

**CONDITIONAL
ANNEXATION AND ZONING AGREEMENT**

This Agreement is made and entered into on this 18TH day of MARCH, 1996, by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City", and RF Properties, Inc., a Nebraska corporation, hereinafter referred to as "RF Properties."

RECITALS

- A. RF Properties requested that the City annex and rezone certain property generally located along North 70th Street and Salt Creek.
- B. The City is willing to approve such annexation and rezoning provided that the municipal infrastructure necessary to serve and properly accommodate the area of the proposed annexation and the uses under the proposed zoning are constructed in a timely manner.
- C. The City and RF Properties recognize that the City does not currently have sufficient funds to devote to this area to provide for the construction of all necessary municipal infrastructure and recognize that, in order to support a current annexation and rezoning of this property as requested by RF Properties, it is necessary that RF Properties assume cost responsibility for the necessary municipal infrastructure. The parties are entering into this Agreement for the purpose of providing for the construction of the municipal infrastructure necessary for the area of the proposed annexation and rezoning and for the assumption of cost responsibilities for such municipal infrastructure by RF Properties.

Now, Therefore, in consideration of the mutual covenants contained herein, the parties to this Agreement do hereby agree as follows:

**I.
ANNEXATION AND REZONING**

The City Council of the City, concurrently with approval of this Agreement, is annexing the property which is described in Attachment "A", hereinafter referred to as the "Property", which is attached hereto made a part hereof by reference. The City Council of the City is also approving changes to the Lincoln zoning district maps to change the Property from AG Agricultural to I-1 Industrial.

Said annexation and zoning approval are conditional upon the terms, conditions, and understandings as set forth in this Agreement being fulfilled. The parties understand and agree, that notwithstanding the conditional nature of such zoning approval, nothing shall preclude the City Council, in the exercise of its legislative authority, from rezoning, or revising the zoning designations applicable to, the property described in Attachment "A",k as future circumstances may warrant.

II. NECESSARY MUNICIPAL INFRASTRUCTURE

The City and RF Properties covenant and agree that the following are the municipal infrastructure improvement fees and conveyances required for the uses which will be permissible upon the Property on approval of the rezoning of the Property from AG to I-1, and which are necessary to promote the general health and welfare of the City, and to relieve potential traffic congestion in the area surrounding the project.

A. Private Sanitary Sewer Line and Lift Station:

1. RF Properties shall extend a sewer line from an existing manhole in North 70th Street to the Property. The sewer line shall be privately owned.
2. RF Properties shall install a lift station on the Property to collect sewage from any and all development on the Property and pump it into the line described in subparagraph II.A.1 above. The lift station shall be privately owned.
3. RF Properties agrees to extend the sanitary sewer line and install the lift station at his own cost and expense. RF Properties further agrees at his own cost and expense to permanently maintain the private sanitary sewer line and private sanitary lift station.
4. RF Properties shall enter into a non-abutting sewer service agreement with the City for the sanitary sewer service to be hung on the 70th Street bridge.

B. Water Main Tap: RF Properties shall pay the City a tap fee of Nineteen Thousand Thirty-Nine and 59/100ths Dollars (\$19,039.59) for the privilege of tapping the existing water main in North 70th Street abutting the Property. This fee represents the amount which could have been assessed against the Property if the main in North 70th Street had been installed pursuant to a special assessment district. RF Properties shall pay to the City the above-entitled amount at the time RF Properties makes application to tap said water main.

C. 70th Street Paving: RF Properties shall pay the City a fee of Thirty-Five Thousand Two Hundred Fifty-Eight and 50/100ths Dollars (\$35,258.50) for the paving of North 70th Street abutting the Property. This fee represents the amount which could have been assessed against the Property if the paving in North 70th Street had been installed pursuant to a special assessment district. RF Properties shall pay to the City the above-entitled amount at the time RF Properties makes application for a building permit to construct a building upon the Property or within one year from the date of annexation, which occurs first.

D. Conveyances:

1. RF Properties shall convey to the City, at no cost to the City, seventeen feet (17') of right-of-way in order to provide a total of fifty feet (50') of right-of-way west of the 70th Street centerline abutting the Property.
2. RF Properties shall convey to the City, at no cost to the City, a twenty-foot (20') wide trail easement along the southern end of the Property (along Salt Creek).

**III.
ESSENTIAL NEXUS**

The City and RF Properties agree that an essential nexus exists between the uses which will be permissible upon the Property on approval of RF Properties proposed rezoning and the private infrastructure improvement fees and conveyances being required. Further, RF Properties and the City agree that the cost responsibilities imposed upon RF Properties by this Agreement are roughly proportional both in nature and extent of the impact of the proposed development.

**IV.
DEFAULT**

The parties agree that the rezoning of the Property promotes the public health, safety and welfare so long as RF Properties fulfills all of the conditions and responsibilities set forth in this Agreement. In the event that RF Properties defaults in fulfilling any of the covenants or responsibilities as set forth in this Agreement, the City may, in the exercise of its legislative authority, rezone the Property to its previous zoning designation or such other zoning designation as the City may deem appropriate under the then existing circumstances.

**V.
NOTICES**

Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

City of Lincoln, Nebraska
Attn: Public Works Director
555 South 10th Street
Lincoln, NE 68508

RF Properties, Inc.
Dwaine R. Rogge, President
850 NBC Center
1248 O Street
Lincoln, NE 68508

With a copy to:
City Clerk
555 South 10th Street
Lincoln, NE 68508

**VI.
BINDING EFFECT**

This Agreement shall run with the land and shall be binding upon and inure to the benefit and burden of the successors and assigns of the respective parties.

**VII.
AMENDMENTS**

This Agreement may only be amended or modified in writing signed by the parties hereto.

**VIII.
INTERPRETATIONS**


Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

**IX.
RECORDING**

The City Clerk shall file this Agreement with the Register of Deeds. RF Properties shall pay the recording fee.


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

ATTEST:



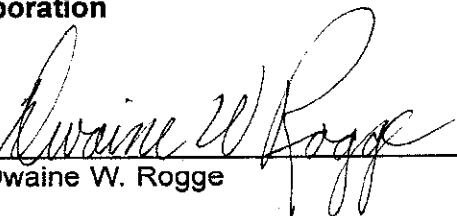
City Clerk

**The City of Lincoln, Nebraska, a
municipal corporation**

By: 

Mike Johanns, Mayor

**RF Properties, Inc., a Nebraska
corporation**

By: 

Dwaine W. Rogge

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

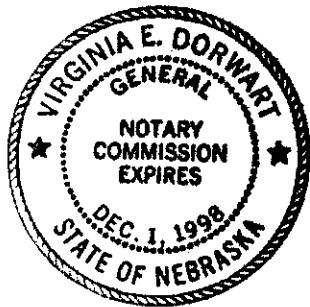
The foregoing instrument was acknowledged before me this 18TH day of MARCH, 1996, by Mike Johanns, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City of Lincoln, Nebraska.



Joan E. Ross
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19 day of January, 1996, by Dwaine W. Rogge, President of RF Properties, Inc., a Nebraska corporation.



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Virginia E. Dorwart
Notary Public

ATTACHMENT "A"

A portion of the Southeast Quarter of the Southeast Quarter of Section 28, Township 11 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the southeast corner of said Section 28, thence west along the south line of said Section 28, a distance of 33.00 feet to the point of intersection of right-of-way for North 70th Street, and the south line of said Section 28, said point being the true point of beginning, thence north along the west right-of-way line of North 70th Street, said line being 33.00 feet west of, and parallel to the east line of said Section 28, a distance of 705.17 feet to a point, thence west along a line 705.17 feet north of and parallel to the south line of said Section 28, a distance of 840.11 feet to a point, thence south along a line 873.11 feet west of, and parallel to the east line of said Section 28, a distance of 705.17 feet to a point on the south line of said Section 28, thence east along the south line of said Section 28, a distance of 840.11 feet to the point of beginning, said tract contains a calculated area of 13.60 acres more or less.

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