

18R-178

Introduce: 7-30-18

RESOLUTION NO. A- 91199

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 1. That the Annexation Agreement for Southwest Village Heights 1st Addition, which is
3 attached hereto, marked as Attachment "A", and made a part hereof by reference, by and between the City
4 of Lincoln, Nebraska and Southwest Folsom Development, LLC, outlining certain conditions and
5 understandings relating to the annexation of approximately 42.49 acres of property generally located at the
6 southwest corner of Old Cheney and South Folsom Street, is approved.

7 2. That the Mayor is authorized to execute the Annexation Agreement for Southwest Village
8 Heights 1st Addition on behalf of the City.

9 3. That the City Clerk is directed to return one fully-executed copy of this Agreement to Tim
10 Sieh, Assistant City Attorney, for distribution to the Property Owners.

11 4. The City Clerk is directed to record the Annexation Agreement for Southwest Village
12 Heights 1st Addition with the Register of Deeds to be indexed against the properties listed in Attachment
13 "A" to the Annexation Agreement, filing fees to be paid by the Property Owners.

14 5. The City Clerk is directed to forward a copy of this Agreement to Michaela Dugan, Impact
15 Fee Administrator.

Introduced by:

AYES: Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None; ABSENT: Camp.

Approved as to Form & Legality:

Jeffery R. Herzog
City Attorney

Approved this 15th day of Aug, 2018:

Mayor

ADOPTED
AUG 13 2018
BY CITY COUNCIL

**ANNEXATION AGREEMENT
FOR
SOUTHWEST VILLAGE HEIGHTS 1ST ADDITION**

This Annexation Agreement for Southwest Village Heights 1st Addition (“Agreement”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **City of Lincoln, Nebraska**, a municipal corporation (“City”), and **Southwest Folsom Development, LLC**, a Nebraska limited liability company (“Property Owner”).

RECITALS

1. The Property Owner is the owner and developer of the real estate legally described on Exhibit “A” (the “Property”). The City and Property Owner desire to cause the urban development of the Property.

2. The Property is shown as Tier 1, Priority B (2040) on the 2040 Priority Growth Areas (Map 1.3 Growth Tiers with Priority Areas) in the Lincoln City-Lancaster County Comprehensive Plan.

3. The City and Property Owner desire that the Property be annexed in phases pursuant to this Agreement.

4. Property Owner has requested that the City annex and rezone from AG Agricultural District to R-3 Residential District that portion of the Property legally described and shown on Exhibit “B” as the first phase of annexation and zoning of the Property (“First Phase Property”).

5. Property Owner has represented to the City that it has offered to sell part of the Property to be used for affordable housing units and that it is engaged in negotiations with the Lincoln Housing Authority to facilitate such a project.

6. The City’s annexation and rezoning approval of the First Phase Property are collectively referred to herein as “First Phase Governmental Action”.

7. The City is willing to approve the First Phase Governmental Action and subsequently consider approving the annexation of the balance of the Property in phases pursuant to the Comprehensive Plan (collectively "Subsequent Phase Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate development of the Property.

8. The parties acknowledge the City is currently conducting a Southwest Subarea Transportation Study ("Subarea Study") that is looking at the road network in the southwest area. The Subarea Study is anticipated to be completed by August 31, 2018.

9. Property Owner has also submitted a preliminary plat on the Property as shown on Exhibit "C" for the City's review. The parties acknowledge the preliminary plat is conceptual at this time as Property Owner has agreed to delay approval until the completion of the Subarea Study.

10. This Agreement identifies the Property Owner's and City's responsibilities regarding the construction of impact fee facility infrastructure improvements necessitated upon annexation and future development of the Property.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants established herein, the parties do hereby agree as follows:

I.

**CONCURRENT APPROVAL OF FIRST PHASE GOVERNMENTAL ACTION;
CONDITIONAL APPROVAL**

A. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following First Phase Governmental Action:

1. Annexation of the First Phase Property as legally described and shown on Exhibit "B".
2. Rezoning the First Phase Property from AG Agricultural District to R-3 Residential District as legally described and shown on Exhibit "B".

B. Conditional Approval of First Phase and Subsequent Governmental Actions.

The City's Approvals of the First Phase Governmental Action and any Subsequent Phase Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The Property Owner understands and agrees that, notwithstanding the conditional nature of such governmental approvals hereto, the City Council for the City of Lincoln, on its own motion or at the request of the Property Owner, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property or any portion thereof; or (iv) approve or amend plats, dedications, use permits, special permits, community unit plans, building permits or other land use controls, as future development and circumstances may warrant.

II.

PHASED DEVELOPMENT OF THE PROPERTY

A. Subsequent Phases of Annexation. The City and Property Owner agree that the remainder of the Property will be annexed in one or more phases. The Property Owner and the City recognize and understand that as part of this Agreement, the Property Owner and City are identifying the public impact fee facility infrastructure improvements necessary to serve future development of the First Phase Property and all other phases of the Property.

III.

ARTERIAL STREET IMPROVEMENTS

A. S. Folsom Street Adjacent to the Property.

1. Existing Conditions. Presently, S. Folsom Street adjacent to the Property ("S. Folsom Street") is designated as a "Major Collector" in the 2040 Lincoln City – Lancaster County Comprehensive Plan. No improvements to this segment of S. Folsom Street are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period. This segment of S. Folsom Street is described in the City's Access Management Policy as a Minor Arterial Street. S. Folsom Street exists as a graveled two-lane rural cross section county road except for the southern portion that contains pavement providing a taper section from the paved urban roadway section of S. Folsom Street to the south. S. Folsom Street is included in the Subarea Study.

2. Access Point. The City and Property Owner agree that full turn movement intersection ingress and egress to and from the Property along S. Folsom Street will be limited to one access point at the quarter mile in the approximate location shown as Palm Canyon Road on Exhibit "C".

3. Property Owner's S. Folsom Street Improvements. The City and Property Owner agree that urban development of the Property will require the improvement of S. Folsom Street as set forth on the roadway cross section attached hereto as Exhibit "D-1" and the roadway configuration is attached hereto as Exhibit "D-2". The S. Folsom Street grading and paving improvements identified on Exhibit "D-1" are arterial street impact fee facility improvements ("S. Folsom Street Impact Fee Facility Improvements"). The City does not currently have funding to pay for the S. Folsom Street Impact Fee Facility Improvements. The Property Owner may, on the

City's behalf, design, competitively bid, construct and fund the S. Folsom Street Impact Fee Facility Improvements through the City's Executive Order process as part of the final plat process. In the event Property Owner designs and constructs the S. Folsom Street Impact Fee Facility Improvements described herein, then the City agrees to reimburse Property Owner for said costs, as soon as reasonably possible, from Segregated Arterial Street Impact Fees, as set forth below. In the event the Property Owner's costs for the S. Folsom Street Impact Fee Facility Improvements are in excess of the anticipated Segregated Arterial Street Impact Fees, defined below, then the City agrees to use Impact Fees collected from within the same benefit district to reimburse the Property Owner for such costs.

4. Segregated Arterial Street Impact Fees. The City agrees to segregate arterial street impact fees collected by the City from development of the Property, as well as the property included within Southwest Village Heights Preliminary Plat, which area is identified on Exhibit "D" ("Segregated Arterial Street Impact Fees") and utilize said Segregated Arterial Street Impact Fees to fund the S. Folsom Street Impact Fee Facility Improvements. In the event Segregated Arterial Street Impact Fees are not available to fund the S. Folsom Street Impact Fee Facility Improvements at the time they are constructed by the Property Owner, the Property Owner shall fund said S. Folsom Street Arterial Street Impact Fee Facility Improvements and said costs shall be reimbursed to the Property Owner semi-annually by the City from Segregated Arterial Impact Fees actually collected. If required, the S. Folsom Street Arterial Street Impact Fee Facility Improvements shall be publicly bid and awarded as provided by law. If required, the Property Owner shall prepare and process, and the City agrees to sign, as permittee, an application for any Section 404 permit required for construction of the S. Folsom Street Arterial Street Impact Fee Facility Improvements.

5. Dedication of S. Folsom Street ROW. At the time of final platting or upon the earlier request by the City, the Property Owner agrees to dedicate or convey, at no cost to the City, the additional right-of-way needed to provide 60 feet of right-of-way from the center line of S. Folsom Street, as well as additional of right-of-way at the planned quarter mile intersection and future intersection with Old Cheney Road for roundabout improvements along with any temporary construction easements.

6. Final Platting Adjacent to S. Folsom Street. The parties acknowledge that S. Folsom Street is paved adjacent to a majority of the First Phase Property. The Property Owner may final plat all of the First Phase Property prior to construction of the S. Folsom Street Improvements. The parties agree construction of the S. Folsom Street Improvements shall be completed in conjunction with the first final plat of the Property outside the First Phase Property, unless it is completed sooner by the Property Owner.

B. SW 12th Street Adjacent to the Property.

1. Existing Conditions. SW 12th Street adjacent to the Property ("SW 12th Street") is shown in the 2040 Lincoln City – Lancaster County Comprehensive Plan as a "minor arterial" street improvement during the 25-year planning period. This segment of SW 12th Street is also described in the City's Access Management Policy as a Minor Arterial Street. Presently, SW 12th Street is an existing two lane paved county road. The classification of SW 12th Street may be impacted by the Subarea Study.

2. Access Points. The City and Property Owner agree that the full turn movement intersection ingress and egress to and from the Property along SW 12th Street will be limited to the one access point in the approximate location shown on Exhibit "C".

3. Property Owner's SW 12th Street Improvements. The City and Property Owner agree that urban development of the Property will require the Property Owner to design and construct, at its own cost and expense, temporary right and left turn lanes as determined by the City at the final approved full turn movement intersection access point along SW 12th Street abutting the Property as generally shown on Exhibit "C" (individually "Temporary Turn Lane" and collectively "Temporary Turn Lanes"). The turn lanes will provide required turning motor vehicular storage along with the required deceleration lane length. The final design for the above right and left turn lane improvements will be submitted to the City for review and approval. Notwithstanding the above, if the City's classification of SW 12th Street is downgraded from a Minor Arterial as a result of the Subarea Study, the access points to SW 12th Street and improvements at such access points will be reevaluated with Subsequent Phase Governmental Actions.

7. Dedication of SW 12th Street Right-of-Way. At the time of final platting or upon the earlier request by the City, the Property Owner agrees to dedicate or convey, at no cost to the City, the additional right-of-way needed to provide up to 60 feet of right-of-way from the center line of SW 12th Street, with an additional ten (10) feet of right-of-way at the intersections for turn lanes extending approximately 700 feet from the centerline of the intersections.

C. W. Old Cheney Road from SW 12th Street to S. Folsom Street. W. Old Cheney Road from SW 12th Street to S. Folsom Street is an existing two lane paved county road. It is designated as a "Major Collector" in the 2040 Lincoln City – Lancaster County Comprehensive Plan. This segment of W. Old Cheney Road is described in the City's Access Management Policy as a Minor Arterial Street. W. Old Cheney Road will also be evaluated by the City as part of the Subarea Study. The classification of and any improvements required to W. Old Cheney Road will

be addressed by an amendment to this Agreement after completion of the Subarea Study in conjunction with Subsequent Phase Governmental Actions.

IV.

SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS

A. **Sanitary Sewer Improvements.** The City and Property Owner agree that the following sanitary sewer improvements, which are shown on Exhibit "F" are necessary to serve the annexation of the Property and to promote the general health and welfare of the City.

1. **Southwest Salt Creek Trunk Sewer Extension and Subbasin Extension to SW.** The City, at its expense, shall design, acquire permanent and temporary easements and construct (i) the Southwest Salt Creek Trunk Sewer Extension generally running from S. 7th Street and Old Cheney Road along Old Cheney Road from S. 7th Street to the east side of Highway 77 as shown by the red line on Exhibit "F" ("Salt Creek Trunk Extension"), and (ii) the Salt Creek Subbasin Extension to SW generally running from W. Old Cheney Road and Highway 77 to S. Folsom Street and continuing southwest into the Property approximately 1,000 feet down the drainageway as shown by the green line on Exhibit "F" ("SW Subbasin Extension"). The Salt Creek Trunk Extension and SW Subbasin Extension are sometimes individually referred to as a "Trunk Sewer Line" and collectively as "Trunk Sewer Lines".

(a) **City's 2016/17 – 2011/22 Capital Improvement Program.** In order to carry out this responsibility, the City has approved the City's 2016-17 Capital Improvement Program as part of its Fiscal Year 2016 and Fiscal Year 2017 biennial budget. The current Capital Improvement Plan shows \$500,000 for the Fiscal Year 2018/19, \$2,500,000 for the Fiscal Year 2019/20, and \$2,500,000 for the Fiscal Year 2020/21 to fund the Trunk Sewer Lines.

(b) City Budget. The City's proposed 2018/19 – 2023/24 Capital Improvement Program, as part of its Fiscal Year 2018 and Fiscal Year 2019 biennial budget, shows \$900,000 for the Fiscal Year 2018/19, \$2,100,000 for the Fiscal Year 2019/20, and \$850,000 for the Fiscal Year 2020/21 to fund the Trunk Sewer Lines. The City agrees, contingent upon approval of a 5% increase in Sanitary Sewer User Fees in each of the 2018-19 and 2019/20 fiscal years, to budget and approve in the Fiscal Year 2018 and Fiscal Year 2019 biennial budget the total sum of \$3,000,000 to timely pay for the construction of the Salt Creek Trunk Extension to be completed by the Trunk Completion Date set forth below.

2. Timeline. The City, at its expense, agrees to complete the design and construction of the Salt Creek Trunk Extension by June 30, 2020 ("Trunk Completion Date") subject to the contingency stated in subsection 1 above. Further, the City agrees to complete the design and construction of the SW Subbasin Extension by June 30, 2021 ("Subbasin Completion Date"), subject to (i) the construction of the Salt Creek Trunk Sewer by the Trunk Completion Date; (2) approval of a 5% increase in the Sanitary Sewer User Fees for each of the 2018-19, 2019-20, and 2020-21 fiscal years; and (3) approval of funding for said extension in the first year of the Capital Improvement Program adopted as part of the 2020-21/2021-22 City of Lincoln biennial budget to be considered in August 2020. In the event the Property Owner needs the SW Subbasin Extension prior to the time it is constructed by the City, the Property Owner may, on the City's behalf, design, competitively bid, construct and fund the SW Subbasin Extension through the City's Executive Order process as part of the final plat process. In the event Property Owner constructs the SW Subbasin Extension through the City's Executive Order Process, the City agrees, subject to the contingencies stated above in this subsection, to reimburse the Property Owner for the costs of the SW Subbasin Extension constructed by the Property Owner, including

the design, grading and construction of the SW Subbasin Extension, by no later than November 2020.

3. Internal Sewer Lines. The Property Owner shall design and construct, at its cost, the internal sewer lines (collectively "Internal Sewer Lines" and individually "Internal Sewer Line") required to sewer the Property in phases. The Internal Sewer Lines shall be constructed under the authority of an executive order issued by the Mayor of the City in phases as part of the annexation and platting process. The size and location of the Internal Sewer Lines will be determined as part of the platting process. The Property Owner shall be responsible for the cost of constructing a typical 8-inch sanitary sewer line, and the City shall be responsible for all costs attributable to oversizing the Internal Sewer Lines with pipe, valves, fittings and all other accessories that are larger than 8-inches; provided, however, for any 10-inch or above portion of the Internal Sewer Lines that cannot be utilized for service, the City will reimburse the Property Owner for the entire cost of said 10-inch or above portion of the Internal Sewer Lines. If the subsidy to be provided by the City to increase the size of the Internal Sewer Lines is estimated to exceed \$100,000, the oversized Internal Sewer Lines shall be publicly bid and awarded as provided by law.

4. Sanitary Sewer Easements. At the time of the applicable final platting or upon the earlier request by the City, the Property Owner shall dedicate and convey all necessary temporary and permanent sanitary sewer easements to the City located within the Property, without additional cost or consideration. Said easements shall be nonexclusive easements; provided that, no permanent building improvements will be permitted to be constructed over the top of said easements. The City, with the cooperation of the Property Owner, shall acquire all temporary and permanent nonexclusive easements necessary for the construction and operation of the SW

Subbasin Extension located outside the Property in a timely manner after the Property Owner provides the City reasonable advance notice of the estimated timeframe for the construction of the SW Subbasin Extension. In the event Property Owner is constructing the SW Subbasin Extension through the City's Executive Order process, the costs of the temporary and permanent easements including, but not limited to, the amount of any condemnation award, court costs, expert witness fees, testing fees, interest, and City staff time shall be paid by the Property Owner and included as part of the project cost of the SW Subbasin Extension to be reimbursed to Property Owner. The City is authorized to utilize condemnation, if necessary, to acquire the temporary and permanent easements.

5. Temporary Storage and Pumping. Property Owner and City intend for the Salt Creek Trunk Extension, SW Subbasin Extension and applicable Internal Sewer Line(s) to all be completed prior to the Trunk Completion Date to enable building(s) to receive a certificate of occupancy and to be serviced through said sewer lines. In the event the SW Subbasin Extension and applicable Internal Sewer Line(s) are completed prior to the Trunk Completion Date, but the Salt Creek Trunk Extension is not completed prior to the Trunk Completion Date, then the City will allow the following:

(a) Property Owner, at its expense, to temporarily collect and store the wastewater generated from a building(s) into the SW Subbasin Extension and Internal Sewer Line(s) and timely pump, haul and dispose of said wastewater until such time as the Salt Creek Trunk Extension is constructed and operable (collectively "Temporary Pumping"). In the event of Temporary Pumping, Property Owner, at its expense, shall timely pump said stored wastewater from the SW Subbasin Extension and Internal Sewer Line(s) into a proper collection and transfer truck, and haul and dispose of said wastewater into a nearby operable City sewer manhole and

sewer line that has been identified by the City's Public Works and Utilities Lincoln Wastewater System. Property Owner shall not be required to pay the City a City wastewater collection, storage, pumping, hauling, disposal or wastewater treatment charge for said wastewater. Property Owner's collection, storage, pumping, hauling and disposing of said wastewater from the SW Subbasin Extension and Internal Sewer Line(s) and to the designated City manhole shall be in conformance with the City of Lincoln's Wastewater Department's design standards and procedures for temporary wastewater collection, storage, pumping, hauling and disposal so as to properly protect the public's health and safety. As soon as the Salt Creek Trunk Extension is completed and operable, then Property Owner shall cease the Temporary Pumping;

b. Property Owner and its successors, assigns, buyers and tenants may be issued building permits for said building(s) within the Property prior to the completion of the Salt Creek Trunk Extension; provided that (i) there is compliance with the City's building codes; (ii) the applicable streets, street signs, and water mains are completed; (iii) the SW Subbasin Extension is installed; and (iv) the Trunk Completion Date of June 30, 2020 is no more than 6 months after expected occupancy of said building(s).

c. Property Owner and its successors, assigns, buyers and tenants to be issued a certificate of occupation for said building(s) within the Property; provided that, there is compliance with the City's building codes and further provided that, Property Owner is providing Temporary Pumping as described above.

V.

WATER INFRASTRUCTURE IMPROVEMENTS

A. **Secondary Feed to S. Folsom Street.** The City, at its expense, will be responsible to design and construct a 16 inch water distribution main in Old Cheney Road that serves as a

secondary feed to S. Folsom Street - HD/Belmont, which shall be a water line distribution impact fee facility ("S. Folsom Secondary Feed"), at such time as the City deems the S. Folsom Secondary Feed necessary to serve the development of the Property and/or surrounding property. The parties acknowledge that development of the initial phase of the Property does not require the construction of the S. Folsom Secondary Feed. The City currently identifies the S. Folsom Secondary Feed in both the existing 2016/17 Capital Improvement Program and proposed 2018/19 Capital Improvement Program.

B. SW Folsom Street Water Line. As part of the City's utility planning, the City desires to design and construct a 12" water main in SW 12th Street adjacent to the Property ("SW 12th Street Water Line"). The City acknowledges the SW 12th Street Water Line is not required for the development of the Property. The City, at its expense, will design, competitively bid, construct and fund the SW 12th Street Water Line as such time as SW 12th Street is improved to urban standards.

C. W. Old Cheney Road Water Line. As part of the City's utility planning, the City has determined a 16" water main is needed in W. Old Cheney Road adjacent to the Property to serve the southwest area ("Old Cheney Water Line"), but is not required for the development of the Property. The City, at its expense, will design, competitively bid, construct and fund the W. Old Cheney Water Line at such time as W. Old Cheney Road is improved to urban standards. Notwithstanding the foregoing, the parties acknowledge that if the classification of W. Old Cheney Road is downgraded by the Subarea Study, the parties will reevaluate as part of the Subsequent Phase Governmental Actions whether the W. Old Cheney Road Water Line can be constructed in connection the development of the Property utilizing the City subsidy process.

D. 12-inch Internal Water Line Improvements.

1. Construction by Property Owner. The City and Property Owner agree that adequate water service and fire protection for the Property can be provided by internal water lines (collectively "Internal Water Lines" and individually "Internal Water Line") to be constructed on the Property in phases during the annexation and platting process. The Property Owner shall design and construct the Internal Water Lines at its cost and expense under the authority of an executive order issued by the Mayor of the City as part of the platting process. The size and location of the Internal Water Lines will be determined as part of the platting process. The Property Owner shall be responsible for the cost of constructing a typical 6-inch water line and the City shall be responsible for all costs attributable to oversizing the water sewer with pipe, valves, fittings and all other accessories that are larger than 6-inches. If required, the Internal Water Lines shall be publicly bid and awarded as provided by law.

2. Water Easements. At the time of the applicable final platting or upon the earlier request by the City, the Property Owner shall dedicate or convey to the City all temporary and permanent water easements necessary for the construction and operation of the Internal Water Lines, without additional cost or consideration, in conjunction with the construction of such Internal Water Lines as set forth above. Said easements shall be nonexclusive easements; provided that, no permanent building improvements will be permitted to be constructed over the top of said easements.

VI.

TRAILS & PARKS

A. S. Folsom Trail

1. Easements. At the time of the applicable final platting or upon the earlier request by the City prior to construction of the 10 feet wide trail along the west side of S. Folsom Street adjacent to the Property ("S. Folsom Trail"), the Property Owner shall dedicate or grant to City, at no cost to the City, an additional six feet (6') of right of way or nonexclusive permanent and temporary easements for the S. Folsom Trail along the west side of S. Folsom Street.

2. Construction. The Property Owner shall, at its cost and expense, design, grade and construct the S. Folsom Trail based upon the City's design standards in conjunction with the construction of S. Folsom Street Arterial Street Impact Fee Facility Improvements. The Property Owner shall be responsible for the cost of constructing a typical 5 feet wide sidewalk and the City shall be responsible for all costs attributable to oversizing the sidewalk from 5 feet to a 10 feet wide trail. The sidewalk oversizing to 10 feet trail width is a neighborhood parks and trails impact fee facility improvement ("S. Folsom Trail Impact Fee Facility Improvement").

3. Funding. The City currently has funding to pay for the S. Folsom Trail Impact Fee Facility Improvements, and said funds shall be reimbursed by the City to the Property Owner upon completion of the S. Folsom Trail by the Property Owner. If required, the S. Folsom Trail Impact Fee Facility Improvement shall be publicly bid and awarded as provided by law.

4. Maintenance. The City, at its expense, will have maintenance, repair and replacement responsibilities for the S. Folsom Trail.

B. Parks

1. Dedication of Neighborhood Park. The City and Property Owner have

identified a neighborhood park within the Property as shown on Exhibit "C" ("Neighborhood Park") to serve the recreation and park needs of the future residents. The City, at its expense, will provide for the acquisition, design, development, construction and maintenance of the Neighborhood Park as the City deems necessary. The Property Owner agrees to dedicate the Neighborhood Park to the City at such time as (i) the Neighborhood Park is final platted, (ii) Infrastructure (defined below) has been installed, and (iii) the Property Owner receives the Final Payment (defined below) from the City for the "Neighborhood Park Acquisition Costs" which total Two Hundred Twenty-eight Thousand Eight Hundred and no/100 Dollars (\$228,800), and represents the market value of the real estate for the Neighborhood Park with the Infrastructure (defined below) installed on the Neighborhood Park or the abutting right of ways and easements. "Infrastructure" shall mean site preparation, grading, streets, street lights, curbs, gutters, sanitary sewer, storm sewer, water service, sidewalks adjacent to streets, and other related or customary utility services, service lines or infrastructure improvements, excluding pedestrian sidewalks, street trees and trails. Property Owner shall be responsible for final platting the Neighborhood Park into an outlot of record and installing Infrastructure adjacent to the Neighborhood Park in conjunction with the development of the surrounding property. The City shall be responsible for the installation of all required street trees for the Neighborhood Park, as well as the pedestrian sidewalk across the Neighborhood Park.

2. Funding. The City does not currently have all of the funding to pay the Property Owner for the Neighborhood Park Acquisition Costs, nor does the City desire to take immediate ownership of the Neighborhood Park. Consequently, the City and Property Owner agree that the City shall pay the Neighborhood Park Acquisition Costs to the Property Owner as follows:

(i) Ten percent (10%) of the Neighborhood Park Acquisition Costs shall be paid within sixty (60) days from the date this Agreement is finally approved by the City;

(ii) Forty percent (40%) of the Neighborhood Park Acquisition Costs shall be paid within sixty (60) days from the City's receipt of written notice from the Property Owner including supporting documentation acceptable to the City showing building permits have been issued for at least 290 dwelling units within the Impact Fee Collection Area identified on Exhibit "E", which includes the Property as well as the property included within Southwest Village Heights Preliminary Plat; and

(iii) The remaining fifty percent (50%) of the Neighborhood Park Acquisition Costs ("Final Payment") shall be paid within sixty (60) days from the City's receipt of written notice from the Property Owner including supporting documentation acceptable to the City showing building permits have been issued for at least 434 dwelling units within the Impact Fee Collection Area.

3. Transfer of the Neighborhood Park. Concurrently with the City's delivery of the Final Payment to Property Owner, Property Owner shall deliver to the City a Special Warranty Deed transferring the Neighborhood Park to the City free and clear of any liens and encumbrances, except easements, covenants and restrictions of record. Property Owner shall be responsible for maintaining the Neighborhood Park until it is transferred to the City.

VII.

CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

Property Owner understands and acknowledges that the City's annexation of the Property or any portion thereof lying within the boundaries of the SW Rural Fire Protection District ("District") shall not be complete except upon the City assuming and paying that portion of all

outstanding obligations of the District which would otherwise constitute an obligation of Property or portion thereof being annexed. The Property Owner agrees to pay the City whatever amount which must be paid by the City to the District in order for the portion of the Property being annexed to be complete.

VIII.

NOTICE

A. **Notice.** Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
575 South 10th Street
Lincoln, NE 68508

(2) If to the Property Owner:

Southwest Folsom Development, LLC
2001 Pine Lake Road, Suite 100
Lincoln, NE 68512

with a copy to:

DaNay Kalkowski
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

IX.

MISCELLANEOUS

A. **Exhibits.** All of the Exhibits attached to this Agreement are incorporated herein by this reference.

B. **Amendments.** This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

C. **Further Assurances.** Property Owner and the City will use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other parties 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.

D. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

E. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against any 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.

F. **Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

G. **Relationship of Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Property Owner, or by any third person to create the relationship of partnership or of

joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

H. Assignment. In the case of the assignment of this Agreement by the Property Owner, prompt written notice shall be given to the City who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the City or unless otherwise stated herein.

I. Default. Time is agreed to be of the essence. In the event the Property Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Property Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

J. Copy of Notice of Default to Mortgagee. Whenever a party shall deliver any notice or demand to a defaulting party with respect to any breach or default by defaulting party of its obligations or covenants in this Agreement, the party delivering such notice or demand shall at the same time forward a copy of such notice or demand to each holder of any mortgage, deed of trust or similar method of encumbrance (collectively "Mortgage") at the last address of such Mortgage holder as shown in the records of the Register of Deeds of Lancaster County as provided in such Mortgage of the defaulting party.

K. Mortgage Holder's Option to Cure Defaults. If fourteen (14) days after any notice or demand with respect to any breach or default as referred to in Article IX, Paragraph J such breach or default remains uncured, each such Mortgage holder shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage.

L. Binding Effect. This Agreement 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.

M. Recordation. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

N. Cooperation. Each undersigned party will whenever it shall be necessary to do so by any other party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

O. Authority. The City and Property Owner each represent and warrant that said party has the authority to enter into this Agreement and perform the party's obligations hereunder and has taken all steps to legally exercise that authority.

P. Release of Buildable Lot. Notwithstanding any contrary provisions herein, any Buildable Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. For the purposes of this Agreement, "Buildable Lot" shall mean a buildable lot of record (excluding outlots) as defined by the City subdivision ordinance being (a) less than ten acres in size, (b) within a lawful final plat of the Property or a portion of the Property and (c) conveyed in fee title (or leased in writing for a term of three years or more) to an Unrelated

Third Party. Notwithstanding any contrary provision herein, any Buildable Lot Owner shall automatically be deemed released from this Agreement without further written release. For the purposes of this Agreement, "Buildable Lot Owner" shall mean the grantee under a deed conveying fee title (or a lessee under a written lease having a term of three years or more) to a Buildable Lot who is an Unrelated Third Party. Any such conveyance (or lease) of a Buildable Lot shall not terminate the liability of the grantor (lessor) Property Owner and its successors and assigns to perform its obligations under this Agreement, unless a specific release in writing is given and signed by the parties to this Agreement. An "Unrelated Third Party" means a person, corporation, partnership, trust or other entity who is not the Property Owner or its successor or assign and is not an Affiliate under this Agreement. "Affiliate" means: (i) any officer, director, employee or blood related family member of a Party; and (ii) any corporation, partnership, trust or other entity controlling, controlled by or under common control with a Party or any person described in (i) above; and (iii) any officer, director, trustee, general partner or employee of any person described in (ii) above. For purposes of this definition, the term "control" shall also mean the control or ownership of ten percent (10%) or more of the beneficial ownership or fifty percent (50%) of the memberships in the entity referred to.

Q. Condemnation. 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, 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 impact fee facilities described in this Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements described in this Paragraph.

R. Authority. All necessary actions to duly approve the execution, delivery, and

performance of this Agreement has been undertaken by each party and this Agreement constitutes a valid and binding agreement of the parties, enforceable in accordance with its terms.

S. **Contingency**. This Agreement is contingent upon the City and Property Owner executing and delivering the Annexation Agreement and the City approving the Annexation Agreement and the First Phase Governmental Action.

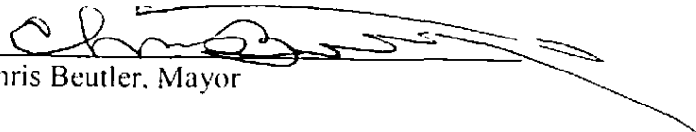
T. **Amendments**. This Agreement may only be amended or modified in writing signed by the City and the Property Owner.

U. **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.

Dated as of Aug 15, 2018 by the City.

"CITY"

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: 
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 15th day of August, 2018, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.




Notary Public

**SOUTHWEST FOLSOM
DEVELOPMENT, LLC,** a Nebraska
limited liability company

By: 1640, LLC, a Nebraska limited liability
company. Member

By: Michelle S. Benes Revocable Trust
dated May 21, 2003, Managing Member

By: *Michelle S. Benes*
Michelle S. Benes, Trustee

By: Robert L. Benes Revocable Trust dated
May 21, 2003, Managing Member

By: *Robert L. Benes*
Robert L. Benes, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

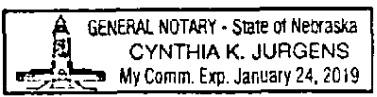
The foregoing was acknowledged before me this 25 day of July, 2018, by
Michelle S. Benes, Trustee of the Michelle S. Benes Revocable Trust dated May 21, 2003,
Managing Member of 1640 LLC, a Nebraska limited liability company. Member of **Southwest
Folsom Development, LLC**, a Nebraska limited liability company, on behalf of the limited
liability company.



Cynthia K. Jurgens
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 25 day of July, 2018, by
Robert L. Benes, Trustee of the Robert L. Benes Revocable Trust dated May 21, 2003, Managing
Member of 1640 LLC, a Nebraska limited liability company. Member of **Southwest Folsom
Development, LLC**, a Nebraska limited liability company, on behalf of the limited liability
company.



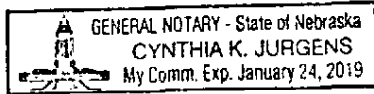
Cynthia K. Jurgens
Notary Public

By: WHITE HOLDINGS, LLC, a Nebraska limited liability company. Member

By: ZRW
Zachary R. White, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 25 day of July, 2018, by Zachary R. White, Member of White Holdings, LLC, a Nebraska limited liability company, Member of **Southwest Folsom Development, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Cynthia K. Jurgens
Notary Public

EXHIBIT "A"

THE PROPERTY

LOT 35 I.T. AND LOT 26 I.T., ALL LOCATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

EXHIBIT "B"

FIRST PHASE PROPERTY

A TRACT OF LAND COMPOSED OF A PORTION LOT 26 I.T., AND A PORTION OF LOT 35 I.T., ALL LOCATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 09 NORTH, RANGE 06 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE N89°23'14"W, ON A SOUTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 33.00' TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH FOLSOM STREET, SAID POINT BEING; TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N89°23'14"W ON SAID LINE, SAID LINE BEING THE SOUTH LINE OF LOT 26 I.T., A DISTANCE OF 1,132.14' TO A POINT; THENCE N00°07'01"E, A DISTANCE OF 65.71'; TO A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 02°37'25", A RADIUS OF 495.00', AN ARC LENGTH OF 22.67', A CHORD LENGTH OF 22.66', A TANGENT LENGTH OF 11.34', AND A CHORD BEARING OF N01°25'44"E; TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 26°57'15", A RADIUS OF 615.00', AN ARC LENGTH OF 289.32', A CHORD LENGTH OF 286.66', A TANGENT LENGTH OF 147.39', AND A CHORD BEARING OF N56°56'53"W TO A POINT; THENCE N43°28'16"W, A DISTANCE OF 85.95' TO A POINT; THENCE N47°24'09"W, A DISTANCE OF 61.30' TO A POINT; THENCE N38°29'10"W, A DISTANCE OF 127.70' TO A POINT; THENCE N38°47'02"W, A DISTANCE OF 103.25' TO A POINT; THENCE N50°23'51"E, A DISTANCE OF 268.57' TO A POINT; THENCE N54°33'37"E, A DISTANCE OF 288.94' TO A POINT; THENCE N63°50'23"E, A DISTANCE OF 414.40' TO A POINT; THENCE N64°11'59"E, A DISTANCE OF 220.34' TO A POINT; THENCE N40°29'33"E, A DISTANCE OF 238.05' TO A POINT; THENCE N25°49'25"E, A DISTANCE OF 422.57' TO A POINT; THENCE S89°52'59"E, A DISTANCE OF 272.25' TO A POINT LOCATED 33.00 FEET WEST OF THE EAST LINE OF SAID NORTHWEST QUARTER, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF SOUTH FOLSOM STREET; THENCE S00°07'01"W, ON AN EAST LINE OF LOT 35 I.T., AND ON A EAST LINE OF LOT 26 I.T., SAID LINE BEING 33.00' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER, SAID LINE ALSO BEING THE WEST LINE OF SAID RIGHT-OF-WAY A DISTANCE OF 1,719.34'; TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 1,694,562.04 SQUARE FEET OR 38.90 ACRES, MORE OR LESS.

EXHIBIT "C"

PRELIMINARY PLAT SITE PLAN

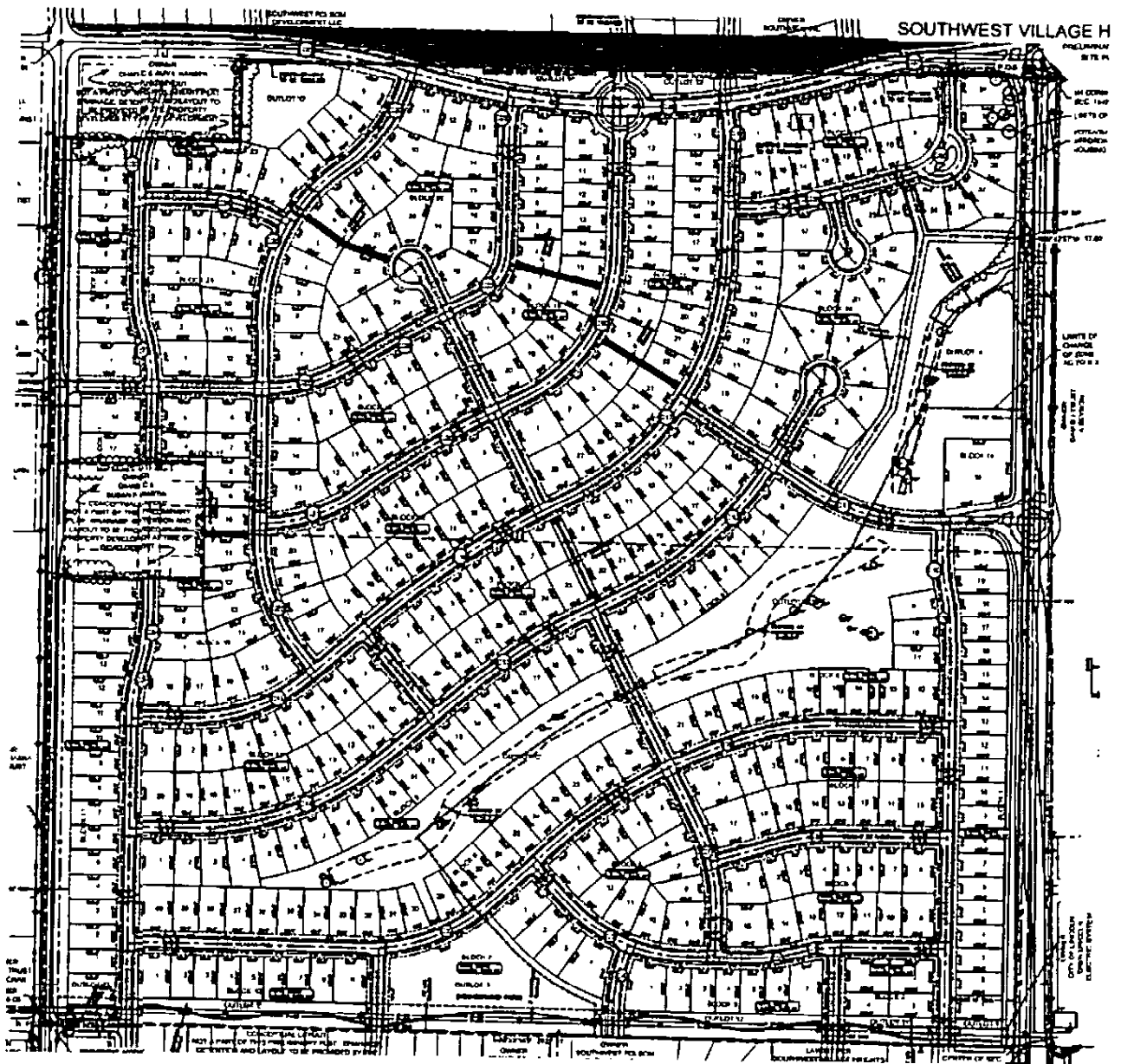


EXHIBIT "D-1"

S. FOLSOM STREET CROSS SECTION

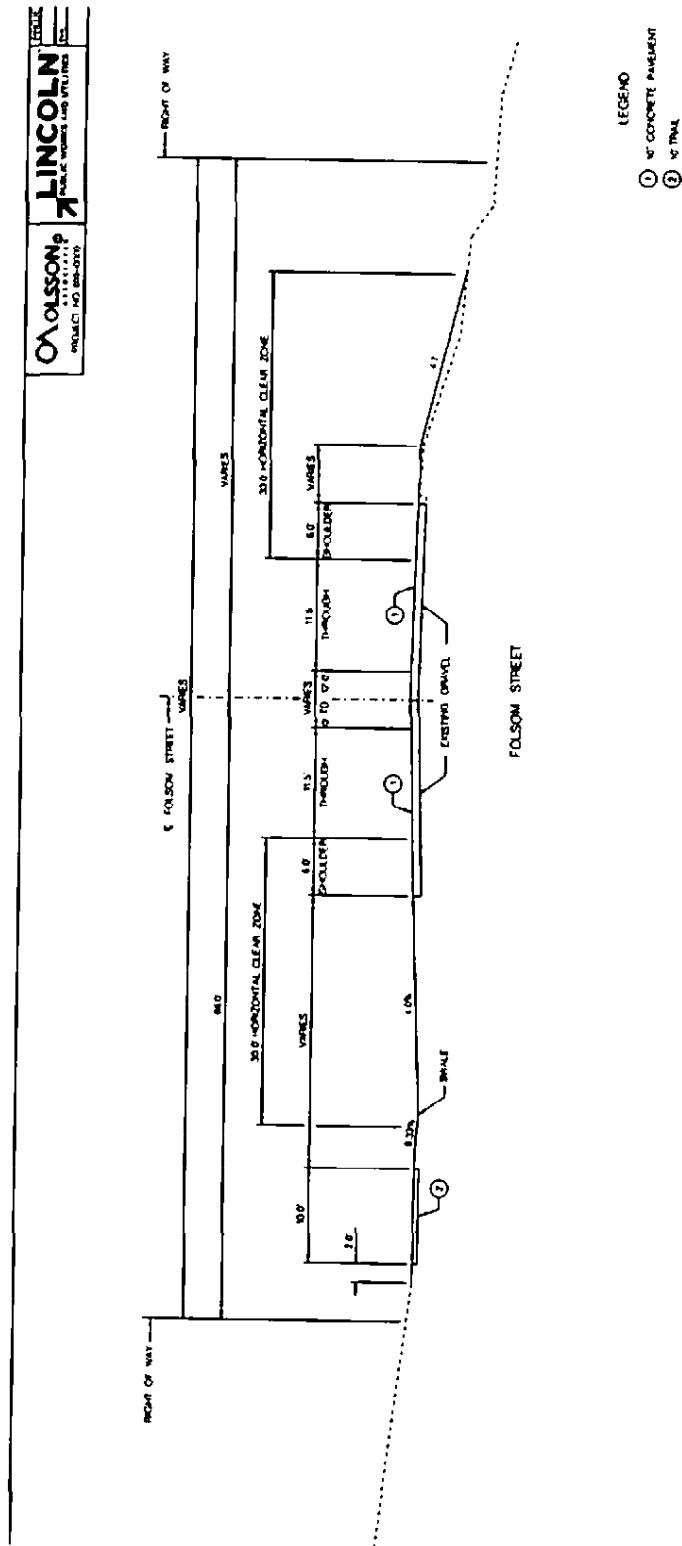


EXHIBIT "D-2"
S. FOLSOM STREET ROADWAY CONFIGURATION



EXHIBIT "E"

IMPACT FEE COLLECTION AREA

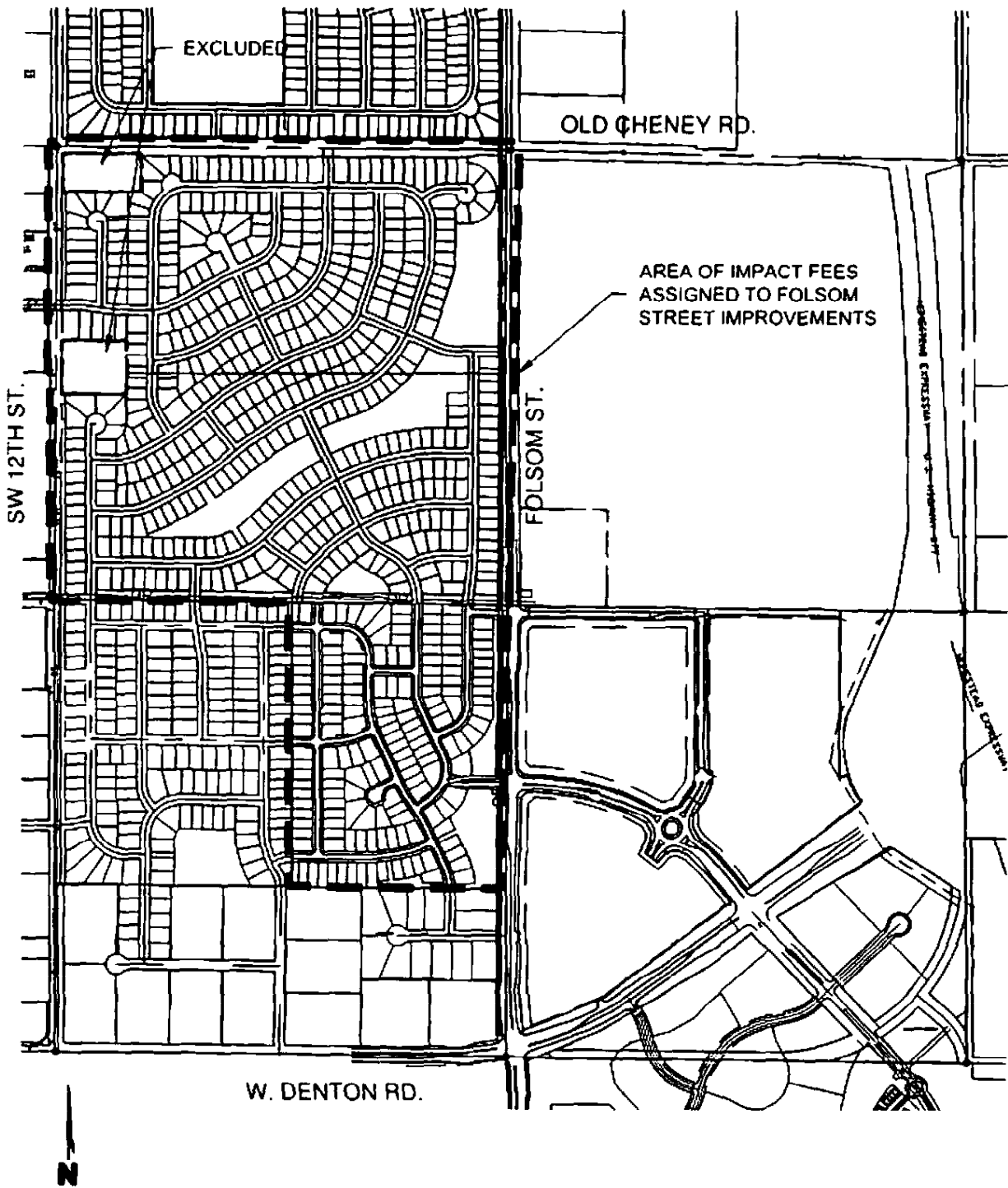


EXHIBIT "F"

SANITARY SEWER

