



20906

20-36

Introduce: 3-30-20

ORDINANCE NO. 20906

1 AN ORDINANCE approving Yankee Hill Road Street Improvements Agreement between
2 the City of Lincoln, Nebraska, Chateau Development, LLC, and Lincoln Federal Bancorp to design
3 and construct road improvements in Yankee Hill Road between South 40th and South 48th Streets,
4 Lincoln, Nebraska.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That the attached Yankee Hill Road Street Improvements Agreement
7 between the City of Lincoln, Nebraska, Chateau Development, LLC, and Lincoln Federal Bancorp
8 to design and construct road improvements in Yankee Hill Road between South 40th and South
9 48th Streets, Lincoln, Lancaster County, Nebraska, upon the terms and conditions set forth therein,
10 is hereby approved, and the Mayor is authorized to execute the same on behalf of the City of
11 Lincoln.

AMENDED, 4/13/2020

12 Section 2. This ordinance shall be published, within fifteen days after the passage
13 hereof, in one issue of a daily or weekly newspaper of general circulation in the City, or posted on
14 the official bulletin board of the City, located on the wall across from the City Clerk's office at
15 555 S. 10th Street, in lieu and in place of the foregoing newspaper publication with notice of
16 passage and such posting to be given by publication one time in the official newspaper by the City
17 Clerk. This ordinance shall take effect and be in force from and after its passage and publication
18 or after its posting and notice of such posting given by publication as herein and in the City Charter
19 provided.

20 Section 3. The City Clerk is directed to forward one fully executed original of said
21 Agreement to Tim Sieh, City Law Department, for distribution to the parties.

Introduced by:

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

**See further Council
Proceedings on next page.**

Approved as to Form & Legality:

City Attorney

Approved this 21st day of April, 2020:

Mayor

PASSED

APR 13 2020

BY CITY COUNCIL

20-36

4/13/20 Council Proceedings:

CHRISTENSEN Moved Motion to Amend No. 1 to amend Bill No. 20-36 to adopt a substitute Yankee Hill Road Street Improvements Agreement attached hereto.

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

20-36

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 20-36 to adopt a substitute Yankee Hill Road Street Improvements 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 make changes at the request of all parties.

ADOPTED

APR 13 2020

BY CITY COUNCIL

Yankee Hill Road Street Improvements Agreement

THIS YANKEE HILL ROAD STREET IMPROVEMENTS AGREEMENT (“Agreement”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and among the **City of Lincoln, Nebraska**, a municipal corporation (“City”), **Chateau Development, LLC**, a Nebraska limited liability company (“Chateau”) and **Lincoln Federal Bancorp**, a federal corporation (“LFB”). City, Chateau, and LFB are hereinafter collectively referred to as the “Parties” and individually as a “Party”. Further, Chateau and LFB may be referred to collectively as the “Property Owners”.

RECITALS

1. The City and LFB, along with other property owners, previously entered into the Wilderness Heights Conditional Annexation and Zoning Agreement approved by the City Council December 15, 2008 as Resolution A-85189, as amended by Amendment No. 1 to the Wilderness Heights Conditional Annexation Zoning Agreement approved by the City Council July 29, 2013 as Resolution A-87461, and as further amended by a second amendment to the Wilderness Heights Conditional Annexation and Zoning Agreement approved by the City Council on August 20, 2018 as Resolution A-92117 (collectively “Wilderness Heights Annexation Agreement”) outlining certain conditions and undertakings related to the annexation of approximately 153 acres of property (“LFB Property”) generally located south and east of the intersection of S. 40th Street and Yankee Hill Road from approximately S. 40th Street on the west to S. 48th Street on the east. The LFB Property is legally described on Exhibit “A”, which is attached hereto and incorporated herein by this reference.

2. Chateau is the owner of the real estate (“Chateau Property”), which is legally described on Exhibit “B”. The Chateau Property is generally shown on the north side of Yankee Hill Road between S. 44th Street on the west and S. 48th Street on the east.

3. The Parties desire to design and construct road improvements in Yankee Hill Road between S. 40th Street and S. 48th Street including two lanes in each direction from S. 40th to S. 44th, a roundabout at S. 44th Street, one lane in each direction between S. 44th Street and S. 48th Street, and a roundabout at S. 48th Street. The configuration of said improvements is generally shown on Exhibit “C”, which is attached hereto and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Existing Conditions. Presently, Yankee Hill Road from S. 40th Street to S. 48th Street is an existing two lane paved rural cross-section and is designated as a “minor arterial” in the 2040 Lincoln City – Lancaster County Comprehensive Plan.

2. Access Points. The City, Chateau, and LFB agree that ingress and egress to and from the Chateau Property and the LFB Property along Yankee Hill Road will be limited to the preliminary and approximate location of these access points as shown on Exhibit “C”. Chateau and LFB further agree that such access is best provided in the form of roundabouts that provide access both to the north and south sides of Yankee Hill Road at the locations shown.

3. Yankee Hill Road Improvements. The Yankee Hill Road Improvements to be completed according to the terms and conditions of this Agreement are considered arterial street impact fee improvements as that term is defined in Chapter 27.82 of the Lincoln Municipal Code. Said improvements include, but are not limited to, the design and construction of the permanent roadway, the roundabouts including the entry and exit curves, related stormwater improvements,

street lights, signage, sidewalks, trails, survey, staking, grading and other related roadway improvements. The Yankee Hill Road Improvements are more specifically described as follows:

- a. "S. 40th Street to S. 44th Street Section" means a four lane arterial roadway section of Yankee Hill Road between S. 40th Street and S. 44th Street that includes a median as generally shown on Exhibit "C";
- b. "S. 44th Street Roundabout" means the roundabout improvements to be designed and constructed at the intersection of S. 44th Street and Yankee Hill Road that provide full turn movement access to the Chateau Property on the north side of Yankee Hill Road and the LFB property on the south side of Yankee Hill Road as generally shown on Exhibit "C";
- c. "S. 44th to S. 48th Street Section" means a two lane section of roadway separated by a median between the roundabouts to be constructed at S. 44th and S. 48th as generally shown on Exhibit "C".
- d. "S. 48th Street Roundabout" means the roundabout improvements to be designed and constructed at the intersection of S. 48th Street and Yankee Hill Road that provide full turn movement access to the Chateau Property on the north and the LFB property on the south as generally shown on Exhibit "C".

4. Design and Construction. On behalf of the City, the Property Owners, whether as one or separately, shall design and construct through the City's Executive Order construction process the Yankee Hill Road Improvements as generally shown on Exhibit "C". The Property Owners agree to complete the construction of the Yankee Hill Road Improvements by no later than December 31, 2021.

- a. Parties agree that Olsson Inc. (“**Olsson**”) and The Clark Enersen Partners Inc. (“**Clark Enersen**”) have completed substantial design work and possesses substantial experience with the requirements of the Yankee Hill Road Improvements. The City agrees that Olsson and Clark Enersen are qualified to perform the design services for the Yankee Hill Road Improvements. 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 Yankee Hill Road Improvements. Clark Enersen shall be engaged as a subconsultant in order to better coordinate the design of the Yankee Hill Road Improvements with the Chateau development. Therefore, the parties agree that Olsson will be engaged as primary contractor and recognize that Olsson will engage Clark Enersen as a Subcontractor.
- b. Together, Olsson Inc. and The Clark Enersen Partners Inc. shall be referred to as the “Design Consultant”. The Design Consultant shall regularly exchange design and construction information related to the Yankee Hill Improvements and shall provide any related information to the other upon request. All design and construction information generated related to the Yankee Hill Road Improvements shall be the property of the City and shall be provided upon request.
- c. Except as otherwise stated herein, Property Owners agree to award and construct the Yankee Hill Road Improvements together as one coordinated construction project. The Property Owners acknowledge and agree that selection of the contractor responsible for constructing the Yankee Hill Road Improvements shall be done through a public, competitive bidding process conducted by the City’s Purchasing Division.

- d. The Parties agree that in the event that the contract amount of the lowest responsible bid submitted for construction of the Yankee Hill Road Improvements, when combined with the design costs, exceed the total estimated cost of \$3,500,000.00, the City may, in its discretion:
- i. Eliminate the eastbound to southbound right turn lane at the 40th Street and Yankee Hill Road intersection; and/or
 - ii. eliminate the westbound to northbound right turn lane at the 40th Street and Yankee Hill Road intersection.

If after elimination of the above two features of the Yankee Hill Road Improvements the total estimated cost of design and construction of the Yankee Hill Road Improvements still exceeds \$3,500,000.00 the City may modify the design of the 44th Street roundabout to eliminate the outside through lane, both eastbound and westbound, to eliminate the northbound and southbound right turnlanes, and/or use additional funds to construct the outside through lane, both eastbound and westbound. The City may, at its sole discretion, allocate additional funds to the Yankee Hill Road Improvements Project in lieu of eliminating the components described in this subsection.

If further consideration of additional alternative design elements are necessary to reduce overall construction costs to meet the budget identified herein, the Parties may elect to consider alternative design elements in an effort to reduce the overall construction cost or reject all bids and either rebid the project or redesign the Yankee Hill Road Improvements and rebid the project with the new design.

- e. The Property Owners agree to contribute toward the project a combined maximum amount of three million five-hundred-one thousand dollars and No/100 (\$3,501,000.00) to fund the design and construction costs and expenses of the Yankee Hill Road Improvements. Except with the written consent of the Parties, Chateau shall not contribute more than One Million Three Hundred Sixty Thousand and No/100 Dollars (\$1,360,000.00) toward the costs and expenses of designing and constructing the Yankee Hill Road Improvements and LFB shall not contribute more than Two Million One Hundred Forty One Thousand and No/100 Dollars (\$2,141,000.00) toward the costs and expenses of designing and constructing the Yankee Hill Road Improvements.
- f. The Parties will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided and to continue progress on the design and construction of the Yankee Hill Road Improvements. Each of the Parties shall cooperate in good faith with the other and shall do any and all other 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.
8. Reserved.
9. Design Control and Approval. The Parties agree that design or construction decisions shall be made in the sole discretion of the City after consulting with Chateau and LFB with respect to said decisions.

10. Reserved.

11. Segregated Arterial Street Impact Fees; Funding. The City does not currently have sufficient funding to pay for the qualified Yankee Hill Road Improvements. Therefore, the City agrees to the following:

- a. The City agrees to segregate those arterial street impact fees already collected and directed toward improvements to Yankee Hill Road pursuant to the Wilderness Heights Annexation Agreement in the amount of approximately Three Hundred Twenty-five Thousand and No/100 Dollars (\$325,000.00) (“Wilderness Heights Impact Fees”) and apply them toward reimbursement of LFB for those funds LFB contributes to the actual cost of designing and constructing the Yankee Hill Road Improvements.
- b. The City agrees to continue to segregate arterial street impact fees collected by the City from development of the LFB Property (“LFB Impact Fees”) and apply them toward the actual cost of constructing the Yankee Hill Road Improvements.
- c. The City agrees to segregate the arterial street impact fees collected by the City from the Development of the Chateau Property (“Chateau Impact Fees”) and apply them toward the actual cost of constructing the Yankee Hill Road Improvements.
- d. In the event Chateau Impact Fees and LFB Arterial Street Impact Fees are not available to fund the Yankee Hill Road Improvements at the time it is constructed by the Property Owners, the Property Owners shall fund said Improvements and said costs shall be reimbursed to LFB by the City from the LFB Arterial Street Impact Fees and the Wilderness Heights Impact

Fees and Chateau by the City from the Chateau Arterial Street Impact Fees when said impact fees become available. Except as otherwise stated, said fees shall be paid to the Property Owners on a quarterly basis upon the Property Owners providing the City with written documentation of the actual costs incurred to design and construct the Yankee Hill Road Improvements. The Property Owners agree that the City's agreement to reimburse said Parties for their expenditures in designing and constructing the Yankee Hill Road Improvements using arterial street impact fees generated from the Chateau Property and the LFB Property shall not constitute a general obligation of the City.

- e. In the event the cost to construct the Yankee Hill Road Improvements exceeds the total estimated cost as stated in paragraph 4.d and the Parties contributions to construction of the Yankee Hill Road Improvements exceed the estimated contributions stated in paragraph 4.e. the Parties shall be reimbursed by the City from arterial street impact fees generated by development on the LFB Property and the Chateau Property until both Parties are fully reimbursed.

12. Alternative Reimbursement of Chateau Impact Fees. For any application for a building permit submitted by Chateau to construct any improvement on the Chateau Property after Chateau has made its contribution described in 11.d. above, the Chateau Impact Fees generated pursuant to such permit shall be calculated by the Impact Fee Administrator, as defined in LMC 27.82.040. The amount of the Chateau Impact Fees shall be used to complete the Impact Fee Reimbursement Acknowledgment attached as Exhibit "D" and upon execution by Chateau, the Impact Fee Administrator, and the City Finance Director the stated amount of the Chateau Impact

Fees shall be deemed to be paid and Chateau shall be deemed to be reimbursed for the costs of the Yankee Hill Road Improvements in the stated amount. If Chateau Impact Fees are paid prior to the Property Owner's funding of the project in accordance with paragraph 11.c. above, such impact fees shall be deemed a contribution to the funding of the Yankee Hill Road Improvements and shall be a credit toward Chateau's maximum contribution to the Yankee Hill Road Improvements as stated in paragraph 4.e. above. Likewise, Chateau shall not be entitled to reimbursement for any arterial street impact fees paid prior to funding of the Yankee Hill Road Improvements project that are credited toward its maximum contribution under this Agreement.

13. Other Funding. Notwithstanding the foregoing, regarding the segregation and use of the LFB Impact Fees and Chateau Impact Fees, the City at its sole discretion, shall have the option to fund all or portions of said costs from funding sources other than the LFB Impact Fees and the Chateau Impact Fees, should other funding become available. More specifically, the City acknowledges and agrees that the availability of arterial street impact fees generated from development of the LFB Property and the Chateau Property will only come in as development of said properties occurs, and that the schedule for complete development of the properties is uncertain. Nevertheless, the City and Property Owners acknowledge the benefit from the construction of the Yankee Hill Road Improvements prior to ultimate build-out of said properties. Therefore, in consideration of the Property Owners constructing the Yankee Hill Road Improvements as described herein, the City agrees, subject to appropriation by the City Council, to allocate revenue generated by the City's additional ¼ cent sales tax approved, in part, for the purpose of building new roadways in order to support the continued private investment and development of the City. With respect to the Yankee Hill Road Improvements, the City's allocation of the ¼ cent sales tax revenue equals One Million and No/100 Dollars (\$1,000,000.00). The City and Property Owners agree that, subject to appropriation of said funds by the City

Council, the City shall pay to Property Owners the combined total of \$1,000,000.00 toward reimbursing said Property Owner for their respective contributions for the Yankee Hill Road Improvements according to the following schedule:

<u>Fiscal Year</u>	<u>LFB</u>	<u>Chateau</u>
2022-2023	\$192,490.00	\$107,510.00
2023-2024	\$224,572.00	\$125,428.00
2024-2025	\$225,572.00	\$125,428.00

Said funds shall be paid to Property Owners on a quarterly basis as funds are collected in the designated fiscal years, prorated based on the contributions set forth in paragraph 7.b. Payment of such funds is conditioned upon Property Owners providing sufficient written documentation of the actual costs of design and construction of the Yankee Hill Road Improvements.

13. Reconciliation of Arterial Street Impact Fees and Other Revenue. At such time as a Property Owner has been paid in full for the costs it incurred in designing and constructing the Yankee Hill Road Improvements from any combination of arterial street impact fees or other revenue as described in Section 13 above, the City may utilize funds allocated to said Property Owner by this Agreement at City’s discretion according to law.

14. 404 Permits. If required, Property Owners shall prepare and process, and the City agrees to sign, as permittee, an application for any Section 404 permit required for construction of the Yankee Hill Road Improvements (collectively “404 Permits”).

15. Dedication of Right-of-Way. At the time of final platting, or upon the earlier request by the City, any Property Owner whose parcel includes land needed for the Yankee Hill Road Improvements shall dedicate or convey to the City the necessary right-of-way for the improvements and any temporary construction easements without additional cost to the City.

16. Acquisition of Right-of-Way. The City, at its expense, including, but not limited to, acquisition costs, condemnation awards, court costs, expert witness fees, testing fees, interest, and City staff time, agrees to acquire the remaining balance of any and all right of way and temporary and permanent easements necessary for the design, grading, construction and operation of the Yankee Hill Road Improvements. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements described in this Paragraph.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

18. Contingency. This Agreement is contingent on the City's approval of Chateau's application for a change of zone of the Chateau Property, application number CZ19031. If such change of zone is not approved, this Agreement shall be null and void.

Dated as of April 21, 2020 by the City.

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: *Leirion Gaylor Baird*
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 21st day of April, 2020, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)



Teresa J Meier
Notary Public

Dated as of _____, 2020 by LFB.

“LFB”
Lincoln Federal Bancorp, a federal
corporation

By: _____

Title: _____

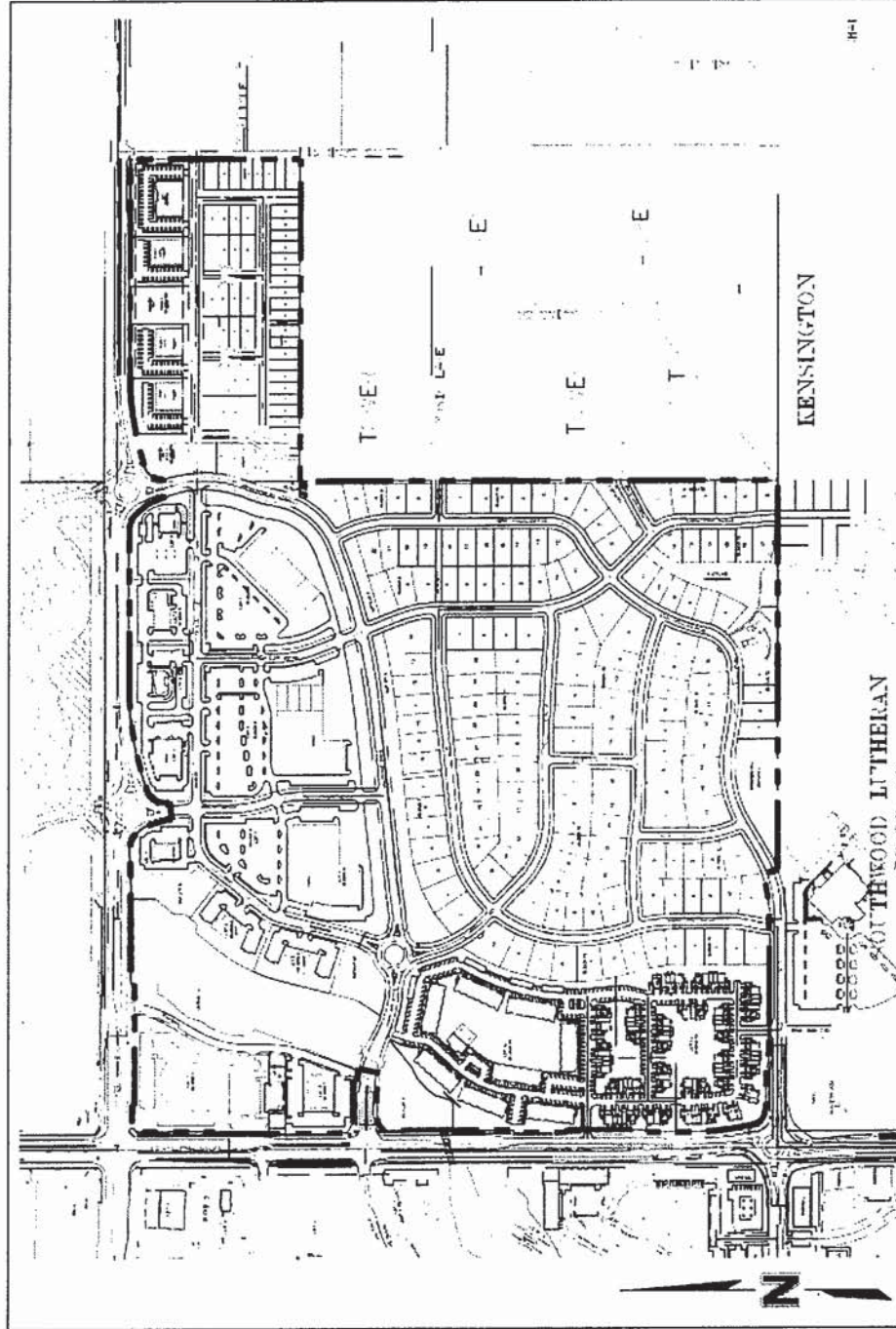
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____,
2020, by _____ as _____ of **Lincoln Federal Bancorp**, a
federal corporation, on behalf of said corporation.

(Seal)

Notary Public

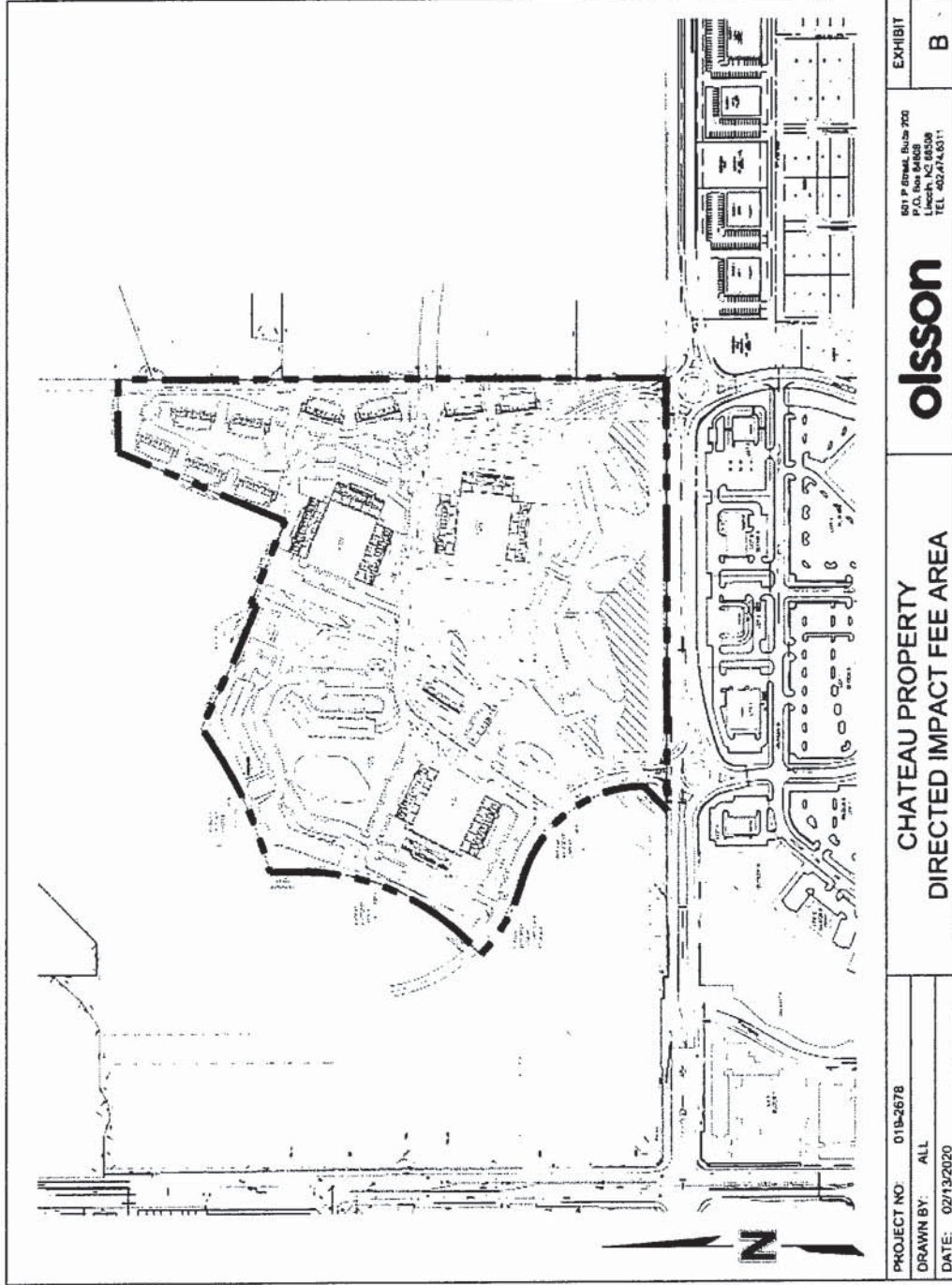
Exhibit "A"
LFB Property



PROJECT NO: 019-2678	801 P Street, Suite 200 Fayetteville, NC 28508 TEL: 422/74-6311	EXHIBIT
DRAWN BY: ALL	olsson	A
DATE: 02/13/2020		

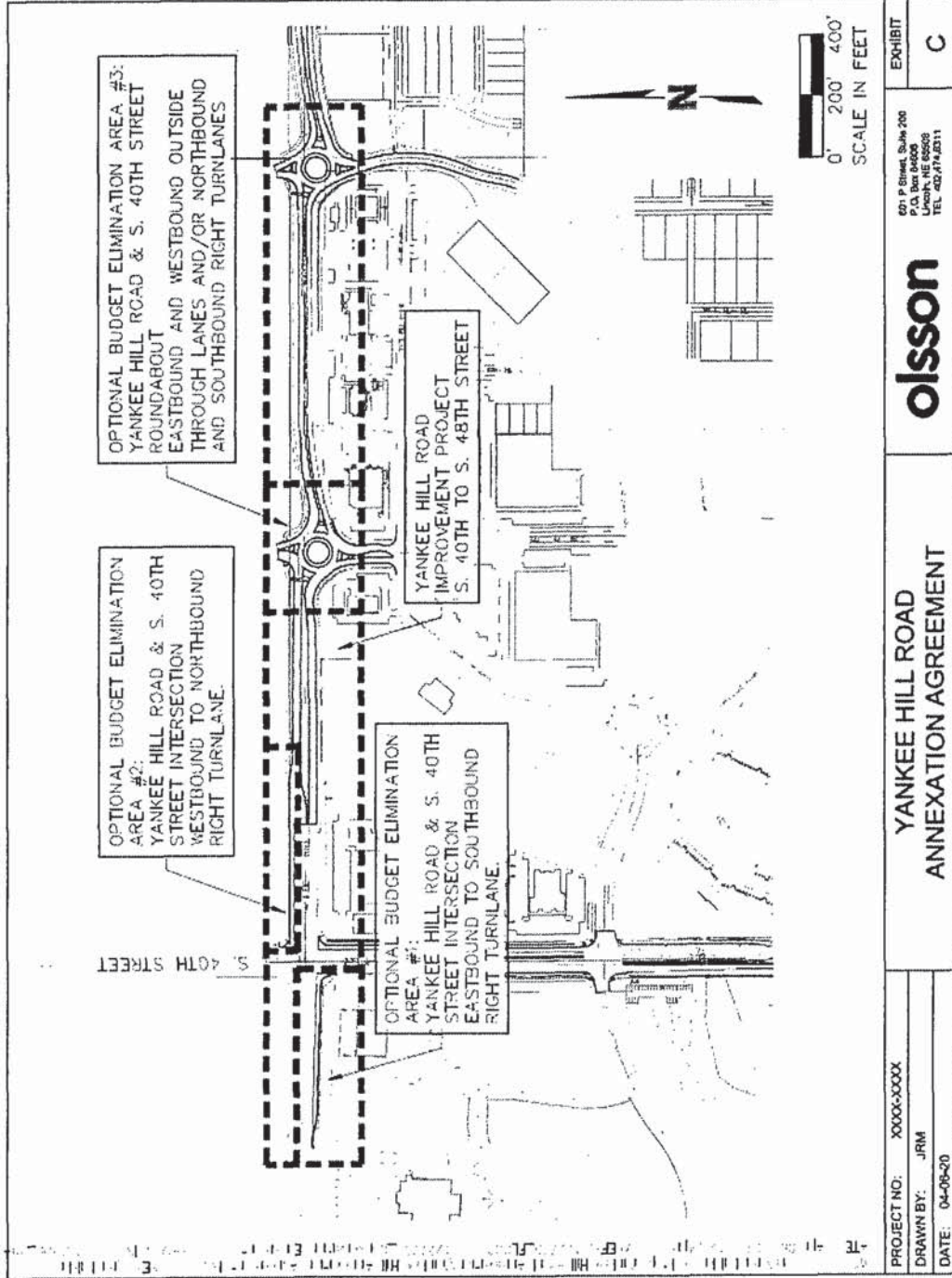
LINCOLN FEDERAL BANCORP PROPERTY
DIRECTED IMPACT FEE AREA

Exhibit "B"
Chateau Property



PROJECT NO: 018-2678	CHATEAU PROPERTY	601 P Street, Suite 700 P.O. Box 8408 Lincoln, NC 28508 TEL: 402.474.6311	EXHIBIT
DRAWN BY: ALL	DIRECTED IMPACT FEE AREA	olsson	B
DATE: 02/13/2020			

Exhibit "C"
Yankee Hill Road Improvements



PROJECT NO: XXXX-XXXX
DRAWN BY: JRM
DATE: 04-08-20

**YANKEE HILL ROAD
ANNEXATION AGREEMENT**

olsson

601 P Street, Suite 200
LA Brea, CA 92650
LA 001 949-8500
TEL 402-474-2311

EXHIBIT
C

Exhibit "D"

Impact Fee Reimbursement Acknowledgment

This Impact Fee Reimbursement Acknowledgment ("Acknowledgement") is made between the City of Lincoln, Nebraska, a municipal corporation ("City") and Chateau Development LLC, a Nebraska limited liability company, ("Chateau"). The City and Chateau agree as follows:

1. Pursuant to Yankee Hill Road Street Improvements Agreement entered into the _____ day of _____ 2020 ("Agreement") Chateau agreed participate in the construction of the Yankee Hill Road Street Improvements, as defined therein.
2. Impact fees were not available to construct the Yankee Hill Road Improvements and such Improvements were funded by LFB and Chateau.
3. Pursuant to the Agreement, Chateau shall be reimbursed by the Chateau Impact Fees or other allocations of funds in the amount Chateau's contributions to construction of the Yankee Hill Road Improvements which as of the time of this Acknowledgement is \$ _____.
4. Chateau has received reimbursement in the amount of \$ _____ and is currently entitled to reimbursement of \$ _____ in accordance with the terms of the Agreement.
5. Chateau has applied for Building Permit No. B _____ ("Building Permit") and is required to pay \$ _____ in arterial street impact fees prior to its issuance ("Impact Fees").
6. Chateau is deemed to have paid the Impact Fees as necessary for the Building Permit to issue.
7. The City is deemed to have reimbursed Chateau for the Yankee Hill Road Improvements in the amount of the Impact Fees.
8. As of the date of this Acknowledgement, Chateau remains entitled to reimbursement of \$ _____ for construction of the Yankee Hill Road Improvements.
9. If the Building Permit is abandoned, this Acknowledgement shall be deemed null and void. The Building Permit shall be of no use and effect, the Impact Fees shall be deemed unpaid, and Chateau shall not be deemed to be reimbursed in the amount of the Impact Fees.
10. Any capitalized terms not defined in this Acknowledgment shall have the meaning assigned to them in the Agreement.

11. This Acknowledgment may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. Handwritten signatures to this Acknowledgment transmitted by telecopy or electronic transmission (for example, through use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the party so signing.

Dated this ____ day of _____, 20__.

City of Lincoln, Nebraska
a municipal corporation

Impact Fee Administrator

By: _____

Print Name: _____

Title: _____

Finance Director

By: _____

Print Name: _____

Title: _____

City Attorney

By: _____

Print Name: _____

Title: _____

Chateau Development LLC
a Nebraska limited liability company

By: _____

Stefan Gaspar, Manager