

ORIGINAL

00R-20

Introduce: 1-10-00

RESOLUTION NO. A- 79384

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:  
 2 That the agreement titled Conditional Annexation and Zoning Agreement for  
 3 Fallbrook ("Annexation Agreement"), which is attached hereto, marked as Attachment "A" and  
 4 made a part hereof by reference, between the City and NEBCO, Inc. (Owner) outlining certain  
 5 conditions and understandings between the City and said Owner relating to the annexation  
 6 and rezoning of approximately 318 acres of land generally located north of Highway 34, south  
 7 of Alvo Road and west of North 1st Street, is approved.

8 BE IT FURTHER RESOLVED that in the event additional right-of-way or  
 9 easements must be acquired for the completion of the transportation improvements provided  
 10 for in this Annexation Agreement, such property rights may be acquired by negotiation and  
 11 purchase or by condemnation, if necessary, as provided by law.

12 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the  
 13 Annexation Agreement on behalf of the City.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully  
 15 executed copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution  
 16 to the Owner.

17 BE IT FURTHER RESOLVED that the City Clerk is directed to record the  
 18 Agreement with the Register of Deeds, filing fees to be paid by the Owner.

Introduced by:

AYES: Camp, Cook, Fortenberry,  
 Johnson, McRoy, Seng, Shoecraft;  
 NAYS: None.

Approved as to Form and Legality:

Chief Assistant City Attorney

Staff Review Completed:

Administrative Assistant

**APPROVED**

FEB 1, 2000

MAYOR

**ADOPTED**

JAN 24 2000

by City Council

00R-20

1/18/00 Council Proceedings:

CAMP Moved to delay action on Bill 00R-20 for 1 week to 1/24/00.  
Seconded by Johnson & carried by the following vote: AYES: Camp, Cook,  
Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

1/24/00 Council Proceedings:

SHOECRAFT Moved to approve a substitute agreement, Version 2.  
Seconded by Johnson & carried by the following vote: AYES: Camp, Cook,  
Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

1/18/00 - ORIG. TO RICK PED  
2/10/00 - ORIG. TO ROGER FISARD

1-21-00 Version 2

**CONDITIONAL ANNEXATION AND ZONING  
AGREEMENT FOR FALLBROOK  
(North 1<sup>st</sup> Street and Highway 34)**

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT FOR FALLBROOK ("Agreement") is made and entered into as of this 1<sup>ST</sup> day of FEBRUARY, 2000, by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation ("City") and **NEBCO, INC.**, a Nebraska corporation ("Property Owner").

**RECITALS**

1. The City, at Property Owner's request, has initiated an amendment to Figure 16 of the Lincoln City-Lancaster County Comprehensive Plan entitled *Lincoln's Future Land Use Plan* to change the Future Land Use of property from Urban Residential and Commercial to Public/Semi-Public, Commercial, and Urban Village as shown on the map which is attached hereto as Attachment "A" and incorporated herein by this reference. The amendment to Figure 16 incorporates the proposed land uses for the property shown on the subarea plan which is attached hereto as Attachment "B" and incorporated herein by this reference ("Subarea Property").

2. The City, at Property Owner's request, has initiated an amendment to Figure 65 of the Lincoln City-Lancaster County Comprehensive Plan entitled *Anticipated 2015 Lincoln Service Limit and Phasing Plan* to designate as "Blue Area" (Phase I -- ready for immediate development) the property legally described and shown on Attachment "C-I", which is attached hereto and incorporated herein by this reference ("Property").

3. The City, at Property Owner's request, has initiated an amendment to Figure 65 of the Lincoln City-Lancaster County Comprehensive Plan entitled *Anticipated 2015 Lincoln Service Limit and Phasing Plan* to designate as "Green Area" (Phase II – designated for near term development) the property shown on Attachment "C-II", which is attached hereto and incorporated herein by this reference ("Next Phase Property").

4. Property Owner has requested that the City annex the Property.

5. Property Owner has requested that the City rezone those portions of the Property referred to as Areas 1A, 2, 3 and 4A, as shown and legally described on Attachment "D", which is attached hereto and incorporated herein by this reference, from AG to R-3, O-3, B-2, and O-3, respectively.

6. The Property Owner has requested that the City concurrently approve a Preliminary Plat, CUP and Generic Use Permit (collectively "Governmental Permits") for the Property, which Governmental Permits are incorporated herein by this reference.

7. The Property Owner and City anticipate that the Next Phase Property or portions thereof, will be annexed, rezoned and platted at a later date. The undersigned parties recognize and understand as part of this Agreement that the Property Owner and City are contributing the cost of certain public infrastructure improvements to provide for a possible annexation, residential rezoning and platting of the Next Phase Property or portions thereof at a later date and to allow the Next Phase Property to be designated as "Green Area" (Phase II – designated for near term development) in the amendment to Figure 65 of the Lincoln City-Lancaster County Comprehensive Plan entitled *Anticipated 2015 Lincoln Service Limit and Phasing Plan* as shown on Attachment "C-II".

8. The City is willing to: (1) amend Figure 16 of the Comprehensive Plan entitled *Lincoln's Land Use Plan* to reflect the new uses as shown on Attachment "A", (2) designate the Property as "Blue Area" (Phase I) and the Next Phase Property as "Green Area" (Phase II) on Figure 65 of the Comprehensive Plan for the Subarea Property as shown on Attachments "C-I" and "C-II", (3) annex the Property, (4) rezone the Property as shown on Attachment "D", and (5) approve the Governmental Permits; provided that the necessary municipal infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area of the proposed annexation and the uses under the proposed zoning and generic use permit.

9. The City and Property Owner recognize that the City does not currently have sufficient funds to devote to these areas to provide for the construction of all necessary infrastructure improvements. The parties also recognize that, in order for the City to approve the Governmental Permits, it is necessary that the Property Owner assume certain cost responsibilities for various portions of the necessary municipal infrastructure improvements. The parties are entering into this Agreement for the purpose of providing for the construction of the infrastructure improvements necessary for the area of the Governmental Permits and for the allocation of cost responsibilities for such infrastructure between the City and Property Owner.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

**I.**  
**COMPREHENSIVE PLAN AMENDMENT,  
ANNEXATION, REZONING, PRELIMINARY PLAT, COMMUNITY  
UNIT PLAN, AND GENERIC USE PERMIT**

**A. Concurrent Approval.** The City, concurrently with the approval of this Agreement, is:

1. Amending Figure 16 of the Lincoln City-Lancaster County Comprehensive Plan entitled *Lincoln's Land Use Plan* to reflect the uses shown on the subarea plan attached as Attachment "A" and to designate the Property as "Blue Area" (Phase I) and the Next Phase Property as "Green Area" (Phase II) on Figure 65 of the Comprehensive Plan entitled the *Anticipated 2015 Lincoln Service Limit and Phasing Plan* as shown on Attachments "C-I" and "C-II";

2. Annexing the Property;

3. Approving changes to the Lincoln zoning district maps as legally described and shown on Attachment "D"; and

4. Approving the Governmental Permits.

**B. Conditional Approval.** Said approvals are conditioned 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 approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) change the municipal corporate boundaries; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits,

developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

## II. COSTS DEFINED

For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs, but shall exclude City personnel costs (except for inspection and testing fees associated with executive order construction work, which shall be included), unless otherwise defined herein.

## III. TRANSPORTATION IMPROVEMENTS

A. **Streets.** The City and the Property Owner covenant and agree that the following street improvements will be needed to serve the Property and Next Phase Property:

1. **Fallbrook Boulevard Street Cut at U.S. Highway 34.** The Property Owner shall grade and pave, at its cost, the necessary intersection improvements for a full turn movement and median opening intersection at Fallbrook Boulevard and U.S. Highway 34 as shown on the Governmental Permits, including the necessary taper median and lanes and left turn pockets in U.S. Highway 34. Said intersection shall be constructed under the authority of an executive order issued by the Mayor of the City within the time frame established during final platting and dedication of Fallbrook Boulevard. The City agrees, at no charge, to fully cooperate with and assist the Property Owner in obtaining the State of Nebraska's approval for a full turn movement intersection between Fallbrook Boulevard and U.S. Highway 34 as shown on the Governmental Permits. The City agrees not to charge the Property Owner for the release of controlled access rights or interests the City may have (if any) along U.S. Highway 34, provided

however, in the event the State of Nebraska charges a fee for said release, such cost shall be the responsibility of the Property Owner.

The Property Owner shall also design and install, at its cost, under the authority of a separate executive order issued by the Mayor of the City, a traffic signal at the above intersection. Due to the amount of the City subsidy being provided, the design and installation of the traffic signal shall be bid and awarded only after competitive bidding in accordance with City procedures. The Property Owner shall use its best efforts to complete the traffic signal by the fall of 2000. The City shall reimburse the Property Owner for one-half of the actual cost of the design and installation of the traffic signal within thirty (30) days from the date the City is notified the traffic signal it is finally completed.

2. North 1<sup>st</sup> Street South Leg: North 1<sup>st</sup> Street Between U.S. Highway 34 and Pennsylvania Avenue. The Property Owner shall, at its expense, design, grade, install storm sewer and pave North 1<sup>st</sup> Street from U.S. Highway 34 to Pennsylvania Avenue (including reconstruction of Fletcher Avenue as a "T" into North 1<sup>st</sup> Street) ("North 1<sup>st</sup> Street South Leg") to urban standards for a four lane cross section. The Property Owner's paving shall include an appropriate taper section north of the intersection with Pennsylvania Avenue as shown on Attachment "E", which is attached hereto and incorporated herein by this reference and reconstruction of the east leg of Pennsylvania Avenue. The Property Owner shall construct the north side of the intersection of North 1<sup>st</sup> Street and U.S. Highway 34 in accordance with the geometrics shown on Attachment "F", which is attached hereto and incorporated herein by this reference. The City shall be responsible for any costs of reconstruction of North 1<sup>st</sup> Street south of U.S. Highway 34 in the Highlands resulting from the Property Owner's construction of the improvements to North 1<sup>st</sup> Street contemplated in this Section. The Property Owner shall cause



the above improvements to be included within and constructed as part of the first final plat of the Property.

The Property Owner agrees, at no cost, to dedicate sixty-five (65) feet of right-of-way from the center line of North 1<sup>st</sup> Street as shown on the Governmental Permits. The City agrees to condemn the right-of-way necessary for the east leg of Pennsylvania Avenue, Fletcher Avenue as a "T" into North 1<sup>st</sup> Street and any other necessary North 1<sup>st</sup> Street right-of-way to cause the completion of the above improvements. The costs of condemnation, excluding staff time which shall be the City's responsibility, shall be split equally between the City and Property Owner.

The City shall reconstruct, at its cost, the traffic signal at the intersection of North 1<sup>st</sup> Street and U.S. Highway 34. The City shall use its best efforts to complete the reconstruction of the traffic signal by the time the intersection of North 1<sup>st</sup> Street and U.S. Highway 34 is completed by the Property Owner.

The City shall also design and install, at its cost, a traffic signal at the intersection of North 1<sup>st</sup> Street and Pennsylvania Avenue at such time as the intersection meets the minimum FHWA warrants for traffic control. The Property Owner shall reimburse the City for one-half of the actual cost of the design and installation of the traffic signal within thirty (30) days from the date the Property Owner receives notice from the City that the traffic signal is finally completed.

3. North 1<sup>st</sup> Street North Leg: North 1<sup>st</sup> Street Between Pennsylvania Avenue and Alvo Road. The Property Owner shall design, grade, install culverts and pave, at its cost, North 1<sup>st</sup> Street between Pennsylvania Avenue and Alvo Road ("North 1<sup>st</sup> Street North Leg") as a thirty-three (33) feet wide rural section. The Property Owner agrees to include and construct that portion of the North 1<sup>st</sup> Street North Leg that abuts any portion of the Property that is final platted into buildable lots as part of such final plat. The Property Owner agrees to dedicate fifty

(50) feet of right-of-way from the center line of North 1<sup>st</sup> Street as shown on the Governmental Permits.

Prior to the time the Property Owner constructs the North 1<sup>st</sup> Street North Leg to rural standards, the City and Property Owner agree to work together to find an alternative design, that is acceptable to all parties, for the North 1<sup>st</sup> Street North Leg that is more adaptable to an urban section. In the event the parties agree on an alternative design for the North 1<sup>st</sup> Street North Leg prior to the Property Owner's construction of said road to rural standards, the Property Owner agrees to contribute the estimated engineered value of the improvements it agreed to construct to the North 1<sup>st</sup> Street North Leg to the City to help defray the cost of the North 1<sup>st</sup> Street North Leg under the new design.

4. Alvo Road East Leg: Alvo Road Between Stonebrook Parkway and North 1<sup>st</sup> Street. The Property Owner shall design, grade, install storm sewer and pave, at its cost, Alvo Road between Stonebrook Parkway and North 1<sup>st</sup> Street, including that portion of Alvo Road that abuts Lot 1, Block 25 ("Alvo Road East Leg") as a four lane urban section boulevard as shown on the Governmental Permits. The Property Owner agrees to include and construct that portion of the Alvo Road East Leg that abuts any portion of the Property that is final platted into buildable lots as part of such final plat. The Property Owner agrees to dedicate a minimum of one hundred (100) feet of right-of-way for the Alvo Road East Leg. The City agrees, subject to approval of future funding by the City Council through its normal budgetary procedures in fiscal year 2003-2004, to reimburse the Property Owner for 21/48ths of the Property Owner's actual cost of the design, grading, installation of storm sewer and paving of the Alvo Road East Leg, as set forth above. If such funding is approved, said reimbursement shall not be due and payable until four (4) years from the date of this Agreement or the date Property Owner causes the

completion of such improvements, whichever occurs later. Property Owner agrees that due to the amount of the City subsidy being provided, the design and construction of the Alvo Road East Leg shall be bid and awarded only after competitive bidding in accordance with City procedures.

5. Alvo Road West Leg: Alvo Road Between Northwest 12<sup>th</sup> Street and Stonebrook Parkway. If and when the Next Phase Property, or any portion thereof, is annexed, rezoned and platted, the Property Owner shall design, grade, install storm sewer and pave, at its cost, that portion of Alvo Road between Northwest 12<sup>th</sup> Street and Stonebrook Parkway ("Alvo Road West Leg") that is annexed, rezoned and platted as a four-lane urban section boulevard as illustrated on the preliminary plat for the Alvo Road East Leg; provided that the Land Subdivision Ordinance and the Design Standards for Subdivision Regulation regarding the minimum street improvements during the interim have not been amended to the contrary. In the event said ordinance and design standards have been so amended, the Property Owner shall construct the Alvo Road West Leg in accordance with those requirements or as otherwise agreed between the parties by written amendment to this Agreement. The Property Owner agrees to include and construct that portion of the Alvo Road West Leg abutting buildable lots within a final plat of the Property or Next Phase Property at the time of the final platting of said portion of the Property or Next Phase Property. In the event that the Alvo Road West Leg is constructed as a four-lane urban section boulevard as illustrated on the preliminary plat for the Alvo Road East Leg, the City agrees, subject to approval of funding through its normal budgetary procedures, to contribute 21/48ths of the actual cost of the design, grading, installation of storm sewer and paving of the Alvo Road West Leg, as set forth above upon completion of such improvements. The Property Owner agrees to dedicate for the Alvo Road West Leg a minimum of one hundred

(100) feet of right-of-way 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, subject to the following paragraph.

The Property Owner and City acknowledge that the location of the Alvo Road West Leg has not been determined at this time and will be determined as part of the preliminary plat approval for the Next Phase Property; provided however, the parties agree the Alvo Road West Leg shall connect to Northwest 12<sup>th</sup> Street. In the event any abutting side of any portion of the Alvo Road West Leg alignment is owned by a third party, then Property Owner reserves the right to request the City to require said third party to dedicate the appropriate right-of-way and to pay for the abutting portion or to request the City to create a paving district or districts to accomplish and dedicate the right-of-way and paving described above.

6. Northwest 12<sup>th</sup> Street Leg: Northwest 12<sup>th</sup> Street Between Alvo Road and U.S. Highway 34. If and when the Next Phase Property, or any portion thereof, is annexed, rezoned and platted and if Northwest 12<sup>th</sup> Street is not paved between Alvo Road and the start of a bridge over U.S. Highway 34 or the south edge of the Next Phase Property if no bridge is constructed over U.S. Highway 34 ("Northwest 12<sup>th</sup> Street Leg"), then the Property Owner agrees to contribute to the City the estimated value of one-half of a thirty-three (33) feet wide rural section, if the City builds the Northwest 12<sup>th</sup> Street Leg as a rural section, or one-half of a two lane urban section, if the City builds the Northwest 12<sup>th</sup> Street Leg as a two or four lane urban section; provided that the Land Subdivision Ordinance and the Design Standards for Subdivision Regulation regarding the minimum street improvements during the interim have not been amended to the contrary. In the event said ordinance and design standards have been so amended, the Property Owner shall construct the Northwest 12<sup>th</sup> Street Leg in accordance with

those requirements or as otherwise agreed between the parties by written amendment to this Agreement. In the event the Northwest 12<sup>th</sup> Street Leg is so constructed, the Property Owner shall pay the City the above cost within thirty (30) days after receipt of notice from the City that the Northwest 12<sup>th</sup> Street Leg has been completed. The City, at its expense, may at some date cause a Northwest 12<sup>th</sup> Street overpass bridge to be constructed over U.S. Highway 34.

7. Other Street Improvements. The Property Owner shall grade and pave, at its cost, the other internal roads within the Governmental Permits pursuant to either (i) the City's minimum urban street standards or (ii) as shown on the Governmental Permits ("Other Street Improvements"). The Property Owner agrees to include and construct the Other Street Improvements as part of the final platting of any portion of the Property that abuts the Other Street Improvements.

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. The City and the Property Owner agree that any drainage easements shall be only for the smallest space reasonably feasible.

9. Right-of Way Costs. The City, with the cooperation of the Property Owner, shall acquire any additional right-of-way and drainage easements necessary for the construction of the Transportation Improvements. The City agrees to acquire the North 1<sup>st</sup> Street South Leg right-of-way and easements as soon as reasonably possible and the right-of-way and

easements for the other Transportation Improvements within six (6) months notice from the Property Owner to the City that the Property Owner is ready to begin construction of any portion of such Transportation Improvements. Unless otherwise stated herein, the costs of the right-of-way and temporary and permanent easements including, but not limited to, the amount of any condemnation award, court costs, expert witness fees, testing fees and interest, but excluding City staff time and compensation, shall be paid by the Property Owner.

B. **Traffic Study and Use Permit.** The Property Owner has provided the City a satisfactory traffic study for the development described in the Use Permit which is part of the Governmental Permits. The City and Property Owner agree the City has a legitimate state interest in promoting the public's health, safety and welfare in providing for the safe and efficient movement of motor vehicles upon the public street system, and that an "essential nexus" exists between the City's above interests and the conditions placed upon the Property Owner under this Agreement. In addition, the City and Property Owner have made an individualized determination and agree that the conditions placed upon the Property Owner under this Agreement are related both in nature and extent and are in "rough proportionality" to the projected adverse effects the development and operation of 120,000 square feet of retail floor area and 500,000 square feet of office space will have on traffic on the public street system that serves and provides access to the Property. By acceptance of the right-of-way identified above and the executive order construction provided for above, and the contributions identified above, the City in no way warrants or assures any particular level of service on the public streets and roads serving the Property or the development contemplated under the Governmental Permits.

The City and Property Owner have preliminarily identified the Transportation Improvements associated with and made necessary by the Governmental Permits and the assumed

development and operation of 120,000 square feet of retail floor area and 500,000 square feet of office space. The parties acknowledge that the actual land uses and square footage amounts approved by the City's use permit process may be different from those described above. The parties acknowledge Property Owner's right to request different land uses and/or square footage amounts through the use permit process or amendments thereto.

#### IV. WATER IMPROVEMENTS

A. **Water Booster Pump Station.** In order to provide adequate water service to the Property and the Next Phase Property it will be necessary to construct a water booster pump station and the water lines described in Section IV.B. below. The Property Owner understands and acknowledges that the City's public water system is not adequate to serve the Property and the Next Phase Property without the construction of a water booster pump station. The Property Owner desires to be connected to the City's public water system and therefore agrees to design, acquire and install, at its expense, a booster pump station that benefits the Property and the Next Phase Property under the authority of an executive order issued by the Mayor of the City. Due to the amount of the City subsidy being provided, the booster pump station shall be bid and awarded only after competitive bidding in accordance with City procedure. The City shall use its best efforts to include the booster pump station in its Capital Improvement Program for fiscal year 2001-2002. To defray the cost of oversizing the booster pump station, the City shall contribute seventy percent (70%) of the total cost (excluding costs for aesthetic treatment) of the acquisition and installation of the booster pump station; provided that the City's contribution for the above costs shall not exceed Three Hundred Thirty-three Thousand Three Hundred and no/100 Dollars (\$333,300). Said contribution shall be paid to the Property Owner at the

commencement of fiscal year 2001-2002. In addition, the City shall contribute Twenty-four Thousand Nine Hundred and No/100 Dollars (\$24,900) to the Property Owner for design and construction services for the booster pump station at the commencement of fiscal year 2001-2002. The City, at its expense, shall also be responsible for the maintenance, repair and replacement of said booster pump station after installation.

The City agrees to allow the Property Owner to place landscape screening on the City property containing the booster pump station to screen the booster pump station from the surrounding property, provided that any such landscape screen must be approved by the Director of Public Works and Utilities.

**B. Water Lines.** The City and Property Owner agree that the water lines shown on Attachment "G", which is attached hereto and incorporated herein by this reference, are necessary to serve the Property and Next Phase Property and will be constructed within the time frames set forth herein, unless the Director of Public Works consents to a different time frame, which consent shall not be unreasonably withheld.

1. Phase I Water Lines. The 24-inch, 16-inch and 12-inch water lines shown as Phase I 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. Due to the amount of the City subsidy being provided, the Phase I water lines shall be bid and awarded only after competitive bidding in accordance with City procedures. The Property Owner agrees to use its best efforts to complete the Phase I water lines within six months of the date of this Agreement, weather permitting. The City agrees to reimburse the Property Owner for the difference in cost between the 24-inch, 16-inch and 12-inch water lines and an equivalent 6-inch water line abutting a residential area and an equivalent



8-inch water line abutting a commercial area. The City further agrees to pay the Property Owner for such difference on October 1, 2000 or within thirty (30) days from the date the Phase I water lines are finally completed, whichever occurs later.

2. Phase II Water Lines. The 12-inch water lines shown as Phase II 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. Due to the amount of the City subsidy being provided, the Phase II water lines shall be bid and awarded only after competitive bidding in accordance with City procedures. The Property Owner agrees to use its best efforts to complete the Phase II water lines in the fall of 2002. The City agrees to reimburse the Property Owner for the difference in cost between the 12-inch water lines and an equivalent 6-inch water line abutting a residential area. The City further agrees to pay the Property Owner for such difference on October 1, 2002 or within thirty (30) days from the date the Phase II water lines are finally completed, whichever occurs later.

3. Phase III Water Lines. Subject to the approval of future funding by the City Council through its normal budgetary procedures in fiscal year 2004-2005 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 in the fall of 2004, 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. 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 in fiscal year 2006-2007 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 in the fall of 2006, 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. 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.

C. Water Lines That Benefit Third Party Properties. The City and Property Owner acknowledge that water lines described in Section B above will benefit and provide water to neighboring third party properties ("Third Party Properties"). Notwithstanding the above, the Property Owner, as an inducement for the City to enter into this Agreement, has agreed to pay for the total cost of constructing a typical 6-inch water line abutting a residential area and the total cost of constructing a typical 8-inch water line abutting a commercial area for the water mains described in subsections 3 and 4 of Section B above. Therefore, if permitted by law and in order to be fair, the City agrees to require the Third Party Properties which abut the water mains described in subsections 3 and 4 of Section B above to also pay the total costs of constructing a typical 6-inch water line abutting a residential area and the total cost of constructing a typical 8-inch water line abutting a commercial area prior to allowing said Third Party Properties to connect to said water lines.

The Property Owner understands and agrees that the authority, if any, of the City to charge the owners of the Third Party Properties said cost is limited to those situations where annexation of the Third Party Properties is discretionary and not mandated by law (i.e. automatic annexation of abutting property) or Comprehensive Plan Policy (i.e. land which is engulfed by the City should be annexed).

Notwithstanding the above, the Property Owner understands and agrees that the City cannot contract away its police powers and legislative discretion and thus the duty of the City to use its best efforts to charge the owners of the Third Party Properties their fair share of the cost of said water lines does not require the City Council for the City to adopt nor restrict the Council from adopting ordinances affecting the City's ability to charge property owners for the right to connect to the City's water system.

V.  
**OTHER NECESSARY MUNICIPAL IMPROVEMENTS**

A. **Sanitary Sewer**. The Property Owner shall, at its expense, design and build all internal sanitary sewer lines shown on the Governmental Permits. The City agrees the Property Owner shall not be liable or responsible for any off-site downstream trunk sewer improvements.

B. **Sidewalks**. The Property Owner agrees to be responsible, at its cost, for those sidewalks abutting the Property and Next Phase Property and agrees to complete said sidewalks as required by the City's platting, use permit or special permit process concurrent with adjacent development, unless waived by the City.

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, at its expense, agrees to pave said trail in lieu of the

four (4) feet wide sidewalks. The parties acknowledge the Property Owner is constructing the 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 additional pavement.

In other areas, hiker/biker trails are shown that are not in the public street right-of-way. In those areas, the Property Owner shall dedicate to the City a nonexclusive twenty (20) feet wide easement for hiker/biker trails as generally shown on the Governmental Permits. The location of the trails are recognized to be general and may be adjusted through mutual agreement between the City and Property Owner. The easement dedication shall be made at no cost to the City and shall be free and clear of all liens, taxes, and assessments, and free of any encumbrances, which would, in the opinion of the Director of the Parks Department, adversely affect the use of the property for trail purposes and subject to tenants in possession whose tenancy is one year or less in duration. The City reserves the right to construct, at its expense, a ten (10) foot wide hiker/biker trail in the easement area if and when City funding or donated funds become available. The City shall not require the Property Owner to construct such trail improvements as part of a preliminary or final plat, use permit, special permit, community unit plan, planned unit development, or comprehensive plan amendment. Until the trails are constructed by the City, the Property Owner is entitled to farm the easement area. The City agrees that during construction and upon completion of the construction of the trails, the City shall indemnify, defend, and hold harmless the Property Owner and its successors and assigns, from and against any and all losses, damages, claims, costs, expenses, or liabilities, including attorney fees, arising out of the public's use of the trail easement granted to the City herein other

than as a result of the Property Owner's or its successors' or assigns' negligence or willful misconduct. The City agrees that the Property Owner shall have the option, but not the obligation, to construct the trails within the easement areas prior to the time the City commences construction of the trail as a charitable contribution to the City.

## VI. CONSTRUCTION STANDARDS

Unless otherwise stated herein, all construction of required municipal infrastructure improvements, shall be completed in accordance with the City of Lincoln's standard specifications for municipal construction which are on file in the Office of the City Engineer and shall be subject to inspection and approval by the City Engineer.

## VII. SECURITY

Within thirty (30) days from the execution of this Agreement, the Property Owner shall provide to the City a bond, escrow or other security agreement, approved by the City Attorney, in the amount of One Hundred Forty-one Thousand Seven Hundred and no/100 Dollars (\$141, 700) to guaranty construction of the water booster pump as described in Article IV, Section A above. Unless stated otherwise herein, Property Owner agrees that the actual costs for all other improvements described in this Agreement shall be paid by Property Owner pursuant to the City's executive order process. To guarantee construction of the other improvements Property Owner is liable for under this Agreement, Property Owner shall furnish to the City bonds, escrows, or other security agreements approved by the City Law Department in conjunction with the final platting of the Property. Unless stated otherwise herein, Property Owner shall complete construction of the improvements described above as a condition of the final platting of the Property.

**VIII.**  
**FUTURE COST RESPONSIBILITIES**

Except as stated herein, it is understood and agreed between the parties that the provision of the above described municipal infrastructure improvements and the allocation of cost responsibilities therefore for the Property and Next Phase Property in no way limits the right of the City to impose reasonable conditions or to require reasonable additional dedications, contributions, or construction in conjunction with the approval of future annexation, zoning requests, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the Property, Next Phase Property or any portion thereof. Such future dedications, contributions and construction may include, but shall not be limited to, local sewers, water mains, paving, trails, detention ponds, storm sewers, or transportation improvements relating to commercial development, including necessary street widening, traffic signals and added turn lanes necessitated, in the opinion of the City, by major commercial development in the area.

**IX.**  
**DEFAULT**

The parties agree that the rezoning of the Property promotes the public health, safety and welfare so long as the Property Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event that the Property Owner 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 said property to the previous zoning designations or such other zoning designations as the City may deem appropriate under the then existing circumstances.

**X.  
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 at such future addresses as may be designated in writing:

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

with a copy to: City Clerk  
555 South 10th Street  
Lincoln, Nebraska 68508

Property Owner: NEBCO, INC.  
Attn: President  
1815 Y Street  
Lincoln NE 68508

with a copy to: Seacrest & Kalkowski, P.C.  
Attn: Kent Seacrest  
1111 Lincoln Mall, Suite 350  
Lincoln, NE 68508

**XI.  
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.

**XII.  
AMENDMENTS**

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