

**AN AGREEMENT REGARDING THE ANNEXATION OF
HILLTOP ROAD AND A PORTION OF GRANDVIEW HEIGHTS**

THIS AGREEMENT is entered into on this ____ day of September, 1992, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City", Nebraska Academy of Sciences, Inc., a Nebraska nonprofit corporation, hereinafter referred to as "NAS", J. Robert Duncan, a married person, hereinafter referred to as "R.D.", Charlotte Bopf Miller, a married person, hereinafter referred to as "C.M.", Donald W. Miller and Charlotte Miller, husband and wife, hereinafter referred to as "Millers", and Karen K. Duncan, a married person, hereinafter referred to as "K.D.". R.D., C.M., Millers and K.D. are sometimes referred to herein as "Annexed Neighbors."

RECITALS

I.

NAS is the owner of the East 217 feet of Lot E, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska including abutting vacated right-of-way; South 521 feet of Lot 1, Grandview Heights, except the West 450.7 feet thereof, (???) Grandview Heights, Lancaster County, Nebraska; and the East 1/2 of Lot 2, Grandview Heights, Lancaster County, Nebraska, including abutting vacated right-of-way.

II.

R.D. is the owner of Lot A, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

III.

C.M. is the owner of Lot B, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

IV.

Millers are the owner of Lot C, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

V.

K.D. is the owner of Lot D, except that part thereof contained within a circle of 60 feet radius, the center of which is on the centerline of Stanton Street as same is shown on the recorded plat of said Grandview Heights and 60 feet east of the intersection of the west line of said Lot D, as extended north, with the centerline of said Stanton Street, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

VI.

A request has been made by the Annexed Neighbors to annex an area, legally described on Exhibit "A", which is attached hereto and incorporated herein by this reference (hereinafter referred to as "Property"), into the corporate limits of the City of Lincoln and the City of Lincoln is agreeable to such annexation provided that there is an agreement regarding cost responsibilities for the construction of necessary public water main and public sanitary sewer main construction to serve the Property by public sewer and water and to provide adequate fire protection, to define maintenance responsibilities for Hilltop Road right-of-way and other appropriate matters.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the parties do agree as follows:

1. Annexation by City. The City agrees to annex all of the Property into the corporate limits of the City.

2. Water Main Extension. The Annexed Neighbors agree to construct, by executive order construction, an eight inch water main to provide water service to the Property. The total cost of construction of the water main extensions is estimated to be \$_____, and the actual cost of design and construction shall be paid by the Annexed Neighbors pursuant to the City of Lincoln's executive order. In order to guarantee construction of said water mains, the Annexed Neighbors shall post a bond, escrow, or other acceptable security with the City in the amount of \$_____. Construction of said water main extensions shall be completed not later than one year from the date of this agreement.

3. Sanitary Sewer Extension. The Annexed Neighbors agree to construct, by executive order construction, an eight inch trunk sanitary sewer to provide sanitary sewer service to the Property. Total cost of the extension of the sanitary sewer system as above-described is estimated to be \$_____ and the actual cost of design and construction shall be paid by the Annexed Neighbors pursuant to the City of Lincoln's executive order process. In order to guarantee completion of the above-described sanitary sewer extensions, the Annexed Neighbors shall post a bond, escrow, or other acceptable security with the City in the amount of \$_____.

____. Construction of the sanitary sewer extensions shall be completed not later than one year from the date of this agreement.

4. Future Annexation. No privately-owned property abutting the water main extension and sanitary sewer extension shall be permitted to connect to such water main extension and sanitary sewer extension until such privately-owned abutting property has been annexed into the corporate limits of the City.

5. Maintenance Responsibility of Hilltop Road and Ditches.

a. The parties agree that Hilltop Road does not meet City street construction design standards. Until Hilltop Road meets City street construction design standards, general maintenance, (i.e. grading, rocking, and dust control) of Hilltop Road abutting the Property and keeping the adjacent ditches, driveway pipe and vegetation maintained, free of obstructions, mowed and trimmed, shall be the responsibility of the owners of the property described in Exhibit "B". The owners of the property described in Exhibit "B" agree to continue their past maintenance practices and prorata cost sharing assessment based upon NAS paying one-third, CM and Miller jointly paying one-third and R.D. and K.D. jointly paying one-third.

b. The only permitted improvement within the Hilltop Road right-of-way shall be a mailbox. This mailbox and mailbox post shall be a minimum of 5 feet from the edge of the roadway. Mailbox opening may be 4 feet from the edge of roadway. The mailbox and standard shall only be used for mail

purposes and may have street addresses affixed to it. The mailbox turnout shall be maintained by the owner for which it serves. No other fixtures shall be allowed, within the public right-of-way, except public street name signs, traffic control signs and public lighting approved by the city.

c. Should any owner of the property described in Exhibit "B" neglect or be negligent in performing and financing the general maintenance of driveway, driveway pipes and ditches that is required, and damages occur to the public roadway or the adjacent property, that property owner shall be responsible for all damages and liabilities that occur.

d. When it is determined by the Public Works Department that a driveway pipe or pipes has deteriorated or been damaged to a point that replacement is required, the property owner shall replace said driveway pipe within one week of notification or bear the cost of said replacement.

6. Potential Future Assessment. The City is not, as a condition of annexation, requiring the relocation or upgrading of such roadway to meet City street construction design standards at the present time. Nevertheless, it is understood and agreed, and the parties hereto recognize, that the City reserves the right to reconstruct such roadway in the future and that any such reconstruction shall be in accordance with then existing City street construction design standards, and that, at the City's option, such reconstruction may be accomplished through an appropriate assessment district with the cost of such

reconstruction being assessed against benefitted property owners to the extent of the benefit conferred.

7. Binding. This Agreement shall be inure to and be binding upon the City and its successors and assigns and is for the benefit of each owner of real estate described in Exhibit "E" and shall inure to and shall run with the title of such real estate of land and subdivision thereof and shall bind the respective successors and assigns in interest of the present owner thereof.

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

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

Mike Johanns, Mayor

NEBRASKA ACADEMY OF SCIENCES,
INC., a Nebraska nonprofit
corporation

By: _____

Title: _____

J. ROBERT DUNCAN

CHARLOTTE BOPF MILLER

DONALD W. MILLER

KAREN K. DUNCAN

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 1992 by Mike Johanns, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 1992 by _____ as _____ of the Nebraska Academy of Sciences, Inc., a Nebraska nonprofit 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 _____, 1992 by J. Robert Duncan, a married person.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 1992 by Charlotte Bopf Miller, a married person.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____
day of _____, 1992 by Donald W. Miller, a married person.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____
day of _____, 1992 by Karen K. Duncan, a married
person.

Notary Public

A tract of land composed of a portion of the Replat of Lots 4 and 5 Grandview Heights, located in the Southeast Quarter of Section 2, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska and more particularly described as follows: That portion of Lot A of said Addition and Hilltop Road right-of-way which lies west of a line which is 200.0' west of and parallel to the east line of said Southeast Quarter, also all of Lots B, C, and D.

Exhibit "A"

East 217 feet of Lot E, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska including abutting vacated right-of-way; South 521 feet of Lot 1, Grandview Heights, except the west 450.7 feet thereof, (???) Grandview Heights, Lancaster County, Nebraska; and the East 1/2 of Lot 2, Grandview Heights, Lancaster County, Nebraska, including abutting vacated right-of-way.

Lot A, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

Lot B, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

Lot C, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

Lot D, except that part thereof contained within a circle of 60 feet radius, the center of which is on the centerline of Stanton Street as same is shown on the recorded plat of said Grandview Heights and 60 feet east of the intersection of the west line of said Lot D, as extended north, with the centerline of said Stanton Street, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska.

Exhibit "B"

WATER AND SEWER TAP AGREEMENT

This Water and Sewer Tap Agreement ("Agreement") is made as of this ____ day of September, 1992, by and between Nebraska Academy of Sciences, Inc., a Nebraska nonprofit corporation ("NAS") and J. Robert Duncan and Karen K. Duncan, husband and wife (collectively "Duncan").

WHEREAS, Karen K. Duncan and NAS are owners of the following legally described property:

A. Karen K. Duncan:

Lot D, except that part thereof contained within a circle of 60 feet radius, the center of which is on the centerline of Stanton Street as same is shown on the recorded plat of said Grandview Heights and 60 feet east of the intersection of the west line of said Lot D, as extended north, with the centerline of said Stanton Street, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska ("Duncan Property");

B. NAS:

East 217 feet of Lot E, Replat of Lots 4 and 5, Grandview Heights, Lancaster County, Nebraska including abutting vacated right-of-way; South 521 feet of Lot 1, Grandview Heights, except the West 450.7 feet thereof, (???) Grandview Heights, Lancaster County, Nebraska; and the East 1/2 of Lot 2, Grandview Heights, Lancaster County, Nebraska, including abutting vacated right-of-way NAS Property").

WHEREAS, the City of Lincoln, Nebraska ("City") has received a request from Duncan to annex all of the Duncan Property and certain other properties legally described as a tract of land composed of a portion of the Replat of Lots 4 and 5, Grandview Heights, located in the Southeast Quarter of Section 2, Township 10

North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, and more particularly described as follows: that portion of Lot A of said addition and Hilltop Road right-of-way which lies west of a line which is 200.0' west of a parallel to the east line of said southeast quarter; also all of Lots B, C, and D (collectively "Annexed Properties").

WHEREAS, Duncan along with other property owners of the Annexed Properties have agreed to construct, by executive order construction, a water main and trunk sanitary sewer to provide public water service and sanitary sewer service to the Annexed Properties and to share the actual costs of the design and initial construction of the public water main and trunk sanitary sewer.

WHEREAS, all or a portion of said water main and trunk sanitary sewer will be located in the Hilltop Road right-of-way which abuts the ANAS Property.

WHEREAS, ANAS does not intend to tap or connect any water main, trunk sanitary sewer, individual water service line, nor individual sanitary sewer service line (individually and collectively "Utility Line") from, through, across or under ANAS Property and therefore has elected as of this date not to share in the actual costs of the design and initial construction of the public water main and trunk sanitary sewer.

NOW, THEREFORE, Duncan and ANAS agree as follows:

1. Trim Trees. Duncan agrees to use reasonable efforts to trim tree limbs from trees located on the Duncan Property that might interfere or disrupt electric service to the existing house located on the ANAS Property.

2. Joint Support. ANAS agrees to support the annexation of the Annexed Properties by the City. Duncan agrees to support the exclusion of the ANAS Property from annexation by the City.

3. Connection Fee. Duncan is financing a portion of the public water main and trunk sanitary sewer in an amount which exceeds the special benefit conferred to the Duncan Property based upon the City's standard practice of assessing benefitted property under a special assessment district. The excess amount Duncan is financing is approximately the amount the City could special assess the ANAS Property if the ANAS Property were annexed by the City and if the public water main and trunk sanitary sewer were to be designed, constructed and financed by a special assessment district. In the event said water main line or trunk sewer line is constructed and the owner of the ANAS Property or a party with an interest in ANAS Property or an abutting property of ANAS Property taps or connects a Utility Line from, through, across or under ANAS Property to said public water main and/or trunk sanitary sewer on or before December 31, 2002, then the owner of the ANAS Property shall pay to Duncan or their Successors (as defined herein) the "fair share" amount determined by Olsson Associates (or other licensed civil engineer agreeable to the parties) plus eight (8) percent interest per annum on the fair share from the completion date of installation of said water main line and/or trunk sewer line to the date of the engineers determination of the fair share (collectively "Connection Fee"). As used herein, "fair share" shall be an amount determined by a licensed civil engineer which approximates the amount the City could have special assessed the

ANAS Property if the City had annexed 150 feet of ANAS Property that abuts Hilltop Road and if the public water main and/or trunk sanitary sewer had been designed, constructed and financed by a special assessment district based upon the actual costs and expenses incurred by Duncan and the other Annexed Properties owners in designing and constructing the water main and/or trunk sanitary sewer by executive order process. The payment of the Connection Fee shall without demand, notice, or presentation, be due and payable, to Duncan or their Successors within thirty (30) days of the date of the engineers determination of the fair share. Failure to pay the entire Connection Fee when due and payable shall be a default (without demand or notice) herein and the promise to pay the Connection Fee hereunder shall then bear interest after default equal to an interest rate of twelve (12) percent per annum ("Default Interest").

4. Remedies and Lien. In the event the owner of the ANAS Property fails to pay the Connection Fee when due, and any Default Interest, then Duncan or their Successor may prosecute any proceeding at law or in equity against the owner of the ANAS Property, and seek to prevent the owner of the ANAS Property or any other party from tapping or connecting a Utility Line from, through, across or under ANAS Property to said public water main and/or trunk sanitary sewer, or to recover damages, or both. Furthermore, Duncan shall have a lien upon the ANAS Property to secure payment of the Connection Fee and any Default Interest.

5. Successors. The term "Successors" shall include respective heirs, legatees, devisees, personal representatives, successors and assigns.

6. Entire Agreement. This Agreement contains the entire agreement of the parties. This Agreement cannot be modified or amended unless reduced to writing which is executed by all the undersigned parties.

7. Further Assurances. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all 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. Failure by Duncan to demand strict adherence to this Agreement shall not constitute a waiver of any obligation, nor shall Duncan be estopped from enforcing its terms in the future.

8. Time of the Essence. With regard to any payment due under this Agreement, time is of the essence.

9. Recording. This Agreement is intended to be recorded against the NAS Property. The obligations of the owner of the NAS Property contained herein shall run with the land and shall become the obligation of any successor-owner of the NAS Property.

10. Notices. Any notice, payment, or request which the undersigned party is respectively required or desires to give or make shall be in writing and shall be given or made by personally delivering the notice or mailing the notice by First Class Mail, postage prepaid, to the party who should receive the notice.

11. Termination. This Agreement shall automatically terminate and be of no force or effect on the earlier of the following two events: (i) December 31, 2007 or (ii) upon Duncan receipt of full payment of the Connection Fee and any Default Interest which may be due hereunder pursuant to the terms of this Agreement.

12. Binding. This Agreement shall be inure to and be binding upon and for the benefit of Duncan and their Successors and is for the benefit of the owner of the NAS Property and shall inure to and shall run with the title of the NAS Property and subdivision thereof and shall bind the respective Successors of the present owner thereof.

This Agreement is made as of the date first written above, but each party has signed on the date reflected on each signature block.

"DUNCAN"

Date

J. Robert Duncan

Date

Karen K. Duncan

Date

<
"NAS"

Nebraska Academy of Sciences,
Inc., a Nebraska nonprofit
corporation

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 1992, by J. Robert Duncan, a married person.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 1992, by Karen K. Duncan, a married person.

Notary Public

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STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 1992, by _____ as _____ of the Nebraska Academy of Sciences, Inc., a Nebraska nonprofit corporation on behalf of the corporation.

Notary Public

11. Termination. This Agreement shall automatically terminate and be of no force or effect on the earlier of the following two events: (i) December 31, 2007 or (ii) upon Duncan receipt of full payment of the Connection Fee and any Default Interest which may be due hereunder pursuant to the terms of this Agreement.

12. Binding. This Agreement shall be inure to and be binding upon and for the benefit of Duncan and their Successors and is for the benefit of the owner of the NAS Property and shall inure to and shall run with the title of the NAS Property and subdivision thereof and shall bind the respective Successors of the present owner thereof.

This Agreement is made as of the date first written above, but each party has signed on the date reflected on each signature block.

"DUNCAN"

Date

J. Robert Duncan

Date

Karen K. Duncan

Date

<
"NAS"
Nebraska Academy of Sciences,
Inc., a Nebraska nonprofit
corporation
By: _____
Title: _____

COUNTY OF LANCASTER) ss.

The foregoing instrument was acknowledged before me this
_____ day of _____, 1992, by J. Robert
Duncan, a married person.

Notary Public

STATE OF NEBRASKA)
COUNTY OF LANCASTER) ss.

The foregoing instrument was acknowledged bore me this
_____ day of _____, 199, by Karen K.
Duncan, a married person.

Notary Public

STATE OF NEBRASKA)
COUNTY OF LANCASTER) ss.

The foregoing instrument was acknowledged before me this
_____ day of _____, 1992, by _____
as _____ of the
Nebraska Academy of Sciences, Inc., a Nebraska nonprofit
corporation on behalf of the corporation.

Notary Public