AGREEMENT

CITY OF LINCOLN
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. CM-55(142), STATE CONTROL NO. 11215A
NORTH/SOUTH ROAD FROM "K" to "Q" STREET, LINCOLN (ANTELOPE VALLEY)
NEW 6-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 federal funds by the Department of Transportation, Federal Highway Administration, hereinafter called the FHWA, in compliance with federal laws pertaining thereto, and

WHEREAS, federal funds from FHWA have been made available by Title 23 of the United States Code, providing for improvements on eligible city streets, and

WHEREAS, the actual percent of federal share payable for eligible costs on this project will be determined by the State as funds become available, and

WHEREAS, the 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, Section 115 of Title 23, United States Code allows the use of advance construction on eligible projects, and

WHEREAS, this project is one of the Antelope Valley projects, and now under this agreement will be prepared for letting and let by the City, and

WHEREAS, the design and letting preparation services for this project will be done by the City's Antelope Valley Design Consultant, and

WHEREAS, the City also desires to employ an engineering firm to carry out the construction engineering for this project, and will chose a firm by using the federally approved selection procedures as provided by the State, and

WHEREAS, the City desires this project to be let to contract and constructed in 2008, although sufficient federal funds are not available, and

WHEREAS, the City is prepared to pay 100 percent of the project costs at the time the contract is awarded. The City will request State to supplement the agreement to add federal funding to the project, and

WHEREAS, the City agrees to 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, the regulations further permit the use of funds other than State funds in matching federal funds for the improvements of those city 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, 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 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, Federal Regulations provide that the City shall <u>not</u> profit or otherwise gain from local property assessments that exceed the City's share of project costs, and

WHEREAS, it is the desire of the City that this project, one of the Antelope Valley projects, as shown on attached EXHIBIT "A" be constructed under the designation of Project No. CM-55(142), as evidenced by the Resolution of the City Council dated the _____ day of _____, 2004, attached as EXHIBIT "B" and made a part of this agreement, and

WHEREAS, the total cost of eligible items of this project such as design engineering, R.O.W., nonbetterment utility rehabilitation, construction and construction engineering is estimated to be $18,322,000, and

WHEREAS, the project is described as follows:

On a new alignment, North/South roadway from "K" Street to 95' North of "Q" Street, in Lincoln. Construct new 6-lane divided concrete pavement, grading, culverts and utilities.

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

<u>SECTION 1</u>. The State agrees to present this project to the FHWA for its approval, if necessary.

<u>SECTION 2</u>. 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 $300,000 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 3. The City agrees to perform or cause to be performed a preliminary survey and all necessary plans, specifications and estimates for the proposed work. The City agrees to acquire any or all permits necessary to accomplish the project.

SECTION 4. The City agrees to locate and reference or have located and referenced all section corners, quarter section corners and sub-division lot corners required for construction of the proposed project in accordance with Section 39-1708 et. seq., R.R.S. 1943 as amended.

SECTION 5. The City will be responsible for preparing and executing any railroad agreement or agreements required for this project. The City shall send a copy of the executed railroad agreements to the State prior to advertising the project for bids. Should the railroad agreement include work to be performed by the Railroad as part of the project, which is eligible for reimbursement, the City shall pay the Railroad and bill the State for reimbursement.

SECTION 6. ENVIRONMENTAL RESPONSIBILITY

The City shall be responsible to complete any federally required environmental actions and documents for this project, and get them approved by the State and the FHWA prior to proceeding with appraising and acquiring any right-of-way 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 7. The City agrees to provide the State with current project schedules and progress reports of critical milestones (start date, public meetings/hearings, P.I.H., 100% plans, letting date, construction start and ending date, etc.).

SECTION 8. The City shall design the project according to the current publications of the AASHTO Policy on Geometric Design of Highways and Streets, the Minimum Design Standards of the Board of Public Roads Classifications and Standards, and 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 approved by the State prior to any bid letting by the City. Any deviations from the above publications must be approved by the State.

SECTION 9. The State and City agree that the construction engineering, which is an eligible project expense and which includes construction staking, inspection and field testing, will be accomplished by City forces or a State Certified Consultant selected by the City.

For the construction engineering to be eligible for State or Federal participation, a selection process must be completed. The City's Design Consultant under contract for design services will not be eligible to do construction engineering under their existing contract (VK9506 and supplements), but will be eligible to be considered under the approved FHWA selection process for selection of a consultant for construction engineering services.

The City agrees that it will use the State's boilerplate actual cost agreement for the construction engineering services between the City and its selected Consultant. The City shall execute the engineering agreement with the selected Consultant and must receive approval from the State prior to the City issuing the Consultant a Notice-to-Proceed.

The inspection, sampling and testing of all materials must be done in accordance with the current publications of 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.dor.state.ne.us) or AASHTO or ASTM procedures. The City shall provide adequate quality assurance 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 Representative designated by the State on a part-time basis who will serve to inspect the project and ensure that the City is in compliance with the contract, plans, 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 Representative for further action. If the State Representative determines the project is acceptable, the State Representative will sign the form and send it to the District Engineer for signature. The District Engineer will forward the form to the State's Urban Engineer for signing, project closeout and final payment.

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 Representative will conduct a final review of the project and will determine if the project is acceptable. If the State Representative determines the project is not acceptable, the State 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 Representative will sign the DR 299 and recommend the project for closeout. The City shall contact the State's District Engineer for State Representative assignment. It is understood that any construction engineering services furnished by the State will be considered part of the cost of the project and the State's expenses will be included as costs of the project.

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 Project Representative informed of project start and ending dates and other scheduled construction milestones, project management as required and preparing contractor change orders and supplemental agreements.

SECTION 10. This project design engineering services will be done by the City's Antelope Valley Design Consultant and those services will be paid for under this agreement. The City will issue the Design Consultant a work order for this project under Agreement VK9506, under the original Antelope Valley project STPAA-TMT-5244(3), C.N. 11215, Agreement XL9752.

SECTION 11. The City agrees to 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% plans, specifications, engineers estimate, permits and contract bidding documents) to the 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 or Joint Antelope Valley Authority will sign the construction contract or contracts and the City shall send copies of the signed contract(s), including copies of the awarded final plans package to the State's Urban Engineer, and District Engineer.

SECTION 12. The estimated cost of design engineering, Right-of-Way, utility rehabilitation, railroad, construction and construction engineering is $18,322,000 and the City's share is estimated at 20 percent or $3,664,400. The State agrees to reimburse the City, using Federal Funds, contingent upon availability, for 80 percent of the actual eligible cost of the improvement up to a maximum of $14,657,600 for the project. Should Federal Funds be appropriated to this project with a reimbursement rate of 100 percent, said funds will be utilized with precedence until exhausted. After such time that said funds are exhausted, the reimbursement of remaining eligible costs will be paid at the original 80 percent reimbursement rate (contingent upon availability).

Progress billings to reimburse the City may be submitted by the City no more often than monthly. The State will pay 95 percent of the eligible reimbursement rate of each billing until 95 percent of the City's available federal fund allocation has been reimbursed. The State will reimburse the remaining five percent of that federal funds allocation upon receipt of payments records, State final acceptance and an audit, if deemed necessary. The City shall maintain copies of all payment records for submittal when Federal Funds become available. Final payment of the Federal share will be made after final review and acceptance of the project by the State and a final audit, if deemed necessary, has been performed to verify actual eligible costs. The City agrees to 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 Allocation Funds apportioned or to be apportioned to the City, in an amount equal to the required reimbursement to the State.

Costs incurred by the State with respect to the entire project will be 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 those 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 CRF 31) will be applied to determine the allowability of costs incurred by the City under this agreement.

In the event additional federal funds do not become available, the City will be responsible for 100 percent of the project costs. The State will reimburse the remaining five percent of that federal fund allocation upon receipt of payments records, State final project acceptance and an audit, if deemed necessary.

Final payment will not be made 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.

SECTION 13. The City understands that payment for the costs of this project, whether they be design engineering, Right-of-Way, utilities, railroad, construction and construction engineering, 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 this project, the City is responsible for full project payment with no cost or expense to the State in this project or portion of this project. Should this project be abandoned before completion, the City shall pay all costs incurred by the State prior to such abandonment.

The City shall maintain all books, documents, papers, 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 14. 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 15. The City agrees that it is to receive federal participation for portion(s) of the work on the proposed project. 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 design engineering, acquisition of Right-of-Way, utilities, railroad, construction and construction engineering, etc., according to federal procedures and requirements.

Prior to beginning any phase of work on the proposed project, the City shall contact the Urban Engineer for direction and assistance to ensure that all project work will be accomplished according to federal procedures and requirements.

SECTION 16. If the City performs any part of the work on this project itself, the City agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101, through 48-1126 (Reissue 1998), 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 NONDISCRIMINATION CLAUSES Section of this agreement.

SECTION 17. STATE CONTRACT JAVA PROVISION

The State acknowledges that the City, along with the Board of Regents of the University of Nebraska, a public body corporate and agency of the State of Nebraska and governing body of the University of Nebraska-Lincoln; and the Lower Platte South Natural Resources District, a political subdivision of the State of Nebraska, executed the Joint Antelope Valley Authority Interlocal Agreement, dated April 15, 2000 (as amended) which created the Joint Antelope Valley Authority ("JAVA"); a joint administrative entity created under the Interlocal Cooperation Act (Neb.Rev.Stat. §13-801 to 13-827) to implement the Phase One Priority Projects including the project provided for in this agreement. In addition, the State acknowledges the City may utilize JAVA to perform, in whole or in part, the City's activities and obligations hereunder by separate agreement or otherwise. The City and State agree that for purposes of this agreement, any project related activities completed by JAVA related to the project in this agreement shall be attributed to the City without specific or further approval of the State; provided the City shall not be relieved of any of its obligations under this agreement by virtue of JAVA undertaking any of the activities or obligations hereunder.

SECTION 18. DISADVANTAGED BUSINESS ENTERPRISES

A. Policy

The City agrees to 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 agrees to 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 agrees to 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 19. 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, will 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 Appendixes "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 paragraphs (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 20. Changes to the city street 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 through the District Engineer's office.

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

SECTION 21. Upon project completion, the City shall maintain this project at its own expense, and agrees to make provisions each year for the maintenance costs involved in properly maintaining this facility.

SECTION 22. Any utility rehabilitations or installations made within the Right-of-Way of 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 agrees to 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 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 on the project within the corporate limits of the City will become a project cost. 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 must 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 23. If federal participation is requested in Right-of-Way appraisal or acquisition, the State on behalf of the City, will review appraisals and negotiations for any additional Right-of-Way. The City will be responsible for any eminent domain proceedings required for acquisition of the necessary property. The appropriate procedures as outlined in the current Nebraska Right-of-Way Manual approved by the FHWA must be followed. Regardless of whether or not federal funds are requested for the Right-of-Way, the City agrees to contact the State prior to beginning any Right-of-Way activity in order that the State may advise the City of the required Right-of-Way functions and procedures. It is understood that any Right-of-Way 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 this agreement.

SECTION 24. The City agrees, at no cost to the project, to clear the present Right-of-Way on this project of all advertising signs. The City also agrees, at no cost to the project, to 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 to keep the old and new Right-of-Way free of future encroachments, except those authorized by permit.

SECTION 25. The City agrees, and 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 the FHWA.

SECTION 26. In the event that Relocation Assistance (financial aid to those persons relocated due to the road improvement) as defined in Public Law 91-646 (42 U.S.C. 4601) as amended, 49 CFR 24, and Neb.Rev.Stat. §76-1214 through 76-1238 (Reissue 1996), is required for this improvement, the City shall enter into an appropriate agreement with the State in order that the State may perform the necessary and required relocation assistance functions. All relocation assistance services furnished by the State in this connection will be part of the cost of the project and the State's expenses will be deducted from the federal monies received prior to reimbursement to the City.

SECTION 27. Traffic control during project construction must conform with the Manual on Uniform Traffic Control Devices (MUTCD). Before final acceptance of the project by the State, all project signing and marking must be in conformance with the current edition of the Manual on Uniform Traffic Control Devices.

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 _____, 2004.

WITNESS:
Joan E. Ross

CITY OF LINCOLN
Coleen Seng

_____
City Clerk

_____
Mayor

EXECUTED by the State this _____ day of _____, 2004.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Eldon D. Poppe, P.E.

_____
Roadway Design Engineer

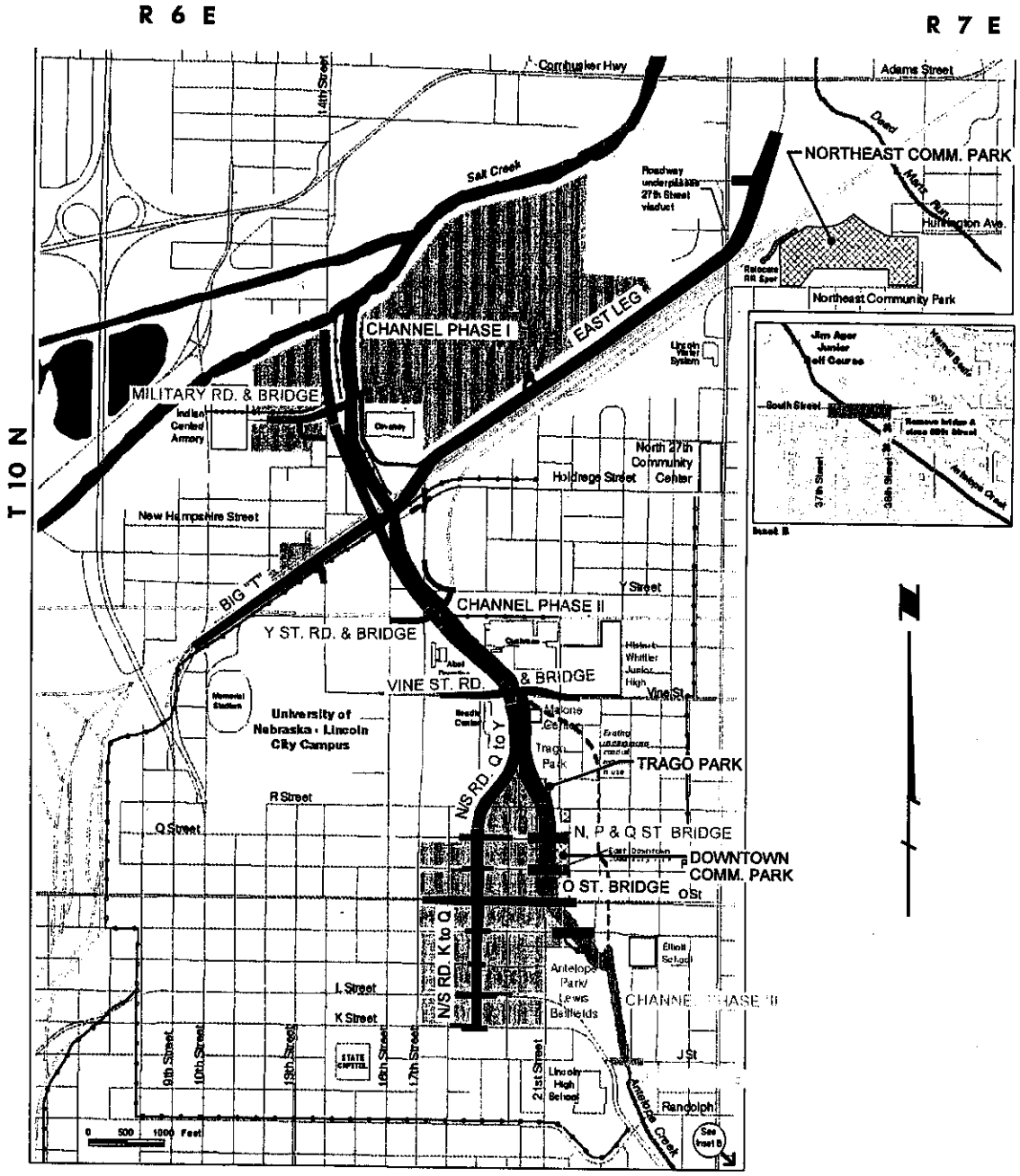
RECOMMENDED:
Richard J. Ruby, P.E.

Richard J. Ruby
District 1 Engineer

AGR10-ZL

LINCOLN

LANCASTER COUNTY
NEBRASKA



CM-55(142)

C.N. 11215A

EXHIBIT "A"