

**AMENDMENT NO. 1
TO THE HIGHWAY 77 & WARLICK BOULEVARD
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 1 to the Highway 77 & Warlick Boulevard Conditional Annexation and Zoning Agreement ("Amendment") is made and entered into this ____ day of _____, 2012 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Dial – Hwy 77, L.L.C.**, a Nebraska limited liability company ("Dial"), **Great Western Bank**, a South Dakota state bank ("Great Western"), **Southport Ventures Company, L.L.C.**, a Nebraska limited liability company ("Southport"), **Spangles, LLC**, a Nebraska limited liability company ("Spangles"), **Southview, Inc.**, a Nebraska corporation ("Southview"), **Austin Realty Company**, a Nebraska corporation ("Austin"), and **LeGrande Excavating, Inc.**, a Nebraska corporation and **Norman H. LeGrande**, an individual (collectively "LeGrande"). The parties may hereinafter jointly be referred to as the "Parties" or individually as a "Party". Dial, Southport, Spangles, Southview and Austin may hereinafter jointly be referred to as "Developer". LeGrande may hereinafter be referred to as "Landowner". The Developer and Landowner may hereinafter jointly be referred to as the "Parties in Interest".

RECITALS

A. The Parties in Interest are the current owners of the Property identified in the Highway 77 & Warlick Boulevard Conditional Annexation and Zoning Agreement ("Annexation Agreement") dated June 15, 2006.

B. Dial has requested the City approve the accompanying Amendment to the Southwest Village PUD Site Plan ("Site Plan").

C. The Parties in Interest and the City desire to amend the Annexation Agreement to clarify the requirements for construction of infrastructure improvements required to serve the Property.

D. Capitalized terms not defined herein shall have the meaning defined in the Annexation Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The City agrees to approve the amendment to the Site Plan.
2. Attachment “A” attached to the Annexation Agreement is hereby replaced with Attachment “A-1”, which is attached hereto and incorporated herein by this reference.
3. Attachment “E” attached to the Annexation Agreement is hereby replaced with Attachment “E-1”, which is attached hereto and incorporated herein by this reference.
4. Attachment “I” attached to the Annexation Agreement is hereby replaced with Attachment “I-1”, which is attached hereto and incorporated herein by this reference.
5. Paragraph 4.A.II.of the Annexation Agreement is hereby amended to remove all references to Folsom Street south of West Denton Road and is restated as follows:

II. Folsom Street. Folsom Street from approximately West Pioneers Boulevard to West Denton Road is shown in the Lincoln City – Lancaster County Comprehensive Plan as an minor arterial road improvement during the 25-year planning period to be constructed as four lanes plus center turn lane. Presently, Folsom Street from West Pioneers Boulevard to Old Cheney Road exists as a two-lane asphalt roadway, and from Old Cheney Road to West Denton Road as a two lane gravel roadway, and does not exist south of West Denton Road. Preliminary roadway design for Folsom Street from West Pioneers Boulevard to the north edge of the Property shall be completed for an ultimate four through lanes with turn lanes, and Folsom Street from the north edge of the Property through West Denton Road~~the Blueflag Lane~~ intersection will be designed and graded for an ultimate four through lanes with turn lanes and initially constructed as a two-lane arterial, offset to the east from the center line, with curb and gutter, including the right and left turn lanes and full turn movement intersections at W. Cardwell Ridge Drive, Amaranth Lane, and West Denton Road~~and Blueflag Lane~~, and any required traffic signals and related improvements at said intersections, and the right-in and right-out intersection with Gailyn Road, as well as an appropriate transition back to the County road section north of the Property (collectively “Two-Lane Folsom Street”). Two-Lane Folsom Street is conceptually shown on Attachment “E-1” and consists of Arterial Street Impact Fee Facility Improvements and Site-Related Improvements. The Arterial Street Impact Fee Facility Improvements consist of the preliminary roadway design from West Pioneers Boulevard to the north edge of the Property, the two-lane arterial, offset to the east from the center line, with curb and gutter, including the right and left turn

lanes and full turn movement intersections at W. Cardwell Ridge Drive, Amaranth Lane, and West Denton Road ~~and Blueflag Lane~~, and any required traffic signals and related improvements at the W. Cardwell Ridge Drive and West Denton Road intersections. The Site-Related Improvements consist of the right-in and right-out intersection at Gailyn Road, and any required traffic signal and related improvements at the Amaranth Lane intersection. On behalf of the City, the Developer will design, competitively bid, construct and fund the Two-Lane Folsom Street through the City's Executive Order process in one or more phases. That portion of Folsom Street located between and including the intersections with West Denton Road and Amaranth Lane shall be completed prior to the time a certificate of occupancy is issued on any building within the Property. Those portions of Folsom Street located ~~south of West Denton Road and~~ north of Amaranth Lane shall be completed in phases as part of the final plat process. The City will use its best efforts to include Two-Lane Folsom Street in a future City Six-Year Capital Improvement Program, and show it to be funded by the City, at its expense, in said future Six-Year Capital Improvement Program. The City agrees to use its best efforts to reimburse the Developer for the Arterial Street Impact Fee Facility Improvements cost of the Two-Lane Folsom Street, including the design, grading and construction of the Two-Lane Folsom Street pursuant to Paragraph 6 below.

6. Paragraph 4.A.IV. of the Annexation Agreement is hereby amended and restated as follows:

IV. South 1st Street/Amaranth Lane. South 1st Street from Yankee Hill Road to West Denton Road is shown in the Lincoln City – Lancaster County Comprehensive Plan as an minor arterial road improvement during the 25-year planning period to be constructed as ~~two~~ four lanes plus center turn lane. Presently, South 1st Street adjacent to the Property exists as a two lane gravel roadway. The Interchange Project includes the relocation of South 1st Street to connect into Relocated West Denton Road. South 1st Street from Relocated West Denton Road through the Property, as conceptually shown on Attachment "E-1", shall be graded and initially constructed as a two lane gravel roadway ("Temporary South 1st Street Connection"). Developer shall be responsible, at its cost, for constructing the Temporary South 1st Street Connection concurrently with the construction of Four-Lane West Denton Road. The City agrees to cooperate with Developer to obtain a contribution from the State for

the cost the State would have incurred to relocate South 1st Street as part of the Interchange Project. Any contribution received by the City from the State shall be paid to the Developer to offset the costs expended for construction of the Temporary South 1st Street Connection. As the Developer final plats that portion of the Property that contains the Temporary South 1st Street Connection, the gravel roadway shall be replaced with the public street South 1st Street~~Amaranth Lane~~ shown on the PUD Site Plan.

As the Property Owner develops and final plats Phase 2 of the AG Area shown on the PUD Site Plan, Property Owner shall relocate and construct South 1st Street through the remainder of the Property as shown on the PUD Site Plan (“South 1st Street Extension”).

7. Paragraph 4.A.V. of the Annexation Agreement is hereby amended and restated as follows:

V. Dedication of Street Right-of-Way and Easements. The Parties in Interest and City acknowledge the State has purchased right-of-way through the Property for the Interchange Project. The Parties in Interest agree to dedicate to the City the additional street right-of-way shown on the PUD Site Plan, at no additional cost, as well as all temporary nonexclusive easements needed for construction and operation of Four-Lane West Denton Road, Two-Lane Folsom Street, North Amaranth Lane, ~~and~~ Temporary South 1st Street Connection, and South 1st Street Extension.

8. The first sentence of Paragraph 4.A.VII. of the Annexation Agreement is hereby amended and restated as follows:

VII. Obtaining Easements. The City, with the cooperation of the Property Owners, shall acquire all additional temporary and permanent nonexclusive easements necessary for the construction and operation of Four-Lane West Denton Road, Temporary West Denton Road, Two-Lane Folsom Street, North Amaranth Lane, ~~and~~ Temporary South 1st Street Connection, and South 1st Street Extension as soon as reasonably possible.

9. The first sentence of Paragraph 4.B.I. of the Annexation Agreement is hereby amended and restated as follows:

I. Water Line in Folsom Street. In order to provide water service to the Property, a 16-inch water main (approximately 410,580 lineal feet) needs to be constructed in Folsom Street from West Pioneers Boulevard to West Denton Road ~~Blueflag Lane~~ as

conceptually shown on the Infrastructure Exhibit (Attachment “E-1”) (collectively “Folsom Street Water Line”).

10. The following is added to the Annexation Agreement as Paragraph 4.B.III.:

III. Water Line in West Denton Road. In order to provide water service to the Property, a 16-inch water main (approximately 1,500 lineal feet) needs to be constructed in West Denton Road from Folsom Street to S. 1st Street as conceptually shown on the Infrastructure Exhibit (Attachment “E-1”) (“West Denton Water Line”).

In the event the Developer needs the West Denton Water Line prior to the time it is constructed by the City, the Developer may, on behalf of the City, design, competitively bid, construct and fund the West Denton Water Line through the City’s Executive Order process in one or more phases as part of the final plat process when required to serve the property being final platted. The City agrees to use its best efforts to show the West Denton Water Line in year six of the City’s 2012/2018 Six-Year Capital Improvement Program, and to be funded by the City, at its expense in year one of the 2017/2018 Six-Year Capital Improvement Program. In the event Developer constructs the West Denton Water Line, or portions thereof, through the City’s Executive Order Process, the City agrees to use its best efforts to reimburse the Developer, by no later than November 2017, for the costs of the West Denton Water Line pursuant to Paragraph 6. If the City Council fails to adopt rate increases sufficient in amount to enable the City to finance the West Denton Water Line within said Six Year Capital Improvement Program period, then the City agrees to use its best efforts to reimburse Developer within eleven (11) years from the date the West Denton Water Line is substantially complete pursuant to Paragraph 6 below. Any reimbursement shall not constitute a general obligation or debt of the City, but shall be solely funded from water revenues.

11. The following is added to the Annexation Agreement as Paragraph 4.B.IV.:

IV. Water Line in S. 1st Street. In order to provide water service to the Property, and to serve other additional property, a 16-inch water main needs to be constructed in S. 1st Street from West Denton Road south approximately 900 linear feet as shown on the Infrastructure Exhibit (Attachment “E-1”) (“S. 1st Water Line”).

On behalf of the City, the Developer will design, competitively bid, construct and fund the S. 1st Water Line through the City's Executive Order process as part of either the final plat process south of West Denton Road or the Phase 1 development south of West Denton Road shown on the PUD Site Plan, whichever first occurs. The parties acknowledge that the City has required that the S. 1st Water Line be oversized from an 8-inch line that is needed to serve the Property to a 16-inch line in order to serve other additional property. Consequently, the City agrees to subsidize the Developer for all costs attributable to oversizing the S. 1st Water Line with pipe, valves, fittings and all other accessories that are larger than 8-inch as part of the Executive Order process.

12. The following is added to the Annexation Agreement as Paragraph 4.B.V.:

V. Best Efforts. Notwithstanding the foregoing, the duty of the City to use its best efforts to reimburse Developer for the cost to install the West Denton Water Line does not require the City to act (1) contrary to the top priority of the Capital Improvement Program to maintain existing infrastructure, provide for new neighborhood improvements, and to complete needed improvements for areas already under development, (2) contrary to the fair and equitable process for funding the Priority A Mains or (3) without regard to cost or consequences. Rather, said duty must be viewed in the context of conformance with the Comprehensive Plan, sound business judgment regarding the City's financial condition, including but not limited to, operation and maintenance of the City's Lincoln Water System, the impact of rate increases on rate payers, and the Mayor's and City Council's duty to exercise independent judgment with respect to the formulation of the City's annual budgets which under the City's Home Rule Charter are required to be a complete financial plan for the ensuing budget year consisting of an operating budget and capital budget.

13. Paragraph 4.C.I. of the Annexation Agreement is hereby amended and restated as follows:

I. Salt Valley Trunk Sewer. As part of the City's utility planning, the City desires to design and construct: ~~(i) Phase V of the Salt Valley Basin relief sewer improvements from approximately South 6th Street and Pioneers Boulevard to Hunts and Old Cheney Roads; and (ii) the~~ upper southwest trunk sewer extension from

South 7th Street and Old Cheney Road to near South 1st Street and West Denton Road, to serve the Tier I, Priority A areas located on the west side of Salt Creek, collectively (“Upper Southwest Salt Valley Trunk Extension Sewer”), as shown on Attachment “F”, which is attached hereto and incorporated herein by this reference. The completion of the Upper Southwest Trunk Extension (i) and (ii) above will allow the gravity flow connection of the Internal Sewer Line described below to the Salt Valley Trunk Sewer and abandonment of the Pump and Force Main described below. The City, at its expense, will design, competitively bid, construct and fund the Upper Southwest Salt Valley Trunk Sewer. ~~The City agrees to use its best efforts to design and construct the Phase V relief sewer improvements by December of 2007.~~ The City agrees to use its best efforts to design and construct the Upper Southwest Trunk Extension to South 1st Street and West Denton Road, as well as any additional extension necessary to connect the Trunk Sewer to the Internal Sewer Line, by December of 2018~~3~~. These above dates are as shown in the City’s proposed ~~2018/1906/07~~ Six-Year Capital Improvement Program and are subject to rate increase approvals and project reprioritization. The Parties in Interest agree to grant the City, at no cost, temporary and permanent nonexclusive easements necessary for the construction and operation of the Upper Southwest Trunk Extension ~~anywhere within~~ ~~Outlet “A”, Block 5, and Outlet “B”, Block 4,~~ as shown on the PUD Site Plan.

14. Paragraph 4.C.II.i. of the Annexation Agreement is hereby amended and restated as follows:

i. Operating, Repair and Maintenance Costs: The Developer will be responsible for all the reasonable and customary costs for operating and maintaining the Pump and Force Main during the time the facilities are in use by the Property. The costs of operating, maintaining, upgrading, permitting, and administering, are all costs of the system that must be paid by the Developer. The City will bill the Developer for such costs and the Developer will pay such costs within thirty (30) days of being billed. In turn, the Developer may bill and collect from other property owners, tenants or homeowners’/business owners’

associations who benefit from the facilities. The City shall not have any responsibility to collect monies from any property owners, tenants or homeowners'/business owners' associations who benefit from the facilities. Prior to the City's approval of this Agreement, the Developer will provide a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney for the operating costs over the full estimated six year life time of the facility. The estimate for the operating, repair and maintenance costs is ~~Thirty One Hundred Fifty Thousand Dollars (\$1530,000)~~ or ~~Twenty Five Thousand Dollars (\$25,000)~~ per year. The amount of Developer's security may be reduced annually by \$25,000 per year, if the Upper Southwest Salt Valley Trunk Sewer progresses forward in the CIP, as long as security for at least two years of costs is provided.

15. Except as amended by this Amendment, all the terms and conditions of the Annexation Agreement applicable to the Property remain in full force and effect.

16. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

17. This Amendment or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Developer's cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first written above.

"CITY"

CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

City Clerk

Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation.

Notary Public

DIAL – HWY 77, L.L.C., a Nebraska limited liability company

By: _____
 Manager/Director

By: _____
 Manager/Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, Manager/Director **Dial – Hwy 77, L.L.C.**, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, Manager/Director **Dial – Hwy 77, L.L.C.**, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

GREAT WESTERN BANK, a South Dakota
state bank

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____,
2012, by _____, _____ of **Great Western Bank**, a South Dakota state
bank, on behalf of the state bank.

Notary Public

SOUTHVIEW, INC., a Nebraska corporation

By: _____
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2012, by Thomas G. Schleich, President of **Southview, Inc.**, a Nebraska corporation, on behalf of the corporation.

Notary Public

AUSTIN REALTY COMPANY, a Nebraska corporation

By: _____
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2012, by Thomas G. Schleich, President of **Austin Realty Company**, a Nebraska corporation, on behalf of the corporation.

Notary Public

SPANGLES, LLC, a Nebraska limited liability company

By: _____
Don Pegler, III, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2012, by Don Pegler, III, Manager of **Spangles, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

LEGRANDE EXCAVATING, INC., a Nebraska corporation

By: _____
Title: _____

NORMAN H. LEGRANDE, an individual

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Norman H. LeGrande, President of **LeGrande Excavating, Inc.**, a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by **Norman H. LeGrande**, an individual.

Notary Public

SOUTHPORT VENTURES COMPANY, L.L.C., a
Nebraska limited liability company

By: _____
Donald F. Dillon, Manager

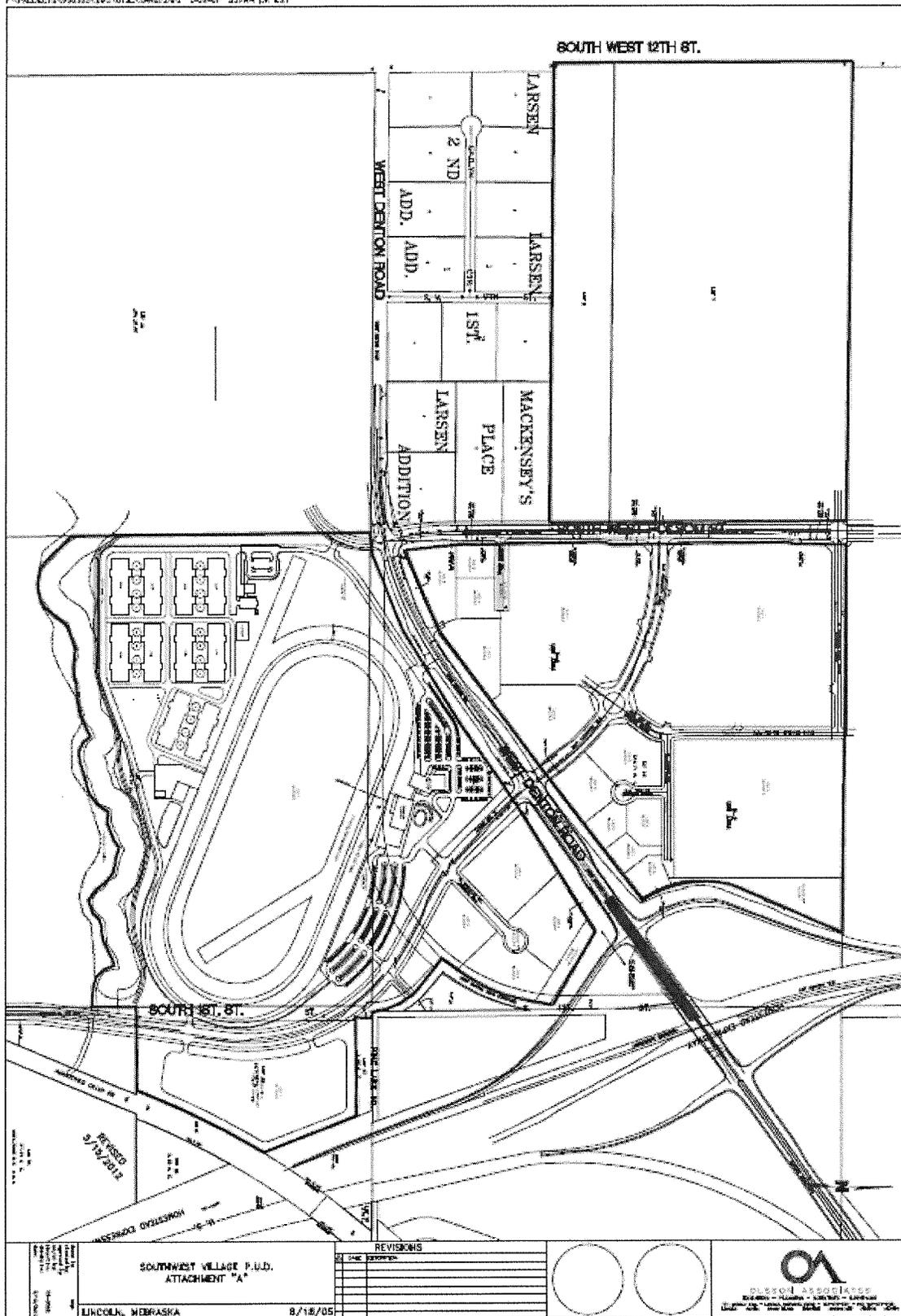
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012
by Donald F. Dillon, Manager of **Southport Ventures Company, L.L.C.**, a Nebraska limited
liability company, on behalf of the limited liability company.

Notary Public

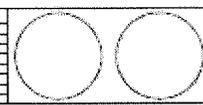
ATTACHMENT "A-1"

P:\PROJECTS\090325\14\04\UTL\0402.DWG 14-03-01 4:37PM BY: EST



SOUTHWEST VILLAGE P.U.D.
ATTACHMENT "A"
LINCOLN, NEBRASKA 8/18/05

REVISIONS	
NO.	DATE



ATTACHMENT "E-1"

Page 1 of 2

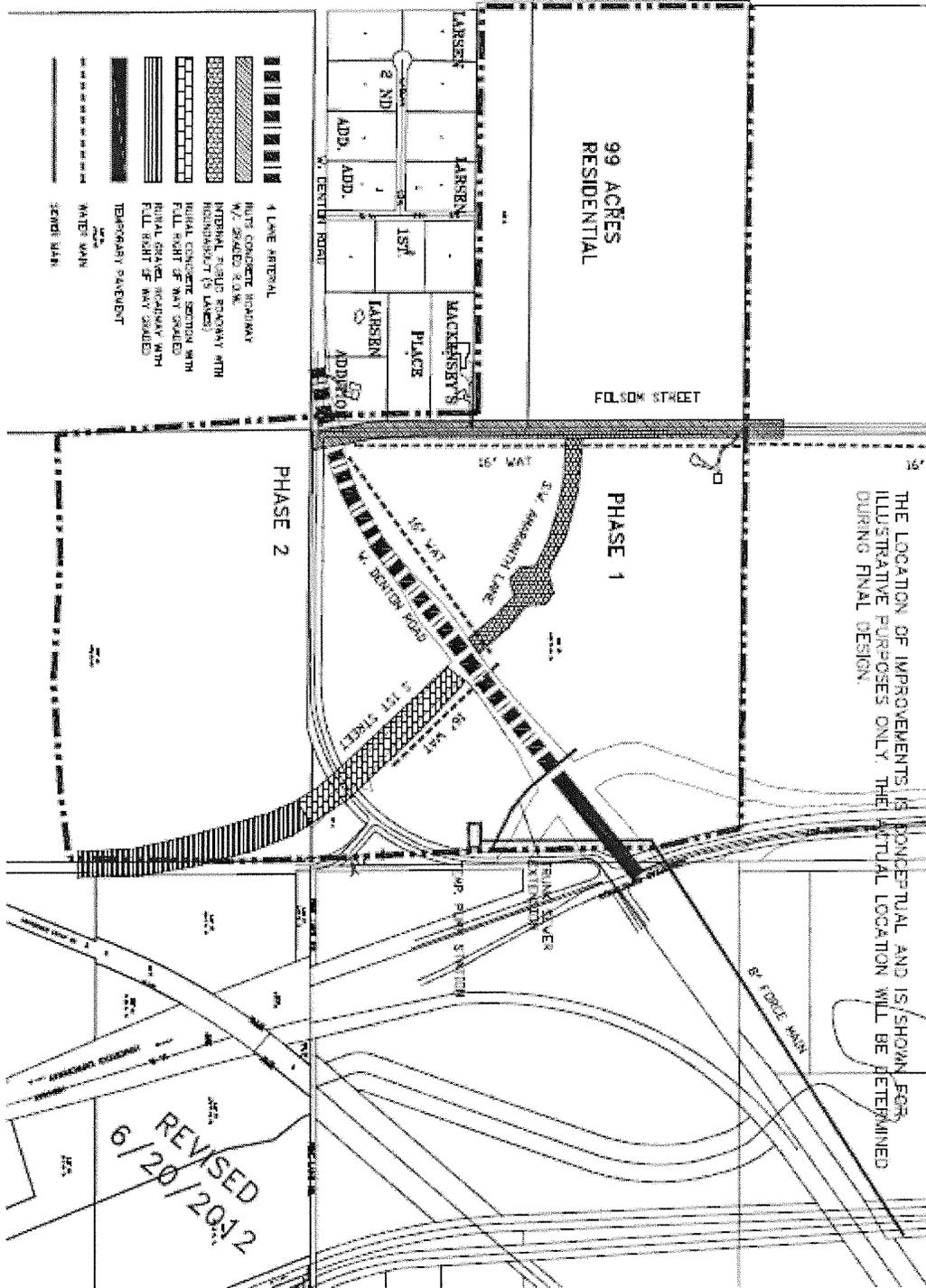
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 DATE: Jun 20, 2012 4:09pm XREFS: 041166-base I150906 e150906 e100906 L140906 L230906 041

PROJECT NO: 2004-1166
 DRAWN BY: MCP
 DATE: 6/20/12

HIGHWAY 77 & WARLICK BLVD.
 INFRASTRUCTURE IMPROVEMENTS



EXHIBIT
 1



ATTACHMENT "E-1"

DWG: F:\Projects\012-0344\LOVP\Exhibits\Annex exhibit 15-MAY-12.dwg USER: mpalmer
 DATE: Jun 25, 2012 1:31pm XREFS: 041166-ebase 1150905 et150905 et00905 L140906 L250906 0411

APPROXIMATE OFF-SITE COSTS:

SANITARY SEWER:

TEMPORARY PUMP STATION & FORCE MAIN TRUNK SEWER EXTENSION (SIZE TO BE DETERMINED)	COST*	<u>APPROX. CIP SCHEDULE</u>
	\$ 460,000	COMPLETED
TOTAL COST:	<u>\$ 460,000</u>	
REIMBURSABLE COSTS BY THE CITY OF LINCOLN:	<u>1,000</u>	<u>APPROX. CIP SCHEDULE</u>

WATER MAIN:

PART "A" 2640 LF OF 16" WATER MAIN IN S. FOLSOM STREET W. DENTON RD. - 1/2 MILE NORTH	COST*	<u>APPROX. CIP SCHEDULE</u>
	\$ 238,382	COMPLETED
PART "B" 2640 LF OF 16" WATER MAIN IN S. FOLSOM STREET W. OLD CHENEY RD. - 1/2 MILE SOUTH	\$ 238,382	COMPLETED
PART "C" 5,300 LF OF 16" WATER MAIN IN S. FOLSOM STREET W. FLOWERS RD. - W. OLD CHENEY RD.	\$ 476,560	COMPLETED
TOTAL:	<u>\$ 953,324</u>	
REIMBURSABLE COSTS BY THE CITY OF LINCOLN:	<u>\$ 953,324</u>	

ROADS:

1,200' OF W. DENTON RD. - 4 LANE SECTION	COST*	<u>APPROX. CIP SCHEDULE</u>
	\$ 898,250	COMPLETED
1,200' OF W. DENTON RD. - 4 LANE SECTION	\$ 1,197,025	COMPLETED
1,600' OF INTERVAL SITE ROADWAY (4 LANES CONCRETE)	\$ 1,122,656 **	COMPLETED
800' OF TEMPORARY ASPHALT IN W. DENTON RD.	\$ 90,500 **	COMPLETED
2640' OF S.W. FOLSOM ST. (N) - ROUTE FORWARD (2 LANES CONCRETE)	\$ 1,089,992	COMPLETED
TEMPORARY INTERSECTION IMPROVEMENTS	\$ 90,000 **	COMPLETED
1ST ST. TEMP. GRAVEL CONNECTION	\$ 20,000 **	COMPLETED
PRELIMINARY ROADWAY DESIGN FOR FOLSOM STREET	\$ 75,000	COMPLETED
TOTAL:	<u>\$ 4,353,422</u>	
REIMBURSABLE COSTS BY THE CITY OF LINCOLN:	<u>\$ 3,039,262</u>	
** NON REIMBURSABLE COSTS		

WATER MAIN:

1,600 LF OF 16" WATER MAIN IN WEST DENTON ROAD FROM FOLSOM STREET TO 1ST STREET	COST*	<u>APPROX. CIP SCHEDULE</u>
	\$ 136,000	2016/2017
900 LF OF 16" WATER MAIN IN WEST DENTON ROAD SOUTH OF WEST DENTON ROAD	\$ 81,000	\$38,000 E.O. SUBSIDY
TOTAL:	<u>\$ 217,000</u>	
REIMBURSABLE COSTS BY THE CITY OF LINCOLN:	<u>\$ 180,000</u>	

TOTAL COST:	<u>\$5,876,501</u>
TOTAL CITY REIMBURSABLE COSTS:	<u>\$4,066,341</u>
TOTAL NON-REIMBURSABLE COSTS:	<u>1,765,160</u>
APPROX. STATE REIMBURSEMENT:	<u>\$740,000</u>

* THE COSTS ARE CALCULATED USING PROJECTED UNIT COSTS FOR 2009

REVISED
6/20/2012

**HIGHWAY 77 & WARLUCK BLVD.
INFRASTRUCTURE IMPROVEMENTS**



EXHIBIT
1

