

AGREEMENT FOR IMPROVEMENTS AND ONGOING MAINTENANCE

This Agreement is made and entered into by and between the City of Lincoln, a municipal corporation (“City”), and County of Lancaster, Nebraska (“County”), both political subdivisions of the State of Nebraska, and shall become effective as of the date on which this Agreement becomes fully executed by both parties hereto.

WHEREAS, County is the owner of property generally located west of North 45th Street and east of Wyuka Cemetery, commonly known as 625 North 46th Street, Lincoln, Nebraska (“Property”) and legally described as follows:

Lot 2, Wyuka 4th Addition, Lincoln, Lancaster County, Nebraska, and that part of Lot 1, Wyuka 8th Addition, Lincoln, Lancaster County, Nebraska, described as follows: Commencing at the northwest corner of Lot 2, Wyuka 4th Addition, said point being on the east line of Lot 1, Wyuka 8th Addition; thence southerly on the west line said Lot 2, S 0°00’00”W 66.90’, to the point of the beginning; thence continuing on said west line for the next three (3) courses, S 0°00’00”W 43.10’; thence S 17°51’45”E 115.14’; thence S 0°00’00”W 9.78’; thence northerly and parallel to said west line for the next two (2) courses, N 17°51’45”W 124.92’; thence N 0°00’00”E 43.57’; thence N 90°00’00”E 3.00’, to the point of the beginning, said tract containing an area of 490.09 square feet of 0.011 acres, more or less.

WHEREAS, City built an inlet structure on the Property in the 1980s prior to County’s ownership of the Property; and deficiencies have recently been discovered on said inlet structure;

WHEREAS, existing easements, agreements, and resolutions are unclear regarding the responsibilities for repairs and maintenance of the inlet structure by County or its predecessors in interest;

WHEREAS, City and County desire to repair the deficiencies in the inlet structure and establish ongoing repair and maintenance obligations for the inlet structure going forward;

NOW THEREFORE, in consideration of the above, and the covenants and conditions contained herein, the parties agree as follows:

1. Improvements to Property. The parties agree that project improvements to repair deficiencies on the inlet structure and to restore the inlet structure to compliance with the requirements set forth in Lincoln Municipal Code, City’s Drainage Criteria Manual, and City’s Design Standards (“Improvements”) shall be constructed and completed on the Property in accordance with the terms and conditions set forth in this Agreement. City will arrange for design of the Improvements. County shall review and approve the final design prior to construction of the Improvements. An aerial map of the Property and location of the inlet structure are attached as Exhibit “A” hereto and incorporated herein by this reference.

2. Construction of Improvements and Cost. City will be the lead and responsible party for constructing the Improvements. The costs for construction of the Improvements shall be paid

by City. City shall use best efforts and complete construction of the Improvements by April 15, 2020. If City determines that additional time is needed to complete the Improvements, City may request from County an extension(s) of time to complete the Improvements, and County shall not unreasonably withhold approval of such request(s). Upon completion of the Improvements by City and acceptance of the Improvements by both City and County, County shall be responsible for perpetual ongoing repair, replacement, and maintenance of the Improvements as provided herein.

3. Indemnification. To the fullest extent permitted by law, County shall release, waive, indemnify, defend and hold harmless City, its officers, agents, contractors, and employees from and against claims, damages, losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance of this Agreement and ongoing maintenance of Improvements that results in any claim for damage, including without limitation, any bodily injury, sickness, disease, death, or damage to tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the acts or omission of the County, its employees, agents, contractors or other duly authorized representatives or designees. Neither party waives its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any activities authorized by this Agreement. This section survives termination of this Agreement.

4. Responsibility of Ongoing Maintenance of the Improvements. County shall be responsible for continued repair, replacement, and maintenance of the Improvements after their completion at its sole expense. City shall have no further obligation to repair, replace, or maintain Improvements. County shall indemnify City as provided in Paragraph 3 above from all further claims related to the Property and the Improvements once accepted by County. County shall also comply with any requirements set forth in Lincoln Municipal Code, the City's Drainage Criteria Manual, and City's Design Standards related to the Improvements, to the extent allowed by law. County hereby grants City, its authorized agents and employees, permission to enter upon the Property and to inspect the Improvements as City deems necessary.

5. Interpretation of Agreement. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended or modified only in writing signed by the parties to this Agreement subsequent to the effective date of this Agreement. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce this Agreement. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

6. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns. This Agreement shall be recorded by City with the Register of Deeds of Lancaster County, Nebraska and shall constitute a covenant running with the land that shall be binding on the parties,

any of their successors in interest, any future owner or owners of the Property, and the parties' respective heirs, devisees, personal representatives, successors and assigns.

7. Authority and Capacity. Each party hereby represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party. Each of the signatories for the parties below represents that he or she is legally capable to sign this Agreement and to lawfully bind each party to this Agreement.

8. No Joint Venture. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the City. The City and the County shall be responsible to their respective employees for all salary and benefits. Neither the City's employees nor the County's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Both parties shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to their respective employees' compensation. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Miki Esposito
Director of Lincoln Transportation & Utilities

DATE: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by Miki Esposito, Director of Public Works & Utilities on behalf of City of Lincoln, Nebraska.

Notary Public

COUNTY OF LANCASTER,
a political subdivision of the State of Nebraska

By: The Board of County Commissioners of Lancaster County, Nebraska

DATE: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____,
2019, by the following:

on behalf of County of Lancaster, Nebraska.

Notary Public

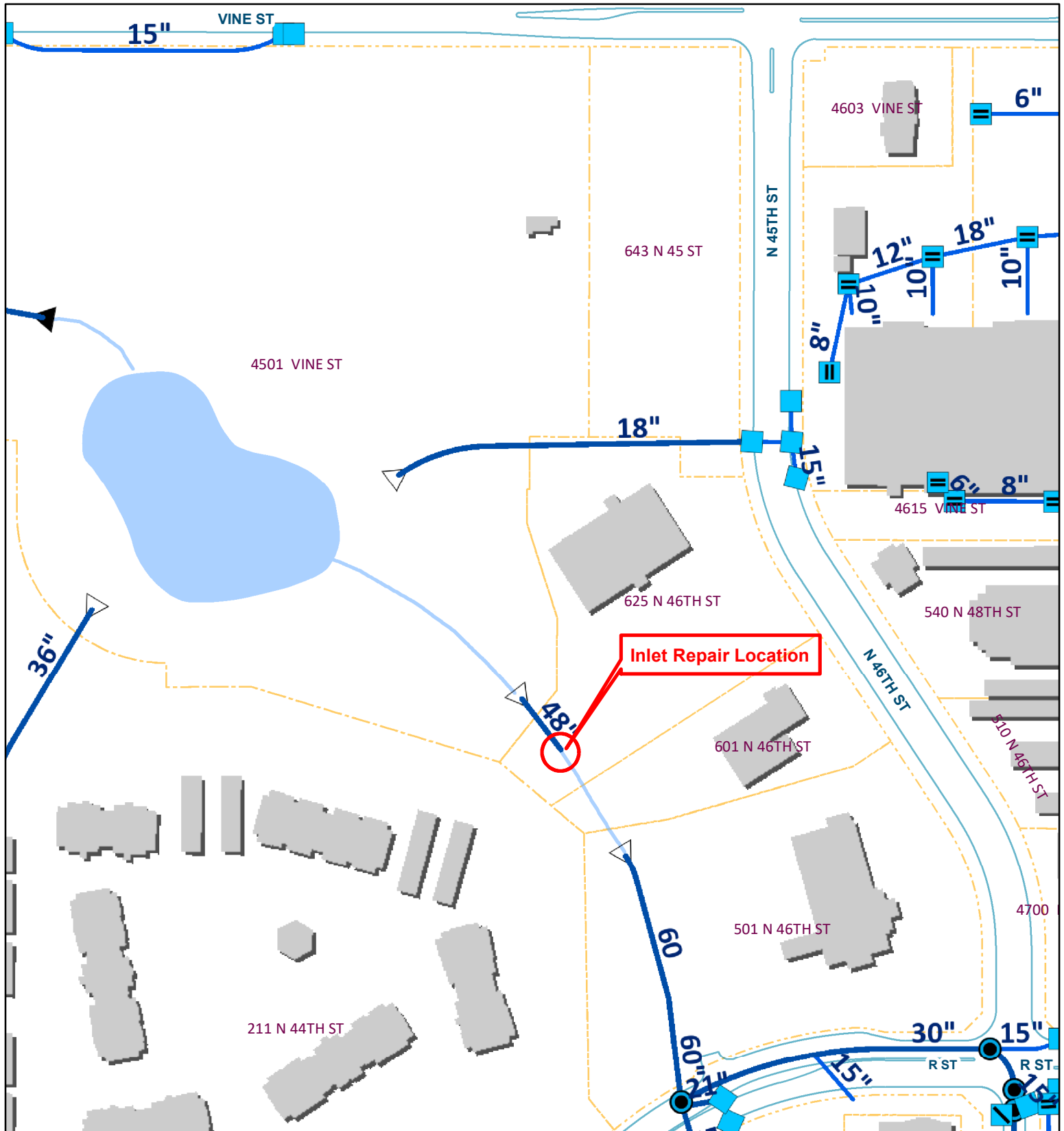


Exhibit A 46th & R St. Inlet Repair Location

