

**SECOND AMENDMENT TO
CONDITIONAL ANNEXATION AND ZONING
AGREEMENT FOR FALLBROOK**

This Amendment No. 2 to the Conditional Annexation and Zoning Agreement for Fallbrook (North 1st Street and Highway 34) is made and entered into this ____ day of _____, 2008, by and between the City of Lincoln, Nebraska, a municipal corporation, (“City”) and NEBCO, Inc., a Nebraska corporation, (“Property Owner”).

RECITALS

A. The City and Property Owner on February 1, 2000, entered into the Conditional Annexation and Zoning Agreement for Fallbrook (North 1st Street and Highway 34) (“Agreement”).

B. The Agreement provided for an allocation of responsibilities between the parties for the construction of street improvements including the Alvo Road East Leg (Alvo Road between Stonebrook Parkway and North 1st Street); Alvo Road West Leg (Alvo Road between N. W. 12th Street and Stonebrook Parkway); N. W. 12th Street Leg (N. W. 12th Street between Alvo Road and U.S. Highway 34); and the construction of trails.

C. The definition of Governmental Permits in the Agreement included the approval of Use Permit No. 124 for 620,000 square feet of retail and office space, the Fallbrook Preliminary Plat, and Fallbrook Community Unit Plan.

D. The Agreement provided that the construction of municipal infrastructure improvements by Property Owner and the allocation of cost responsibilities for the Property and the Next Phase Property in no way limited the right of the City to require construction or contribution for additional municipal infrastructure improvements in conjunction with future annexation, zoning requests, plats, dedications, use permits, special permits, planned unit developments, or community unit plans incorporating the Property, Next Phase Property, or any portion thereof.

E. The City Council adopted an Impact Fee Ordinance on January 13, 2003. The ordinance provided for exemption from impact fees for development agreements approved prior to

June 1, 2002. Property Owner was granted a category exemption for the Property and Next Phase Property from Arterial Street Impact Fees since the Agreement was approved in 2000. An additional 60,000 square feet of office floor area was approved by Administrative Amendment No. 02103 to Use Permit No. 124 on January 22, 2003. Development of this additional 60,000 square feet of floor area is subject to Arterial Street Impact Fees, since the increase was approved after June 1, 2002.

F. In 2006, Owner requested City to annex the Next Phase Property and combine the existing Fallbrook Use Permit No. 124, Community Unit Plan and Preliminary Plat into a planned unit development under a change of zone.

G. On March 27, 2006, the City Council adopted Ordinance No. 18692 designating the Property and the Next Phase Property as an Overlay Planned Unit Development District. Ordinance No. 18692 further approved the Property Owner's Development Plan for Fallbrook Planned Unit Development including the approval of 680,000 square feet of commercial floor area.

H. The parties desire to clarify when development in the Fallbrook Planned Unit Development will be subject to payment of impact fees.

I. In order to meet the traffic demands associated with development in this area, there is a need to revise the timing of improvements in Alvo Road from North 1st Street to N. W. 12th Street, to adjust the description of the Alvo Road East Leg and the Alvo Road West Leg, and to adjust the responsibilities in order to meet that demand.

NOW, THEREFORE, in consideration of the above Recitals and mutual covenants established herein, the parties to this Amendment No. 2 do hereby agree as follows:

1. The term "Governmental Permits" now includes the Fallbrook Planned Unit Development as approved by Ordinance No. 18962.

2. That subparagraph A.4. under Article III, Transportation Improvements, be revised to read as follows:

“4. Alvo Road East Leg (Alvo Road between North 1st Street and Tallgrass Parkway). The Property Owner, at its own cost and expense, through the City’s executive order construction process shall do a full design of the south two lanes and intersections and a preliminary design (second submittal level in accordance with Engineering Services Guiding Principles & Practices) of the north two lanes. The design shall include the establishment of street grades in order for utilities to be installed. In addition, Property Owner at its own cost and expense, through the City’s executive order process shall grade Alvo Road between the east line of North 1st Street and the west end of Tallgrass Parkway Roundabout as a four-lane urban cross section arterial street and shall construct that portion of Alvo Road from the east line of North 1st Street to the west end of the Tallgrass Parkway Roundabout as a two-lane urban cross section arterial street, including street lights, storm sewer, and concrete pavement, together with a ten-foot bike trail on the south side of Alvo Road from North 1st Street to the north-south trail west of Stonebrook Parkway. The bike trail from the west side of Stonebrook Parkway to the west side of the school property shall be constructed (with contribution by Property Owner) by Lincoln Public Schools. The bike trail shall be designed and constructed in accordance with AASHTO Guidelines for Bicycle Facilities and paved with five-inch thick concrete. The Property Owner further agrees to construct the Stonebrook Parkway Roundabout, the Tallgrass Parkway Roundabout, and any other approved roundabout as part of this work. The Property Owner agrees to complete the design and grading of the Alvo Road East Leg between North 1st Street and Tallgrass Parkway in the

City's fiscal year 2007-2008; and have the street open to traffic by August 31, 2009 with complete construction by December 31, 2009.

The Property Owner agrees to dedicate a minimum of 120 feet of right-of-way for the Alvo Road East Leg between North 1st Street and Tallgrass Parkway expanding to 130 feet of right-of-way for right turn lanes at intersections plus an additional six feet for the bike trail between North 1st Street and the north-south trail west of Stonebrook Parkway when requested by the City. If the City is required to acquire the necessary right-of-way from third parties, the Property Owner agrees to reimburse the City for the City's cost of acquisition pursuant to paragraph 9 below. The City agrees to reimburse the Property Owner for the Property Owner's actual cost of designing the Alvo Road East Leg between North 1st Street and Tallgrass Parkway as set forth above. Said reimbursement shall not be due and payable until the date Property Owner completes said design work. The City agrees that the uniform procedure for the selection of professional consultants set forth in Executive Order No. 80199 dated October 9, 2007, need not be utilized to select Property Owner's engineer to design Alvo Road between North 1st Street and Tallgrass Parkway. The Property Owner's engineer has performed preliminary design work and continuing utilization of the Property Owner's engineer will avoid delay, inefficiencies, lack of coordination, and duplication of effort. The City agrees to reimburse the Property Owner for the cost to construct Alvo Road from the west end of the Stonebrook Parkway Roundabout to the west end of the Tallgrass Parkway Roundabout. Said reimbursement shall be paid as follows: The City will pay Property Owner \$327,000 within 30 days of

completion of the work and receipt of billing therefor. A second installment of up to \$450,000 will be paid to Property Owner within 30 days after the County of Lancaster reimburses the City for the paving of Alvo Road from North 1st Street to North 14th Street. The County reimbursement is currently proposed to be paid by December 31, 2010. Since there are no directed impact fees involved, if the cost to pave Alvo Road from the west end of the Stonebrook Parkway Roundabout to the west end of the Tallgrass Parkway Roundabout is in excess of \$777,000, then any amount over \$777,000, the City agrees to use its best efforts to reimburse Property Owner for said cost within three years, but in the event funds are not available, no later than eleven years following completion of the paving of Alvo Road from the west end of the Stonebrook Parkway Roundabout to the west end of the Tallgrass Parkway Roundabout.

3. That subparagraph A.5. of Article III be amended to read as follows:

“5. Alvo Road West Leg (Alvo Road between N. W. 12th Street and Tallgrass Parkway). As part of the design of the Alvo Road East Leg between the east line of North 1st Street and the west end of the Tallgrass Parkway Roundabout, the Property Owner shall do a full design of the south two lanes and a preliminary design (second submittal level in accordance with Engineering Service Guiding Principles and Practices) of the north two lanes of that portion of Alvo Road between N. W. 12th Street and Tallgrass Parkway including the intersection of N. W. 12th Street and Alvo Road (“Alvo Road West Leg”) as a four-lane, urban arterial street. The City agrees to contribute 100% of the actual cost of design of the Alvo Road West Leg. Said contribution and reimbursement shall not be due and

payable until the date Property Owner completes said design work. Property Owner agrees to dedicate for the Alvo Road West Leg a minimum of 120 feet of right-of-way expanding to 130 feet of right-of-way at intersections where right-turn lanes are required or the amount of right-of-way shown on the Anticipated Right-of-Way for Street and Road Project Implementation Map in the Comprehensive Plan. Said dedication to be granted to the City by December 31, 2008. The City agrees to grade Alvo Road between Tallgrass Parkway and N. W. 12th and to construct that portion of Alvo Road between the west end of the Tallgrass Roundabout and N. W. 12th Street as a two-lane urban cross section arterial street including street lights, storm sewer, and concrete pavement and the intersection at N. W. 12th Street and Alvo Road. Subject to approval of funding by the City Council the City agrees to construct the road when requested by the Property Owner. In the event the Property Owner needs the road constructed prior to funding by the City Council, the Property Owner is granted the option of grading and constructing this portion of Alvo Road at Property Owner's own cost and expense through the City's executive order construction process, except that since there are not any directed impact fees involved, the City agrees to use its best efforts to reimburse Property Owner for said cost within three years, but in the event funds are not available, no later than eleven (11) years following construction of said road improvements. The construction work shall be bid and awarded only after competitive bidding in accordance with City procedures.

4. That subparagraph A.6. of Article III be amended to read as follows:

“6. **N. W. 12th Street Leg (N.W. 12th Street between Alvo Road and U.S. Highway 34)**. The Property Owner agrees at its own cost and expense to preliminarily engineer (second submittal level in accordance with Engineering Services Guiding Principles and Practices) the vertical and horizontal alignment of N. W. 12th Street between Alvo Road and Fletcher Avenue south of U.S. Highway 34, including the overpass over Highway 34 (“N. W. 12th Street Leg”), to the satisfaction of the City as a future four-lane urban cross section arterial street with a ten- (10-) foot trail on the east side of N. W. 12th Street. The preliminary engineering for the bridge shall include a Type, Size and Locational Analysis acceptable to the Nebraska Department of Roads. The Property Owner agrees to dedicate one-half of the 120-foot right-of-way (expanding to 130 feet of right-of-way at intersections where right-turn lanes are required) which abuts Highland View Addition and all of the right-of-way where the alignment curves eastward on the Property Owners’ property plus an additional six feet for the trail. Said dedication is to be granted when and as requested by the City.” Said preliminary engineering shall be completed by January 1, 2010 or prior to any development or rezoning of the property north of Highway 34 between Fallbrook Boulevard and N. W. 12th Street, whichever occurs first. Notwithstanding the above, the preliminary engineering shall be completed within six (6) months following receipt of a request from the City that the preliminary engineering is needed to enable N.W. 12th Street to be constructed.

5. The parties agree that subparagraph A.8 of Article III be amended to read as follows:

“8. **Right-of-Way and Easement Dedication.** The Property Owner shall dedicate and convey all right-of-way and temporary and permanent nonexclusive drainage easements needed from the Property and Next Phase Property for the construction of the street improvements described in Section 1 through 7, inclusively, above (collectively "Transportation Improvements"), without additional cost or consideration; provided that the total right-of-way for the said Transportation Improvements shall not exceed the width as shown on the Governmental Permits, except as otherwise provided in this Agreement. The City and the Property Owner agree that any drainage easements shall be only for the smallest space reasonably feasible.”

6. The parties agree that subparagraphs B.3 and B.4 of Article IV be amended to read as follows:

“3. **Phase II Water Lines.** Subject to the approval of future funding by the City Council through its normal budgetary procedures in fiscal year 2008-2009 to pay for the difference in the cost between the pipe size required for a larger feeder main network and the size of pipe required to serve this subdivision of Fallbrook per design standards, it is the intention of the parties that the 16-inch water line shown as Phase III on Attachment "G" shall be constructed by the Property Owner, at its cost, under the authority of an executive order issued by the Mayor of the City in the location shown on the Governmental Permits at the at the time of paving. If such funding is approved, Property Owner agrees that due to the amount of the City subsidy being provided, the design and installation of the Phase

III lines shall be bid and awarded only after competitive bidding in accordance with City procedures.

4. **Phase IV Water Lines.** Subject to the approval of future funding by the City Council through its normal budgetary procedures to pay for the difference in the cost between the pipe size required for a larger feeder main network and the size of pipe required to serve this subdivision of Fallbrook per design standards, it is the intention of the parties that the 16-inch water line shown as Phase IV on Attachment "G" shall be constructed by the Property Owner, at its cost, under the authority of an executive order issued by the Mayor of the City in the location shown on the Governmental Permits at the same time as Alvo Road between Stonebrook Parkway and Tallgrass Parkway is paved. If such funding is approved, Property Owner agrees that due to the amount of the City subsidy being provided, the design and installation of the Phase IV lines shall be bid and awarded only after competitive bidding in accordance with City procedures.”

7. The parties agree that the first paragraph of subparagraph C, Trails, under Article V, Other Necessary Municipal Improvements, be amended to read as follows:

“C. **Trails.** The Governmental Permits show a ten (10) feet wide hiker/biker trail abutting certain public streets in the street right-of-way and said trail replaces the normal four (4) feet wide sidewalk. The Property Owner, except as provided in subparagraphs A.4. and A.5. under Article III agrees to construct said trail according to AASHTO Guidelines for Bicycle Facilities and pave said trail with five (5) inch thick concrete in lieu of the four (4) feet wide sidewalks. The parties acknowledge that except for the

trails required under subparagraph A.4. and A.5. of Article III that Property Owner is constructing an additional six (6) feet of pavement for the hiker/biker trail above the four (4) feet required for sidewalks of its own accord and further acknowledge that this construction reflects an intention on the part of the Property Owner to make a charitable contribution to the City for the value of the six (6) feet of addition pavement.”

8. The parties agree that Article XIII, Future Cost Responsibilities, be amended by adding a second paragraph to read as follows:

Impact Fees. The current Fallbrook Planned Unit Development is approved for a total of 680,000 square feet of commercial space. Any commercial space developed over 620,000 square feet within the boundaries of the Fallbrook Planned Unit Development, including any future amendments or area added to the Planned Unit Development, shall be subject to Arterial Street Impact Fees. Property Owner agrees that in the next amendment to the Fallbrook Planned Unit Development after the approval of this Second Amendment to the Conditional Annexation and Zoning Agreement for Fallbrook, the Property Owner agrees to identify those lot or lots to be developed with commercial space beyond the 620,000 square feet and which will be subject to Arterial Street Impact Fees. However, the Property Owner shall also have the option to redesignate which lot or lots are subject to the Arterial Street Impact Fees in the future amendments to the Fallbrook Planned Unit Development as lots are sold or subdivided. The lot or lots designated to be subject to Arterial Street Impact Fees shall be owned by Property Owner and may not include unbuilt space owned by third parties. In the event that future

amendments to the Planned Unit Development limit the amount of total commercial space in the Planned Unit Development to 620,000 square feet or less, then development of the designated lots shall be exempt from Arterial Street Impact Fees.

9. The parties agree that except as provided herein the terms and conditions of the Agreement remain in full force and effect.

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

Attest:

“City”
CITY OF LINCOLN, NEBRASKA
a municipal corporation,

City Clerk

Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, on behalf of the City of Lincoln, Nebraska.

Notary Public

“Property Owner”
NEBCO, INC.,
a Nebraska corporation,

President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, President of NEBCO, Inc., a Nebraska corporation.

Notary Public