

AGREEMENT

CITY OF LINCOLN
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. LCLC-5244(7), STATE CONTROL NO. 13067
HOLDREGE STREET, 33RD STREET TO 47TH STREET
ROADWAY IMPROVEMENTS

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 American Recovery and Reinvestment Act (ARRA) Funds by the Department of Transportation, Federal Highway Administration, hereinafter called the FHWA, in compliance with Federal laws pertaining thereto, and

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

WHEREAS, the City certifies that it will request and use funds provided by ARRA and that the funds will be used to create jobs and promote economic growth, and certifies that this project meets the requirement of ARRA.

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 any required 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 City is to provide a qualified, full time public employee to be in Responsible Charge (RC) of the project at all times, 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 State shall supervise the contract letting, and

WHEREAS, this project has been designated as a Full Federal Oversight Project, 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-5244(7), 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 \$752,451, and

WHEREAS, the project is described as follows:

Mill and overlay Holdrege Street from 33rd Street to 47th Street. Curb ramps will be replaced as needed to meet ADA requirements.

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

SECTION 1. This project has been designated as full Federal oversight and the State shall present this project to the FHWA for its approval, if necessary.

SECTION 2. The City further certified that this project meets the requirements of ARRA as follows:

1. The investment has received the full review and vetting required by law.
2. The city accepts responsibility that this infrastructure investment is an appropriate use of taxpayer dollars.
3. This investment will be used for LLC-5244(7), is included in the Statewide Transportation Plan, and has an overall cost estimate of \$752,451, of which \$700,558 will be the maximum of 100 percent of the eligible costs.
4. The City agrees to ARRA reporting requirements and agrees that the State will not reimburse the City with Federal or State funds unless all ARRA reporting requirements are met.

SECTION 3. 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 4. The City shall have on file with the State an acceptable drug-free workplace policy.

SECTION 5. 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 as well as the current Local Public Agencies Guidelines Manual for Federal-Aid Projects. 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 Division Urban Engineer for direction and assistance to ensure that all project work will be accomplished according to Federal procedures and requirements.

SECTION 6. 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 7. 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 8. The City shall assign a person to be RC of the project at all times. 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 9. 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 \$752,451. The Federal Share is to be 100 percent of the awarded construction amount, construction engineering costs (capped at 13 percent of the awarded amount) and flat fee of \$2,500 for ARRA audits which is currently estimated to be \$700,558. The City's share is to be 100 percent of all actual eligible costs of preliminary engineering and Right-of-Way and 100 percent of all costs over the capped construction and construction engineering amounts which is currently estimated to be \$51,893. 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 100 percent Federally Funded expenditures.

The final settlement between the State and the City will be made after the State accepts the project and the final costs have been determined by the State. The amount of the final settlement between the State and the City will be the difference between:

- (1)
 - (a) the net expenditure by the City for actual cost items
 - (b) Plus the value of work performed by the City based on agreed prices
 - (c) Plus cash advances by the City to the State.
 - (d) Less previous payments by the State to the City AND,
- (2) The City share of the project cost.

If (1) is greater than (2) the State will pay to the City the difference within thirty days after that determination has been made. If (2) is greater than (1) the State will bill the City for the difference. The City agrees to pay the State the amount of such bill within thirty days of its receipt.

Costs incurred by the State with respect to the entire project must be considered as a 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 their 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 10. 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 11. 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 the State prior to any bid letting by the State. Any deviations from the above publications must be approved by the State.

SECTION 12. 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 13. 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 14. 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 Division 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 15. 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 16. 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 17. 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 18. 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 NDOR Right-of-Way Manual as approved by FHWA.

SECTION 19. Prior to advertising the project for bids, the City shall submit a Right-of-Way Certificate and the final plans package (100 percent full size plans, specifications, summary of quantity sheets, status of utilities, environmental permits and other PS & E required documents) to the State's Local Projects Division Urban Engineer for review. The State and City agree the State is to advertise and conduct a letting and receive bids for the City on the contemplated improvement. The selection of the lowest responsible bidder and the awarding of a contract or contracts must be concurred in by the City prior to State award. The City shall sign the Contract or Contracts.

SECTION 20. 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 available for inspection to the State and the FHWA or their authorized representatives when requested in writing to do so.

The State District Construction Representative assigned to the project will conduct a final review of the project and will determine if the project is acceptable. If the State District Construction Representative determines the project is acceptable, the State District Construction Representative will sign the DR Form 299 and send it to the State District Engineer for signature. The State District Engineer will forward the form to the State's Local Projects Division Urban Engineer for signing, project closeout and final payment. If the State District Construction Representative determines the project is not acceptable, the State District Construction Representative will notify the City's Project Manager in writing of what needs to be done to bring the project into compliance for acceptability before the State District Construction Representative will sign the DR Form 299 and recommend the project for closeout. The City shall contact the State's District Engineer for State District Construction Representative assignment. It is understood that any construction engineering services furnished by the State will be part of the cost of the project and the State's expenses will be included as costs of the project, as specified in the reimbursement section of this agreement.

SECTION 21. Changes to the City streets which affect the function or operation of the improvement made either during construction or after the project is completed, will require prior approval of the State. Requests for changes during project construction must be made to the State Representative who will then forward it to the Local Projects Division Urban Engineer for final approval.

Upon project completion and final review, the City shall send one set of "As-Built" plans to the State's Local Projects Division Urban Engineer and one set to the State's District Engineer.

SECTION 22. Upon project completion, the City shall maintain the project at its own expense, and agrees to make provisions each year for the maintenance costs involved in properly maintaining this facility. The City shall also be responsible for any required environmental commitments and monitoring after the construction of the project. The City will release and

hold harmless the State and FHWA from any suits brought against the State arising out of the City's construction and maintenance.

SECTION 23. Traffic control during project construction must conform with the Manual on Uniform Traffic Control Devices. Before final acceptance of the project by the State, all signing and marking must be in conformance with the current Manual on Uniform Traffic Control Devices.

SECTION 24. 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 25. 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 participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the City of the City's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- (4) Information and Reports: The City shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to,
 - (a) withholding of payments to the City under this agreement until the City complies, and/or
 - (b) cancellation, termination or suspension of this agreement, in whole or in part.
- (6) Incorporation of Provisions: The City shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The City shall take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including

sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the City may request the State to enter into such litigation to protect the interests of the State, and in addition, the City may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 26. 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 Division Engineer

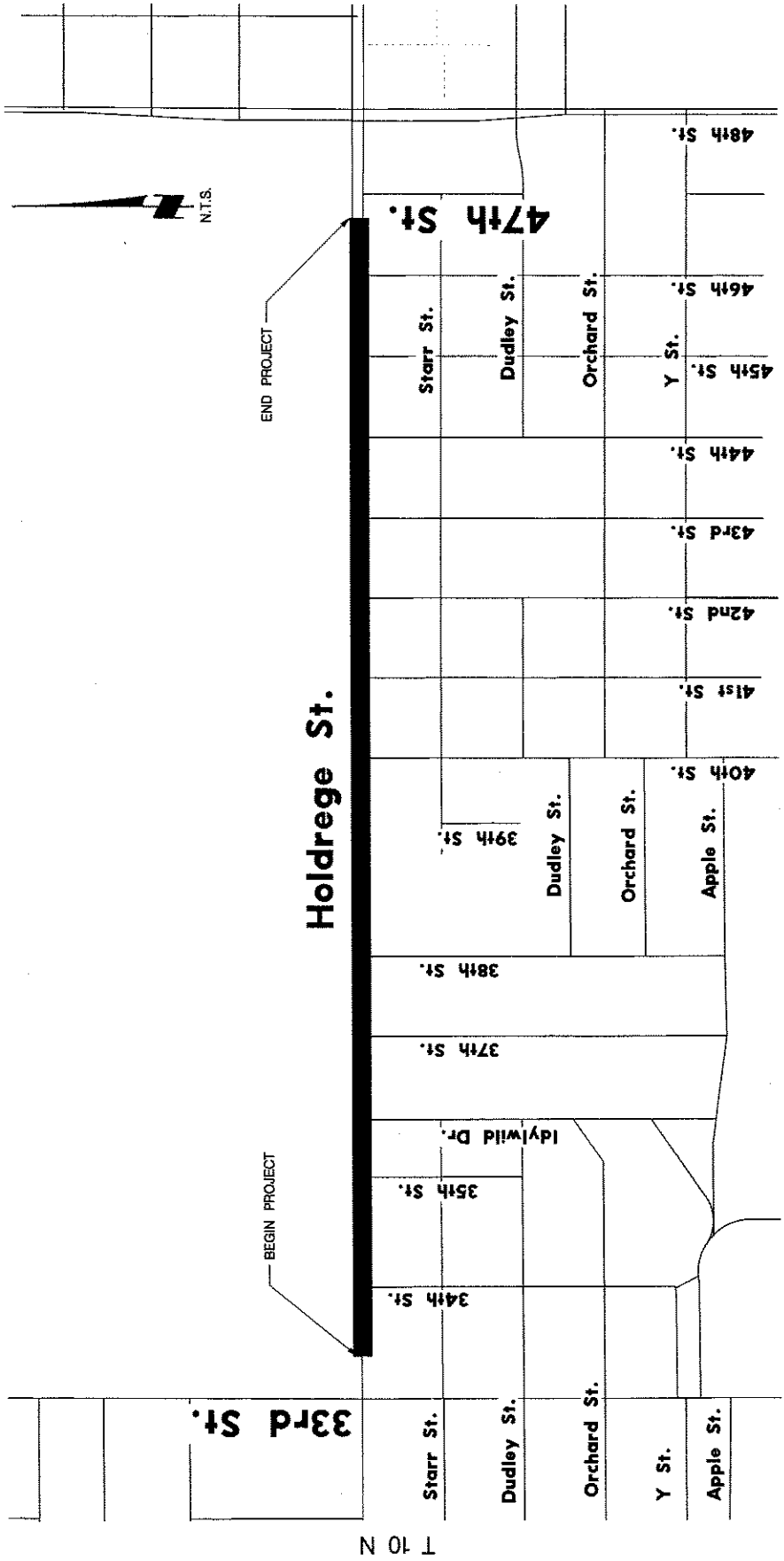
RECOMMENDED:

Rich J. Ruby, P.E.

Chris Beutler *OCF FOR RICH RUBY*
District 1 Engineer

AGR15-ZP

LINCOLN
 LANCASTER COUNTY
 NEBRASKA
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LCLC-5244(7)
 C.N. 13067

EXHIBIT "A"