



20R-279
4a

Introduce: 7-27-20

RESOLUTION A- 92230

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 WHEREAS, the Hub Hall Heights Conditional Annexation and Zoning Agreement was
3 approved on June 9, 2003 as City Council Resolution No. A-82137 and Amendment No. 1 to the
4 Hub Hall Heights Conditional Annexation and Zoning Agreement was approved on March 20,
5 2017 as City Council Resolution No. A-90328 to develop property located at the northeast corner
6 of Northwest 48th and West Holdrege Streets.

7 WHEREAS, Amendment No. 2, attached hereto as Attachment "A", to the Hub Hall
8 Heights Conditional Annexation and Zoning Agreement between the City of Lincoln and Apples
9 Way, LLC, to reflect changes in the scope and financial obligations of the parties related to the
10 road improvements to be constructed on west Holdrege Street between Northwest 48th Street and
11 the future Northwest Chitwood Lane, is hereby approved and the Mayor is authorized to execute
12 Amendment No. 2 on behalf of the City.

13 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this
14 Agreement to Tim Sieh, Assistant City Attorney, for distribution to the Property Owners.

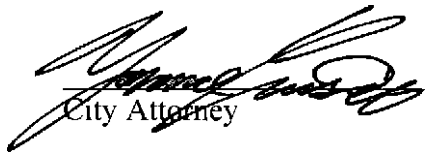
15 BE IT FURTHER RESOLVED that the City Clerk is directed to record Amendment No.
16 2 to the Hub Hall Heights Conditional Annexation and Zoning Agreement with the Register of
17 Deeds for Lancaster County, Nebraska to be indexed against the properties listed in the Hub Hal
18 Heights Conditional Annexation and Zoning Agreement, filing fees to be paid by the Apples Way,
19 LLC.

20 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
21 Agreement to Michaela Dugan, Impact Fee Administrator.

AMENDED 8/3/20

See further Council
Proceedings on next page.


Approved as to Form & Legality:


City Attorney

Introduced by:



AYES: Bowers, Christensen, Meginnis,
Raybould, Shobe, Ward, Washington; NAYS:
None.

Approved this 11 day of July, 2020:

Mayor

ADOPTED

AUG 03 2020

BY CITY COUNCIL

20R-79

8/3/2020 Council Proceedings:

RAYBOULD Moved to Amend Bill No. 20R-79 to adopt a substitute Agreement attached hereto.

 Seconded by Christensen & carried by the following vote: AYES: Bowers, Christensen, Meginnis, Raybould, Shobe, Ward, Washington; NAYS: None.

**AMENDMENT NO. 2 TO THE
HUB HALL HEIGHTS
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 2 to the Hub Hall Heights Conditional Annexation and Zoning Agreement (“Amendment No. 2”) is made and entered into this 3 day of AUGUST, 2020, by and between Apples Way LLC, a Nebraska limited liability company (“Owner”), successor in interest to Highway 15 Inc., a Nebraska corporation, Hub Hall, an individual, Charles Gary Gately, and JLI West Inc., a Nebraska corporation (collectively “Prior Owner”), and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as “City”.

RECITALS

A. Prior Owner and the City entered into the Hub Hall Heights Conditional Annexation and Zoning Agreement (“Original Agreement”) dated June 2, 2003 and subsequently Amendment No. 1 to the Hub Hall Heights Conditional Annexation and Zoning Agreement (“Amendment No. 1”) dated March 15, 2017. Combined, the Original Agreement and Amendment No. 1 provided for the City to annex approximately 142 acres of land generally located northeast of the intersection of NW 48th Street and W. Holdrege Street and to rezone the property from AG Agricultural District to R-3 Residential District. The affected land was then to be developed under the Hub Hall Heights Preliminary Plat and the Hub Hall Heights Community Unit Plan.

B. The Original Agreement and Amendment No. 1 further required the Prior Owner to make certain contributions to the cost of paving W. Holdrege Street east of NW 48th Street to NW Chitwood Lane. In addition, the Prior Owner agreed that no curb cuts would be allowed along this stretch of W. Holdrege Street for the purpose of taking direct access from a buildable lot to W. Holdrege Street and that direct access to this section of W. Holdrege Street would be relinquished as part of any final plat for property abutting W. Holdrege Street.

C. As part of Amendment No. 1, JLI agreed to construct improvements to W. Holdrege Street from NW 48th Street to NW Chitwood Lane at its own cost and expense, subject to reimbursement from Arterial Street Impact Fees generated from development of the Property. Said improvements to W. Holdrege Street included grading, paving a two lane section of roadway with a four (4) foot wide grass or concrete median centered on the ultimate four lane alignment east from NW 48th Street, constructing a small standard roundabout at the intersection of W. Holdrege Street and NW Chitwood Lane, and swales in lieu of underground storm sewer facilities. Further, JLI agreed to construct a paved transition east out of the roundabout to the remaining gravel section of W. Holdrege Street.

D. In addition to construction this section of W. Holdrege Street, JLI agreed to dedicate W. Holdrege Street right-of-way to its ultimate width and to establish and maintain a 20-foot wide landscaped outlot adjacent to W. Holdrege Street and to take necessary steps to control dust generated by vehicles travelling along the remaining gravel portion of W. Holdrege Street adjacent

to Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development.

E. Owner has requested the City to Amend the Original Agreement, as previously amended by Amendment No. 1, to allow Owner construct the W. Holdrege Street Improvements, as shown in Attachment A, which is attached and incorporated by reference, at its cost and expense subject to reimbursement by the City from Arterial Street Impact Fees generated by development of the property within the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development and sales tax funds generated by the City of Lincoln ¼ cent sales tax approved for the purpose of rehabilitating and improving the City's road infrastructure.

F. The City is willing to amend the Original Agreement, as previously amended by Amendment No. 1, as requested subject to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and conditions stated below, the parties agree that the Original Agreement, as amended by Amendment No. 1, be amended as follows:

1. That Recitals A through G stated in Amendment No. 1 be deleted in their entirety.
2. That the paragraph 6 incorporated into the Agreement by Amendment No. 1 be deleted and restated as follows;

6. Construction of West Holdrege Street.

A. NW 48th Street to NW Chitwood Lane. Owner agrees at its own cost and expense, subject to reimbursement as provided below, to design, grade, and construct the following improvements to West Holdrege Street from NW 48th Street to NW Chitwood Lane through the City's Executive Order Construction Process. Owner agrees and acknowledges that the grading and construction of W. Holdrege Street shall be publicly bid through the City's Purchasing Division, and the contract shall be awarded to the lowest responsible bidder.

1. Grade West Holdrege Street as shown on the site plan for the Hub Hall Heights Commercial Center Planned Unit Development. Owner agrees and acknowledges that this will require acquisition of a permanent grading and fill easement from the Owner of real property adjacent to the south side of this section of W. Holdrege Street, and Owner agrees to convey the necessary easements to the City in order to facilitate construction of West Holdrege Street as described herein.

2. Construct West Holdrege Street from NW 48th Street east through the intersection with NW Chitwood Lane as shown on Attachment A. Specifically, this shall include a two lane roadway separated by a six feet wide concrete median, a roundabout at the intersection of W. Holdrege and NW Chitwood Lane, a paved transition from the roundabout to the remaining gravel section of W. Holdrege Street, and westbound left and right turn lanes at the intersection of W. Holdrege and NW 48th Streets.

B. W. Holdrege Street Right-of-Way. The City acknowledges that the foregoing improvements do not require Owner to dedicate or convey additional right-of-way on the north side of W. Holdrege Street. Owner acknowledges and agrees that there will be no driveway curb cuts onto W. Holdrege Street in this section of W. Holdrege Street. Owner further agrees to relinquish direct access to this section of W. Holdrege Street in any final plat abutting W. Holdrege Street. Owner acknowledges and agrees to dedicate all easements necessary over Owner's Property in order to facilitate the construction of a City trail along the north side of this section of W. Holdrege Street in order to match the grading plan.

C. Procurement of Construction Contractor. The parties hereto agree and acknowledge that the estimated cost to design, grade, and construct the improvements to W. Holdrege Street described herein are One Million Three Hundred Seventy-Two Thousand Three Hundred Sixty-seven and 80/100 Dollars (\$1,372,367.80). As a result of the City agreeing to reimburse Owner for the costs to design, grade, and construct this section of W. Holdrege as described herein, Owner shall procure a contractor(s) to grade and construct said improvements by public bids through the City's Purchasing Division and shall select the lowest responsible bidder identified through that process. Owner, by agreeing to design and construct said improvements at its cost, reserves the right to reject all bids for the design and construction of the West Holdrege Street Improvements if said costs exceed the estimate provided herein. In the alternative, the Owner and City agree to jointly consider alterations to the design in order to achieve cost savings necessary to reduce the costs of said project to an amount consistent with the above estimate. The ultimate approval of any such alterations shall be in the discretion of the Director of the Department of Transportation and Utilities of the City of Lincoln.

D. Reimbursement.

1. **Directed Impact Fees.** Owner acknowledges and agrees that the City does not have sufficient funds on hand to design, grade and construct the West Holdrege Street improvement commencing in 2020 and that funding for the total estimated cost said improvements includes an estimated \$300,000 in anticipated arterial street impact fees to be generated by private development of the Owner's property in addition to the approximately \$275,000 in arterial street impact fees already collected from the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development. Owners agrees to complete the design, grading, and construction for the improvements to W. Holdrege Street described herein at its cost subject to reimbursement according to the terms described below. Said contribution shall be made in advance of the City advertising for bids for the grading and/or construction of the improvements to W. Holdrege Street. The City agrees to direct the arterial street impact fees it has on hand, together with arterial street impact fees collected in the future from the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development toward the design, grading, and construction of the improvements to W. Holdrege Street toward reimbursing Owner for actual costs incurred in completing said improvements upon being provided sufficient documentation to support a finding that the improvements have been satisfactorily

completed and the costs presented, were actually incurred by Owner specifically for said improvements.

2. **Sales Tax Revenue.** The City approved the imposition of an additional ¼ cent sales tax to be used for restoring, rehabilitating, and expanding the City’s street infrastructure. Having imposed such a tax, the City Council has subsequently identified the improvements to W. Holdrege Street described herein as a project toward which a portion of the additional sales tax revenue generated by the additional ¼ cent sales tax should be allocated.

Therefore, in addition to the arterial street impact fees generated by the development of the Property, the City, subject to future appropriation by the City Council, hereby agrees to allocate Eight Hundred Thousand and No/100 Dollars (\$800,000.00) from the revenue generated by the additional ¼ cent sales tax for the design and construction of the improvements to W. Holdrege Street between NW 48th Street and NW Chitwood Lane and further agrees that said funds shall be applied, subject to appropriation by the City Council, toward reimbursing Owner for the actual costs of designing and constructing the improvements in W. Holdrege Street described herein. Said sales tax revenue shall be paid to Owner according to the following schedule:

FY2020-2021	\$300,000.00
FY2021-2022	\$300,000.00
FY2022-2023	\$200,000.00

Like the arterial street impact fee payments described above, the sales tax revenue shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years.

Owner expressly acknowledges and agrees that nothing in this Agreement represents a general obligation on the part of the City to repay Owner for the cost of designing and constructing of the improvements to W. Holdrege Street. Likewise, the Owner recognizes that the schedule of repayment shown above is based on projected sales tax receipts and acknowledge that said projections may prove to be incorrect thereby resulting in less revenue being realized by the City from this source. The City, in its sole discretion, will determine how the funds actually received in the Fiscal Years described above are distributed.

E. Design Consultant. The City agrees that The Clark Enersen Partners Inc. (“**Clark Enersen**”) has completed substantial design work and possesses substantial experience with the requirements of the improvements to W. Holdrege Street described herein. The City agrees that Clark Enersen is qualified to perform the design services for the improvements to W. Holdrege Street. Further, the City acknowledges that selecting a different design consultant would result in duplication of work, be an inefficient use of resources, and may cause unnecessary delay and cost in constructing the improvements to W. Holdrege Street. Therefore, the parties agree that Clark Enersen will be engaged as the design consultant responsible for preparing the design and construction documents for the improvements to W. Holdrege Street.


3. The remaining portion of Lot 3, Junes Place Addition, as well as Lots 40 and 66 I.T. located in Section 19, Township 10, Range 6 east of the 6th P.M., all in Lancaster County, Nebraska shall be added to the arterial street impact fee reimbursement area for the Agreement. Said property is shown on Attachment B, which is attached hereto and incorporated herein by this reference.

4. All other terms and conditions of the Original Agreement, as amended by Amendment No. 1, shall remain in full force and effect except as specifically amended hereby.

Executed by Owner this 3 day of AUGUST, 2020.

APPLES WAY LLC

A Nebraska limited liability company

By: 
Name, Managing Member

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 3 day of AUGUST, 2020 by Connie L. McCombs, Managing Member of Apples Way LLC, a Nebraska limited liability company, on behalf of the limited liability company.



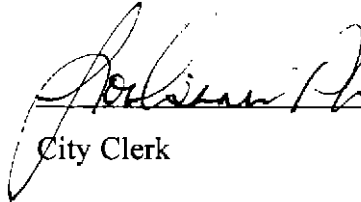

Notary

Executed by City this 11th day of August, 2020.

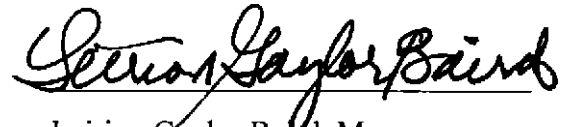
ATTEST:

CITY OF LINCOLN, NEBRASKA

A municipal corporation


City Clerk

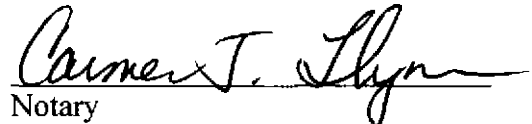



Leirion Gaylor Baird, Mayor

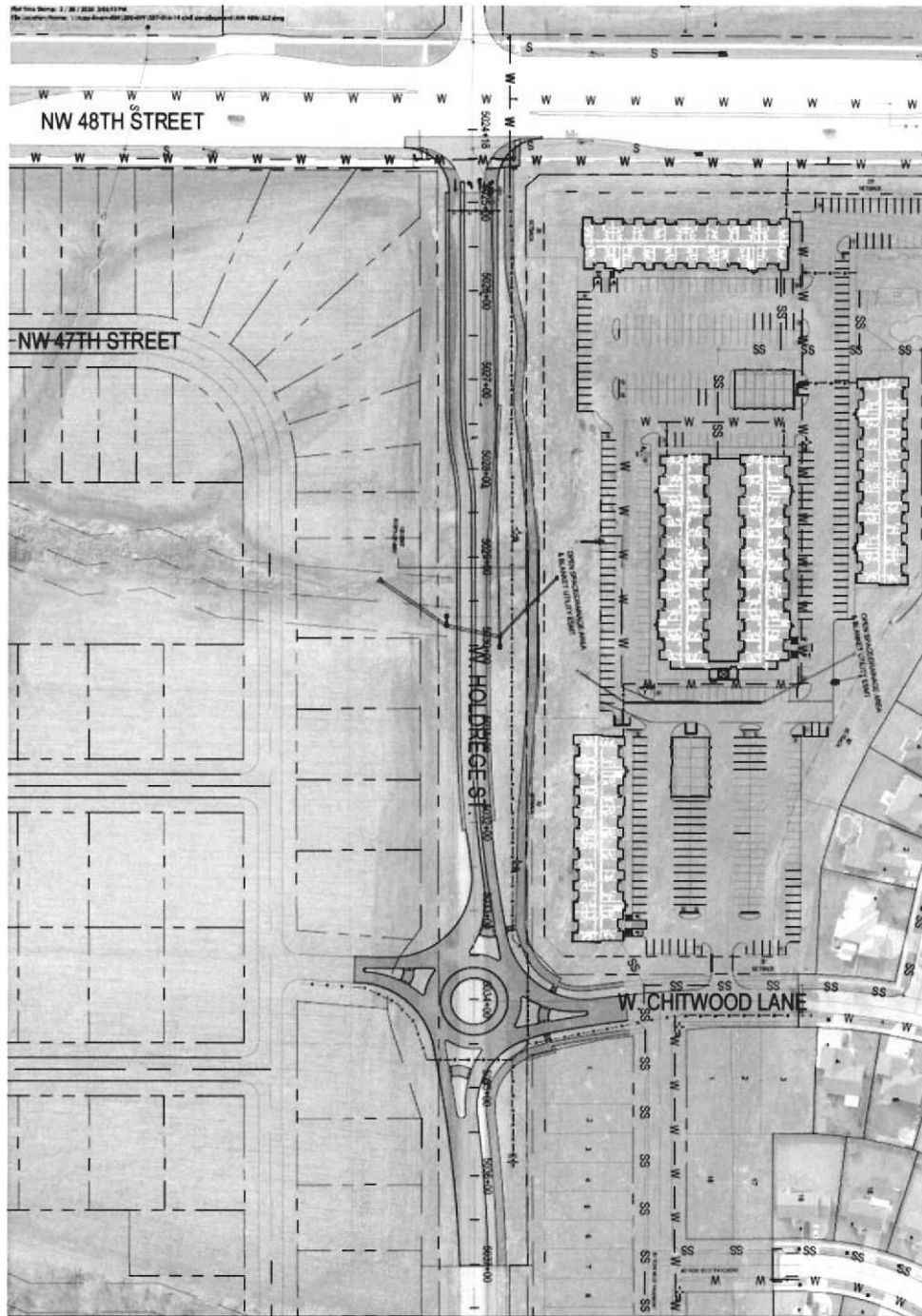
STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 11th day of August, 2020 by Leirion Gaylor Baird, Mayor of the City of Lincoln, a municipal corporation, on behalf of the City.




Notary

ATTACHMENT "A"



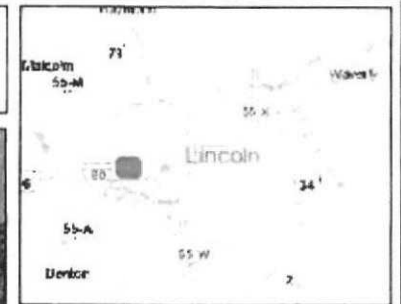
SITE LAYOUT
 SCALE: 1" = 100'
 NW 48th Street
 NW 47th Street
 NW 46th & West Vire
 Lincoln, NE
 TCEP No.: 007-2016-14

The Clork
 Emerson
 Partners



Development Viewer

CITY OF LINCOLN - LANCASTER COUNTY, NE



Legend

- Address Labels
- Park Boundaries
- Park Labels
- Parcels_Aerial

Attachment "B"

= area added to impact fee reimbursement area

Notes

0.3 0 0.14 0.3 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere

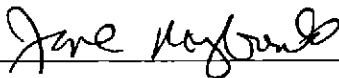
DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email plan@lincoln.ne.gov and you will be directed to the appropriate department.

20R-279

MOTION TO AMEND NO. 1

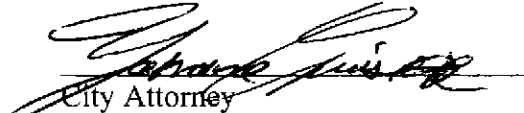
I hereby move to amend Bill No. 20R-279 to adopt a substitute Agreement attached hereto.

Introduced by:



AYES: Bowers, Christensen, Meginnis,
Raybould, Shobe, Ward, Washington; NAYS:
None.

Approved as to Form and Legality:


City Attorney

Requested by: Law Department

Reason for Request: To add new estimate for Holdrege Street improvements from \$1,228,000 to \$1,372,367.80 and to include Attachment B, which was previously omitted by mistake.

ADOPTED

AUG 03 2020

BY CITY COUNCIL

**AMENDMENT NO. 2 TO THE
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B. The Original Agreement and Amendment No. 1 further required the Prior Owner to make certain contributions to the cost of paving W. Holdrege Street east of NW 48th Street to NW Chitwood Lane. In addition, the Prior Owner agreed that no curb cuts would be allowed along this stretch of W. Holdrege Street for the purpose of taking direct access from a buildable lot to W. Holdrege Street and that direct access to this section of W. Holdrege Street would be relinquished as part of any final plat for property abutting W. Holdrege Street.

C. As part of Amendment No. 1, JLI agreed to construct improvements to W. Holdrege Street from NW 48th Street to NW Chitwood Lane at its own cost and expense, subject to reimbursement from Arterial Street Impact Fees generated from development of the Property. Said improvements to W. Holdrege Street included grading, paving a two lane section of roadway with a four (4) foot wide grass or concrete median centered on the ultimate four lane alignment east from NW 48th Street, constructing a small standard roundabout at the intersection of W. Holdrege Street and NW Chitwood Lane, and swales in lieu of underground storm sewer facilities. Further, JLI agreed to construct a paved transition east out of the roundabout to the remaining gravel section of W. Holdrege Street.

D. In addition to construction this section of W. Holdrege Street, JLI agreed to dedicate W. Holdrege Street right-of-way to its ultimate width and to establish and maintain a 20-foot wide landscaped outlot adjacent to W. Holdrege Street and to take necessary steps to control dust generated by vehicles travelling along the remaining gravel portion of W. Holdrege Street adjacent

to Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development.

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F. The City is willing to amend the Original Agreement, as previously amended by Amendment No. 1, as requested subject to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and conditions stated below, the parties agree that the Original Agreement, as amended by Amendment No. 1, be amended as follows:

1. That Recitals A through G stated in Amendment No. 1 be deleted in their entirety.
2. That the paragraph 6 incorporated into the Agreement by Amendment No. 1 be deleted and restated as follows;

6. Construction of West Holdrege Street.

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2. Construct West Holdrege Street from NW 48th Street east through the intersection with NW Chitwood Lane as shown on Attachment A. Specifically, this shall include a two lane roadway separated by a six feet wide concrete median, a roundabout at the intersection of W. Holdrege and NW Chitwood Lane, a paved transition from the roundabout to the remaining gravel section of W. Holdrege Street, and westbound left and right turn lanes at the intersection of W. Holdrege and NW 48th Streets.

B. W. Holdrege Street Right-of-Way. The City acknowledges that the foregoing improvements do not require Owner to dedicate or convey additional right-of-way on the north side of W. Holdrege Street. Owner acknowledges and agrees that there will be no driveway curb cuts onto W. Holdrege Street in this section of W. Holdrege Street. Owner further agrees to relinquish direct access to this section of W. Holdrege Street in any final plat abutting W. Holdrege Street. Owner acknowledges and agrees to dedicate all easements necessary over Owner's Property in order to facilitate the construction of a City trail along the north side of this section of W. Holdrege Street in order to match the grading plan.

C. Procurement of Construction Contractor. The parties hereto agree and acknowledge that the estimated cost to design, grade, and construct the improvements to W. Holdrege Street described herein are ~~One Million Two Hundred Twenty Eight Thousand~~ One Million Three Hundred Seventy-Two Thousand Three Hundred Sixty-seven and ~~No~~ 80/100 Dollars (\$1,228,000.00, 1,372,367.80). As a result of the City agreeing to reimburse Owner for the costs to design, grade, and construct this section of W. Holdrege as described herein, Owner shall procure a contractor(s) to grade and construct said improvements by public bids through the City's Purchasing Division and shall select the lowest responsible bidder identified through that process. Owner, by agreeing to design and construct said improvements at its cost, reserves the right to reject all bids for the design and construction of the West Holdrege Street Improvements if said costs exceed the estimate provided herein. In the alternative, the Owner and City agree to jointly consider alterations to the design in order to achieve cost savings necessary to reduce the costs of said project to an amount consistent with the above estimate. The ultimate approval of any such alterations shall be in the discretion of the Director of the Department of Transportation and Utilities of the City of Lincoln.

D. Reimbursement.

1. **Directed Impact Fees.** Owner acknowledges and agrees that the City does not have sufficient funds on hand to design, grade and construct the West Holdrege Street improvement commencing in 2020 and that funding for the total estimated cost said improvements includes an estimated \$300,000 in anticipated arterial street impact fees to be generated by private development of the Owner's property in addition to the approximately \$275,000 in arterial street impact fees already collected from the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development. Owners agrees to complete the design, grading, and construction for the improvements to W. Holdrege Street described herein at its cost subject to reimbursement according to the terms described below. Said contribution shall be made in advance of the City advertising for bids for the grading and/or construction of the improvements to W. Holdrege Street. The City agrees to direct the arterial street impact fees it has on hand, together with arterial street impact fees collected in the future from the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development toward the design, grading, and construction of the improvements to W. Holdrege Street toward reimbursing Owner for actual costs incurred in completing said improvements upon being provided sufficient

documentation to support a finding that the improvements have been satisfactorily completed and the costs presented, were actually incurred by Owner specifically for said improvements.

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FY2020-2021	\$300,000.00
FY2021-2022	\$300,000.00
FY2022-2023	\$200,000.00

Like the arterial street impact fee payments described above, the sales tax revenue shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years.

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design consultant responsible for preparing the design and construction documents for the improvements to W. Holdrege Street.

3. The remaining portion of Lot 3, Junes Place Addition, as well as Lots 40 and 66 I.T. located in Section 19, Township 10, Range 6 east of the 6th P.M., all in Lancaster County, Nebraska shall be added to the arterial street impact fee reimbursement area for the Agreement. Said property is shown on Attachment B, which is attached hereto and incorporated herein by this reference.

4. All other terms and conditions of the Original Agreement, as amended by Amendment No. 1, shall remain in full force and effect except as specifically amended hereby.

Executed by Owner this ____ day of _____, 2020.

APPLES WAY LLC

A Nebraska limited liability company

By: _____

Name, Managing Member

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by _____, Managing Member of Apples Way LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary

Executed by City this _____ day of _____, 2020.

ATTEST:

CITY OF LINCOLN, NEBRASKA

A municipal corporation

City Clerk

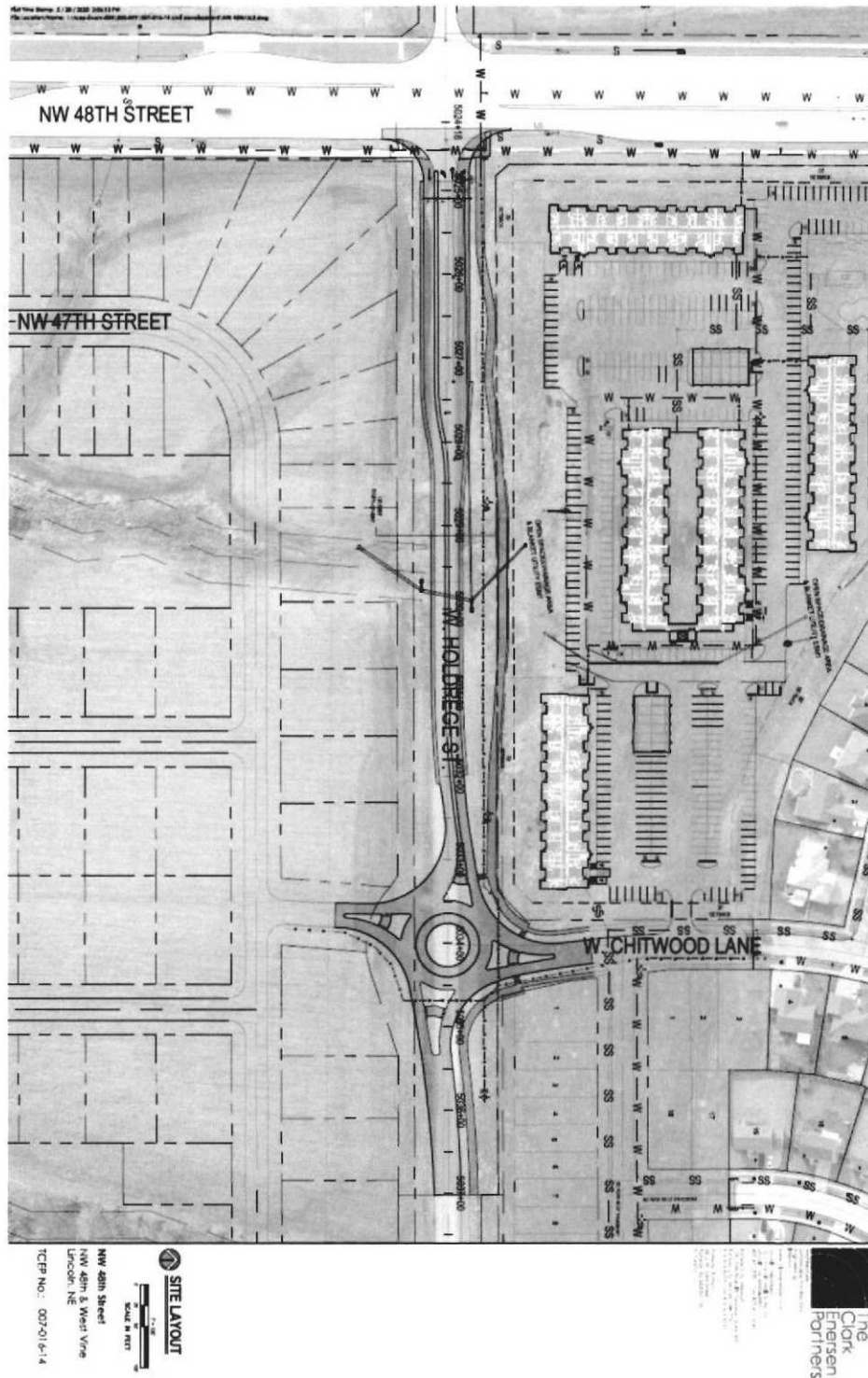
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by Leirion Gaylor Baird, Mayor of the City of Lincoln, a municipal corporation, on behalf of the City.

Notary

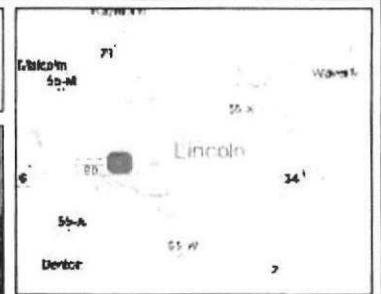
ATTACHMENT "A"





Development Viewer


CITY OF LINCOLN - LANCASTER COUNTY, NE



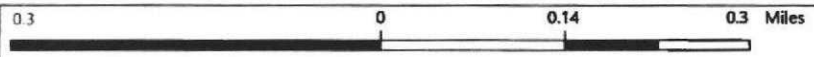
Legend

- Address Labels
- Park Boundaries
- Park Labels
- Parcels_Aerial

Attachment "B"

 = area added to impact fee reimbursement area

1: 9,028 



WGS_1984_Web_Mercator_Auxiliary_Sphere

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email plan@lincoln.ne.gov and you will be directed to the appropriate department.

Notes

VOID

AMENDMENT NO. 2 TO THE HUB HALL HEIGHTS CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Amendment No. 2 to the Hub Hall Heights Conditional Annexation and Zoning Agreement ("Amendment No. 2") is made and entered into this ____ day of _____, 2020, by and between Apples Way LLC, a Nebraska limited liability company ("Owner"), successor in interest to Highway 15 Inc., a Nebraska corporation, Hub Hall, an individual, Charles Gary Gately, and JLI West Inc., a Nebraska corporation (collectively "Prior Owner"), and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as "City".

RECITALS

A. Prior Owner and the City entered into the Hub Hall Heights Conditional Annexation and Zoning Agreement ("Original Agreement") dated June 2, 2003 and subsequently Amendment No. 1 to the Hub Hall Heights Conditional Annexation and Zoning Agreement ("Amendment No. 1") dated March 15, 2017. Combined, the Original Agreement and Amendment No. 1 provided for the City to annex approximately 142 acres of land generally located northeast of the intersection of NW 48th Street and W. Holdrege Street and to rezone the property from AG Agricultural District to R-3 Residential District. The affected land was then to be developed under the Hub Hall Heights Preliminary Plat and the Hub Hall Heights Community Unit Plan.

B. The Original Agreement and Amendment No. 1 further required the Prior Owner to make certain contributions to the cost of paving W. Holdrege Street east of NW 48th Street to NW Chitwood Lane. In addition, the Prior Owner agreed that no curb cuts would be allowed along this stretch of W. Holdrege Street for the purpose of taking direct access from a buildable lot to W. Holdrege Street and that direct access to this section of W. Holdrege Street would be relinquished as part of any final plat for property abutting W. Holdrege Street.

C. As part of Amendment No. 1, JLI agreed to construct improvements to W. Holdrege Street from NW 48th Street to NW Chitwood Lane at its own cost and expense, subject to reimbursement from Arterial Street Impact Fees generated from development of the Property. Said improvements to W. Holdrege Street included grading, paving a two lane section of roadway with a four (4) foot wide grass or concrete median centered on the ultimate four lane alignment east from NW 48th Street, constructing a small standard roundabout at the intersection of W. Holdrege Street and NW Chitwood Lane, and swales in lieu of underground storm sewer facilities. Further, JLI agreed to construct a paved transition east out of the roundabout to the remaining gravel section of W. Holdrege Street.

D. In addition to construction this section of W. Holdrege Street, JLI agreed to dedicate W. Holdrege Street right-of-way to its ultimate width and to establish and maintain a 20-foot wide landscaped outlot adjacent to W. Holdrege Street and to take necessary steps to control dust generated by vehicles travelling along the remaining gravel portion of W. Holdrege Street adjacent

to Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development.

E. Owner has requested the City to Amend the Original Agreement, as previously amended by Amendment No. 1, to allow Owner construct the W. Holdrege Street Improvements, as shown in Attachment A, which is attached and incorporated by reference, at its cost and expense subject to reimbursement by the City from Arterial Street Impact Fees generated by development of the property within the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development and sales tax funds generated by the City of Lincoln ¼ cent sales tax approved for the purpose of rehabilitating and improving the City's road infrastructure.

F. The City is willing to amend the Original Agreement, as previously amended by Amendment No. 1, as requested subject to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and conditions stated below, the parties agree that the Original Agreement, as amended by Amendment No. 1, be amended as follows:

1. That Recitals A through G stated in Amendment No. 1 be deleted in their entirety.
2. That the paragraph 6 incorporated into the Agreement by Amendment No. 1 be deleted and restated as follows;

6. Construction of West Holdrege Street.

A. NW 48th Street to NW Chitwood Lane. Owner agrees at its own cost and expense, subject to reimbursement as provided below, to design, grade, and construct the following improvements to West Holdrege Street from NW 48th Street to NW Chitwood Lane through the City's Executive Order Construction Process. Owner agrees and acknowledges that the grading and construction of W. Holdrege Street shall be publicly bid through the City's Purchasing Division, and the contract shall be awarded to the lowest responsible bidder.

1. Grade West Holdrege Street as shown on the site plan for the Hub Hall Heights Commercial Center Planned Unit Development. Owner agrees and acknowledges that this will require acquisition of a permanent grading and fill easement from the Owner of real property adjacent to the south side of this section of W. Holdrege Street, and Owner agrees to convey the necessary easements to the City in order to facilitate construction of West Holdrege Street as described herein.

2. Construct West Holdrege Street from NW 48th Street east through the intersection with NW Chitwood Lane as shown on Attachment A. Specifically, this shall include a two lane roadway separated by a six feet wide concrete median, a roundabout at the intersection of W. Holdrege and NW Chitwood Lane, a paved transition from the roundabout to the remaining gravel section of W. Holdrege Street, and westbound left and right turn lanes at the intersection of W. Holdrege and NW 48th Streets.

B. W. Holdrege Street Right-of-Way. The City acknowledges that the foregoing improvements do not require Owner to dedicate or convey additional right-of-way on the north side of W. Holdrege Street. Owner acknowledges and agrees that there will be no driveway curb cuts onto W. Holdrege Street in this section of W. Holdrege Street. Owner further agrees to relinquish direct access to this section of W. Holdrege Street in any final plat abutting W. Holdrege Street. Owner acknowledges and agrees to dedicate all easements necessary over Owner's Property in order to facilitate the construction of a City trail along the north side of this section of W. Holdrege Street in order to match the grading plan.

C. Procurement of Construction Contractor. The parties hereto agree and acknowledge that the estimated cost to design, grade, and construct the improvements to W. Holdrege Street described herein are One Million Two Hundred Twenty-Eight Thousand and No/100 Dollars (\$1,228,000.00). As a result of the City agreeing to reimburse Owner for the costs to design, grade, and construct this section of W. Holdrege as described herein, Owner shall procure a contractor(s) to grade and construct said improvements by public bids through the City's Purchasing Division and shall select the lowest responsible bidder identified through that process. Owner, by agreeing to design and construct said improvements at its cost, reserves the right to reject all bids for the design and construction of the West Holdrege Street Improvements if said costs exceed the estimate provided herein. In the alternative, the Owner and City agree to jointly consider alterations to the design in order to achieve cost savings necessary to reduce the costs of said project to an amount consistent with the above estimate. The ultimate approval of any such alterations shall be in the discretion of the Director of the Department of Transportation and Utilities of the City of Lincoln.

D. Reimbursement.

1. **Directed Impact Fees.** Owner acknowledges and agrees that the City does not have sufficient funds on hand to design, grade and construct the West Holdrege Street improvement commencing in 2020 and that funding for the total estimated cost said improvements includes an estimated \$300,000 in anticipated arterial street impact fees to be generated by private development of the Owner's property in addition to the approximately \$275,000 in arterial street impact fees already collected from the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development. Owners agrees to complete the design, grading, and construction for the improvements to W. Holdrege Street described herein at its cost subject to reimbursement according to the terms described below. Said contribution shall be made in advance of the City advertising for bids for the grading and/or construction of the improvements to W. Holdrege Street. The City agrees to direct the arterial street impact fees it has on hand, together with arterial street impact fees collected in the future from the Hub Hall Heights Community Unit Plan and the Hub Hall Heights Commercial Center Planned Unit Development toward the design, grading, and construction of the improvements to W. Holdrege Street toward reimbursing Owner for actual costs incurred in completing said improvements upon being provided sufficient documentation to support a finding that the improvements have been satisfactorily

completed and the costs presented, were actually incurred by Owner specifically for said improvements.

2. **Sales Tax Revenue.** The City approved the imposition of an additional ¼ cent sales tax to be used for restoring, rehabilitating, and expanding the City’s street infrastructure. Having imposed such a tax, the City Council has subsequently identified the improvements to W. Holdrege Street described herein as a project toward which a portion of the additional sales tax revenue generated by the additional ¼ cent sales tax should be allocated.

Therefore, in addition to the arterial street impact fees generated by the development of the Property, the City, subject to future appropriation by the City Council, hereby agrees to allocate Eight Hundred Thousand and No/100 Dollars (\$800,000.00) from the revenue generated by the additional ¼ cent sales tax for the design and construction of the improvements to W. Holdrege Street between NW 48th Street and NW Chitwood Lane and further agrees that said funds shall be applied, subject to appropriation by the City Council, toward reimbursing Owner for the actual costs of designing and constructing the improvements in W. Holdrege Street described herein. Said sales tax revenue shall be paid to Owner according to the following schedule:

FY2020-2021	\$300,000.00
FY2021-2022	\$300,000.00
FY2022-2023	\$200,000.00

Like the arterial street impact fee payments described above, the sales tax revenue shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years.

Owner expressly acknowledges and agrees that nothing in this Agreement represents a general obligation on the part of the City to repay Owner for the cost of designing and constructing of the improvements to W. Holdrege Street. Likewise, the Owner recognizes that the schedule of repayment shown above is based on projected sales tax receipts and acknowledge that said projections may prove to be incorrect thereby resulting in less revenue being realized by the City from this source. The City, in its sole discretion, will determine how the funds actually received in the Fiscal Years described above are distributed.

E. Design Consultant. The City agrees that The Clark Enersen Partners Inc. (“Clark Enersen”) has completed substantial design work and possesses substantial experience with the requirements of the improvements to W. Holdrege Street described herein. The City agrees that Clark Enersen is qualified to perform the design services for the improvements to W. Holdrege Street. Further, the City acknowledges that selecting a different design consultant would result in duplication of work, be an inefficient use of resources, and may cause unnecessary delay and cost in constructing the improvements to W. Holdrege Street. Therefore, the parties agree that Clark Enersen will be engaged as the design consultant responsible for preparing the design and construction documents for the improvements to W. Holdrege Street.

3. The remaining portion of Lot 3, Junes Place Addition, as well as Lots 40 and 66 I.T. located in Section 19, Township 10, Range 6 east of the 6th P.M., all in Lancaster County, Nebraska shall be added to the arterial street impact fee reimbursement area for the Agreement. Said property is shown on Attachment B, which is attached hereto and incorporated herein by this reference.

4. All other terms and conditions of the Original Agreement, as amended by Amendment No. 1, shall remain in full force and effect except as specifically amended hereby.

Executed by Owner this ____ day of _____, 2020.

APPLES WAY LLC

A Nebraska limited liability company

By: _____

Name, Managing Member

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by _____, Managing Member of Apples Way LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary

Executed by City this _____ day of _____, 2020.

ATTEST:

CITY OF LINCOLN, NEBRASKA

A municipal corporation

City Clerk

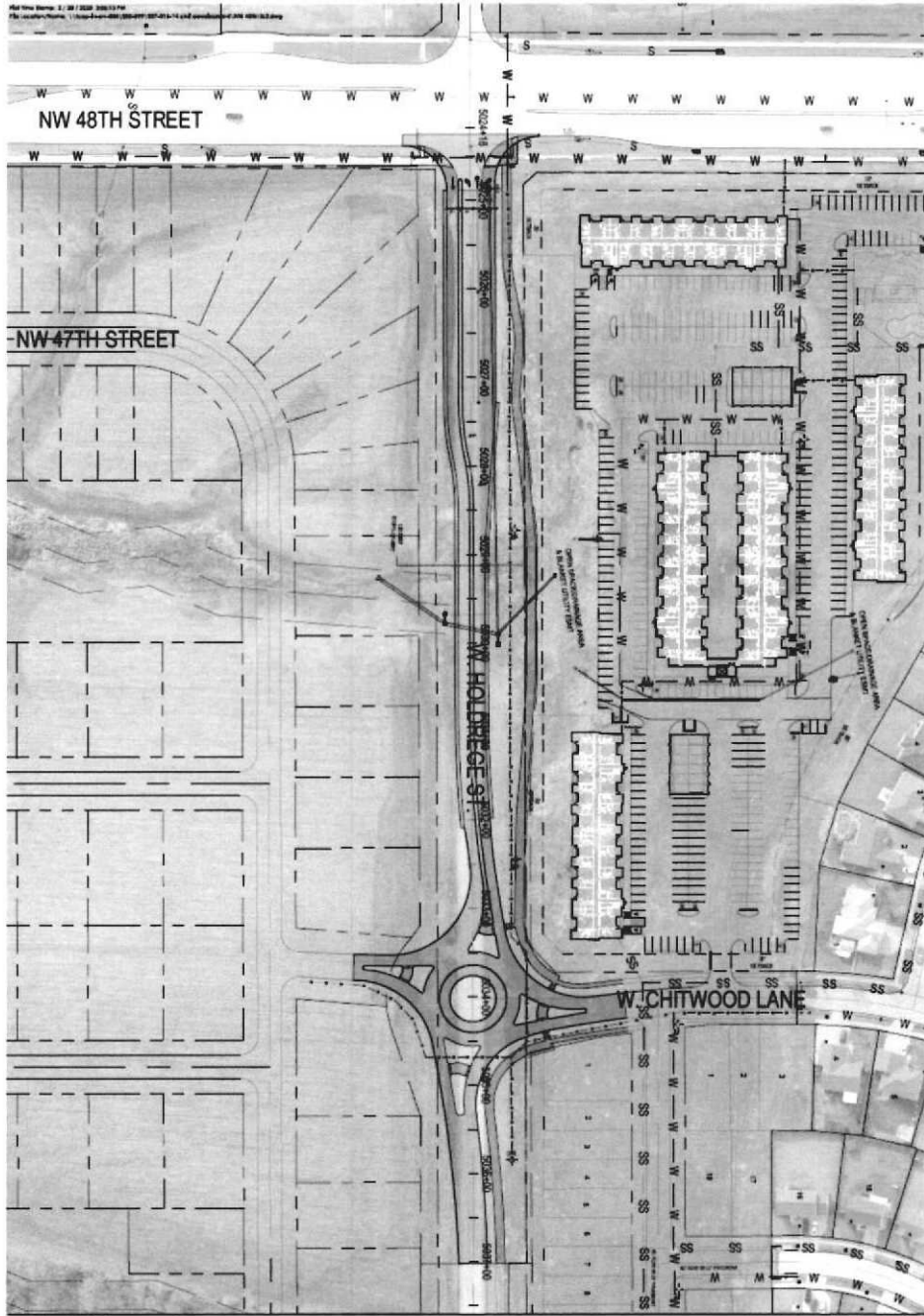
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by Leirion Gaylor Baird, Mayor of the City of Lincoln, a municipal corporation, on behalf of the City.

Notary

ATTACHMENT "A"



NW 48th Street
 NW 47th & West Vireo
 Lincoln, NE
 TCEP No.: 027-016-14



SITE LAYOUT
 SCALE: 1" = 25'

The
 Clark
 Ericksen
 Fortmeyer