to awarding of the construction contract to the successful low bidder. The City shall sign the contract or contracts and shall send copies of the signed contract(s),

including copies of the awarded final plans package to the State's Local Projects Section Urban Engineer, and District Engineer.

SECTION 19. The State and City agree that the construction engineering, which is an eligible project expense and which includes construction management, staking, inspection and field testing, will be accomplished by City forces or a State Certified Consultant selected by the City.

The City agrees, if a Consultant is to be selected, that the method of procurement and evaluation and the resulting agreement between the Consultant and the City must conform to the State's standard practices and will be subject to State review and concurrence prior to agreement execution between the City and the Consultant. **Any CE work performed prior to Federal authorization and receipt of a NTP will not be eligible for Federal funding.**

The City shall provide a Project Manager to oversee the project and to ensure that the construction engineering performed by City forces or the City's Consultant comply with requirements for Federal funding. The Project Manager's services include, but are not limited to, arranging the preconstruction conference, keeping the State's District Construction Representative informed of project start and ending dates, and other scheduled construction milestones, and project management as required and preparing contractor change orders and supplemental agreements.

The inspection, sampling and testing of all materials must be done in accordance with the current State of Nebraska Standard Specifications for Highway Construction, the State Materials Sampling Guide, Quality Assurance Program for Construction, and the State Standard Methods of Tests (www.transportation.nebraska.gov) or applicable AASHTO or ASTM procedures. The City shall provide adequate quality control, construction administration on the project and will be responsible for the sampling and delivery of project materials for testing to a qualified laboratory. In all cases, the State will provide a State District Construction Representative designated by the State on a part-time basis, who will inspect the project, perform quality assurance, and ensure that the City is in compliance with the contract, plans, specifications, scope of work, regulations, statutes, etc., in order that Federal Funds may be expended on the project. Upon project completion, the City shall complete and sign a State DR Form 299, "Notification of Project Completion and Materials Certification" and provide it to the State District Construction Representative for further action.

The City by signing DR Form 299 certifies that all sampling and test results of materials used on the project, manufacturer's certificates of compliance and manufacturer's certified test reports meet contract requirements and are on file with the City and the City shall make them

SECTION 23. DISADVANTAGED BUSINESS ENTERPRISES

A. Policy

The City shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

B. Disadvantaged Business Enterprises Obligation

The City and State shall ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal Funds provided under this agreement. In this regard, the City shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

The City, acting as a subrecipient of Federal-aid funds on this project shall adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the City enters into on this project.

Failure of the City to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the State or such remedy as the State deems appropriate.

SECTION 24. NONDISCRIMINATION CLAUSES

During the performance of this agreement, the City, for itself, its assignees and successors in interest agrees as follows:

- (1) Compliance with Regulations: The City shall 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 agreement.
- (2) Nondiscrimination: The City, with regard to the work performed by it after award and prior to completion of the contract work, shall 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 City shall not

SECTION 25. It is mutually agreed that the final approval of the project will be made by the State and that final project close-out and final payment cannot be made to the City until the project has been approved by the State.

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

EXECUTED by the City this _____ day of _____, 2009.

WITNESS:
Joan Ross

CITY OF LINCOLN
Chris Beutler

City Clerk

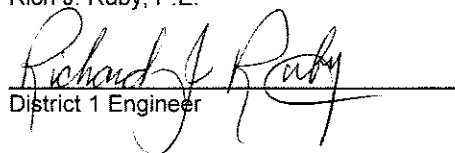
Mayor

EXECUTED by the State this _____ day of _____, 2009.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Jim Wilkinson, P.E.

Local Projects Section Engineer

RECOMMENDED:
Rich J. Ruby, P.E.



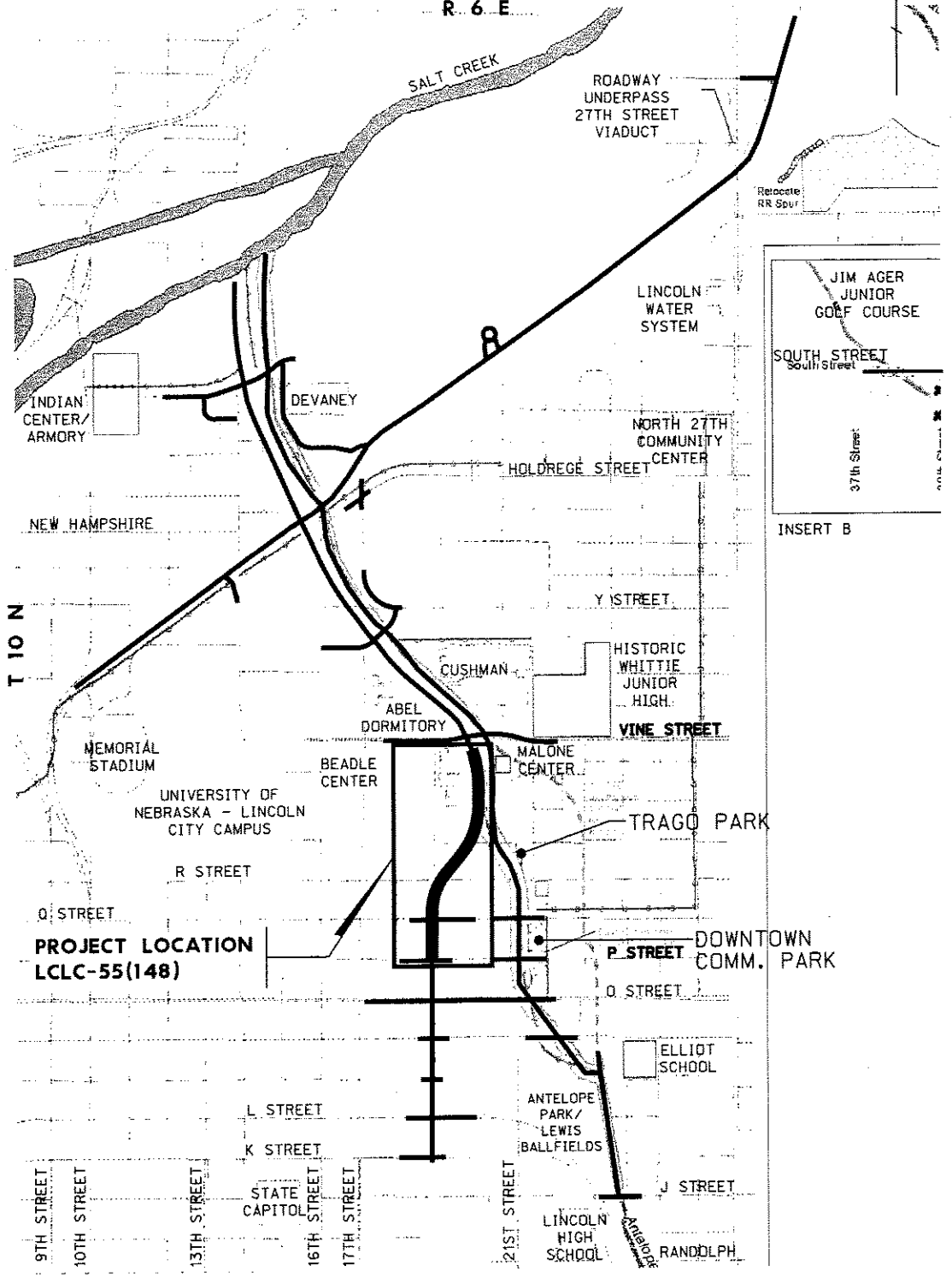
District 1 Engineer

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LINCOLN

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LCLC-55(148)
C.N. 11215M

EXHIBIT "A"