



20R-226

Introduce: 6-29-20

RESOLUTION NO. A- 92207

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

That the Conditional Zoning and Annexation Agreement for South 70th and Saltillo Road which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln and Lancaster County School District No. 0001, a/k/a Lincoln Public Schools, for the development of the property as a site for a new public high school including associated athletic facilities on property generally located at South 70th Street and Saltillo Road and re-zoning the property from AG Agricultural District to P Public District, as set forth in the Agreement, is hereby approved and the Mayor is authorized to execute the Conditional Zoning and Annexation Agreement on behalf of the City.

BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this Agreement to Tim Sieh, Assistant City Attorney, for distribution to the Property Owner.

BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional Zoning and Annexation Agreement for South 70th and Saltillo Road with the Lancaster County Register of Deeds with the recording fees to be paid in advance by the Property Owner.

BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council Proceedings on next page.

Introduced by:

Tim Sieh

AYES: Bowers, Christensen, Meginnis, Raybould, Shobe, Ward, Washington;
NAYS: None.

Approved as to Form & Legality:

Jeffery R. Gutzwiller
City Attorney

ADOPTED

JUL 20 2020

BY CITY COUNCIL

Approved this 29 day of July, 2020:

Garrett Taylor
Mayor

AMENDED 7/20/20

4/6

5/6

20R-226

7/20/2020 Council Proceedings:

CHRISTENSEN Moved to Amend Bill No. 20R-226 to substitute the attached Resolution.

Seconded by Washington & carried by the following vote: AYES: Bowers, Christensen, Meginnis, Shobe, Raybould, Ward, Washington; NAYS: None.

20R-226

MOTION TO AMEND NO. 1

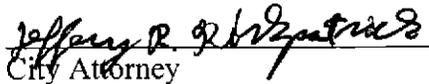
I hereby move to amend Bill No. 20R-226 to adopt a substitute Agreement attached hereto.

Introduced by:



Approved as to Form and Legality:

AYES: Bowers, Christensen, Meginnis,
Raybould, Shobe, Ward, Washington;
NAYS: None.


City Attorney

Requested by: Law Department

Reason for Request: To clarify that the City will pay for the first \$10,000 in right of way acquisition from third parties to the extent that such acquisitions are necessary. Any amount above \$10,000 will become part of the project cost and included in the \$2.25M the City is otherwise agreeing to contribute to the project. The second change is to add a contingency in the event that the cost of meeting the requirements for constructing the road over an existing pipeline exceeds \$150,000. The contingency allows the City and LPS to reconsider the design to determine how best to proceed.

ADOPTED

JUL 20 2020

BY CITY COUNCIL

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR SOUTH 70TH AND SALTILLO ROAD**

This Conditional Zoning and Annexation Agreement for South 70th and Saltillo Road (“**Agreement**”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and among the **City of Lincoln, Nebraska**, a municipal corporation (“**City**”) **Lancaster County School District No. 0001, a/k/a Lincoln Public Schools**, a public school district and a political subdivision of the State of Nebraska (“**LPS**”), including its successors and assignees and any subsequent owners of any portion of the Property described herein.

RECITALS

1. LPS is under contract to purchase and, therefore, has an equitable ownership interest in the real estate identified as “The Property” on Exhibit “A”. Said parcel shall hereinafter referred to as the “**Property**”. The City and LPS desire to cause the urban development of the Property as the site for a new public high school including associated athletic facilities.

2. The Property is shown as Tier II and Tier III 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 LPS desire that the Property be annexed pursuant to the terms and conditions stated in this Agreement.

4. In addition to annexing the Property, LPS has applied to the City to have the zoning designation for the Property changed from AG to P.

5. The annexation and change of the zoning designation for the Property are collectively referred to herein as “**Governmental Actions**”.

6. The City is willing to approve the Governmental Actions requested provided that, the public infrastructure improvements are constructed in a timely manner to serve and properly accommodate development of the Property.

7. The City and LPS recognize that the public infrastructure improvements described herein are necessary for the operation of the LPS high school facility to be constructed on the Property and must be completed prior to the opening of the LPS high school facility and related improvements on the Property. The City and LPS further recognize that the City does not have adequate funds on hand to pay for construction of such infrastructure improvements. Therefore, the City and LPS acknowledge and agree that it is in the best interest of LPS, the City, and the community as a whole that LPS construct or cause the construction of the infrastructure improvements described herein on behalf of the City, but at LPS' cost and expense, subject to reimbursement contributions from the City as described herein.

8. This Agreement identifies LPS's and the City's responsibilities regarding the construction of the public infrastructure improvements necessitated upon annexation and development of the Property as well as other infrastructure improvements necessary to facilitate 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 GOVERNMENTAL ACTION; CONDITIONAL APPROVAL

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

1. Annexation #20010; and
2. Change of Zone #20018.

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

The City's Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. LPS 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 Parcel Owners or any subsequent owner of all or a portion of the Property, 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 Parcel 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.

ARTERIAL STREET IMPROVEMENTS

A. South 70th Street.

1. Existing Conditions. Presently, South 70 Street between Rokeby Road and Saltillo Road is an existing two-lane paved county road and is designated as a minor arterial street in the 2040 Lincoln City – Lancaster County Comprehensive Plan. No improvements to this segment of S. 70th Street are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period. This segment of S. 70th Street is also described in the City's Access Management Policy as a Minor Arterial Street.

2. Access Points. The City and LPS agree that ingress and egress to and from the Property along S. 70th Street will be limited to a roundabout (full turn movements) to be located to the south of the approximately one-half (½) mile point north of Saltillo Road at the intersection of S. 70th Street and Carger Lane (“S. 70th RAB”) and right and left turn lanes at the approximately one-quarter (¼) mile point north of Saltillo Road (“S. 70th Turn Lanes”), all as generally shown on Exhibit “B”, which is attached hereto.

3. S. 70th Cross Section. South 70th Street between the southern terminus of the S. 70th RAB and the northern terminus of the roundabout to be constructed by the State of Nebraska at the intersection of S. 70th Street and Saltillo Road shall be constructed as two-through lanes with a center median, except for the S. 70th Turn Lanes. The through lanes shall be a minimum 11 feet wide with curb and gutter, and the median shall be at least 8 feet wide. The S. 70th RAB and S. 70th Turn Lanes described in subparagraph A.2. and the South 70th Street roadway improvements described in this subparagraph A.3. shall be collectively referred to hereinafter as the “**South 70th Street Improvements**”.

4. On behalf of the City, LPS will be responsible to design, competitively bid, construct, and initially fund (subject to reimbursement provided in Paragraph 7 herein) the South 70th Street Improvements through the City’s Executive Order process in one or more phases; provided that LPS shall consult with the City on the competitive bidding process to be followed so that both entities’ procurement requirements are met while also allowing LPS to utilize available economies of scale to develop a consolidated competitive bidding process for work on the South 70th Street Improvements, work on any other improvements described herein, and any work by LPS on the Property. The final design for the South 70th Street Improvements will be submitted to the City for review and approval prior to commencement of construction. The parties

acknowledge that construction costs for the S. 70th Street Improvements shall include testing and inspection fees. LPS will have the South 70th Street Improvements completed by Fall 2021, subject to any delays in design and/or construction caused by approval processes for any required permits or other related pipeline issues described in subparagraph A.9 below, delays in obtaining any necessary right-of-way as provided herein, and delays beyond the reasonable control of LPS which materially affect its performance and which could not reasonably have been foreseen or provided against.

Should the lowest responsible bid or bids for the cost of the construction work (not including design, administrative or testing costs) on the South 70th Street Improvements exceed the amount of Two Million, Two Hundred Seventy-Three Thousand and No/100ths Dollars (\$2,273,000.00), LPS and the City reserve the right to reject all bids and to meet and confer regarding the design for the South 70th Street Improvements in an effort identify cost savings and to negotiate in good faith to reduce the total cost for constructing the South 70th Street Improvements before rebidding said work.

5. Professional Consulting Services. For purposes of this Agreement, the City hereby recognizes and agrees that LPS's consultant, Olsson, has completed a significant amount of preliminary design work with respect to the South 70th Street Improvements. The City has confirmed that Olsson has been deemed to be qualified to perform the design services for the South 70th Street Improvements by the City's Purchasing Division. Finally, the City acknowledges that to select a different design consultant to reproduce such work product related to the South 70th Street Improvements would be inefficient and likely to result in unnecessary delay in construction of the South 70th Street Improvements. Therefore, based upon the recommendation of the Director of Lincoln Transportation and Utilities, the City agrees to, and hereby does, waive those

procurement procedures related to selection of consultants for professional consulting services as outlined in Executive Order No. 80199 dated October 9, 2007.

6. LPS Contributions. The City does not currently have funding to pay for the South 70th Street Improvements. Therefore, LPS shall design and construct the South 70th Street Improvements at its cost subject to reimbursement by the City as set forth below.

7. Dedication of S. 70th Street Right-of-Way. At the time of final platting, or upon the earlier request by the City, LPS, its successors and assigns, and any subsequent owner of the Property whose interest includes land needed for the South 70th Street Improvements shall dedicate or convey to the City the necessary right-of-way for the improvements and any temporary construction easements without additional cost to the City (“S. 70th ROW”). Said S. 70th ROW shall also include sufficient right-of-way to allow the City to construct a future four-lane section of South 70th Street, which includes 60 feet of right-of-way measured from the center line of South 70th Street and an additional ten (10) feet of right-of-way at intersections that are not roundabouts. The additional right of way at intersections that do not include roundabouts shall extend for two blocks from the centerline of the intersecting roadway.

8. Obtaining Third Party Right-of-Way and Easements. The City, with the cooperation of LPS, shall acquire all third party right-of-way and all temporary and permanent nonexclusive easements not otherwise located on the Property and necessary for the construction and operation of the South 70th Street Improvements within twelve (12) months from the date LPS provides the City notice of the estimated timeframe for the construction of a particular street improvement. The City and LPS agree that all reasonable efforts shall be made to design the South 70th Street Road Improvements in such a manner that right-of-way acquisition is minimized to the extent possible. All costs of any 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, interest, and City staff time shall be paid by the City. If at any time the cumulative costs of any condemnation award and other funds paid for right-of-way acquisition from third parties for the South 70th Street Improvements and the Saltillo Road Improvements exceed \$10,000.00, any amount over \$10,000 shall be included in the construction cost of the project. The City is authorized to utilize condemnation, if necessary, to acquire the third-party right-of-way and temporary and permanent easements.

9. Pipeline. A private petroleum pipeline crosses under S. 70th Street between the northern terminus of the roundabout to be constructed by the State of Nebraska at the intersection of S. 70th Street and Saltillo Road and the S. 70th AP. The City shall be responsible for coordinating with the pipeline easement holder to meet the requirements under said easement for constructing the S. 70th Street Improvements (“Pipeline Requirements”). The Pipeline Requirements shall be included in the term South 70th Street Improvements for purposes of this Agreement. Should the opinion of probable cost of construction or the lowest bid for the work to meet the Pipeline Requirements exceed \$150,000.00, LPS and the City reserve the right to reject all bids and to meet and confer regarding the design for the Pipeline Requirements and the overall design of the South 70th Street Improvements in an effort to identify cost savings. The City and LPS shall negotiate in good faith to reduce the cost for constructing the Pipeline Requirements or other parts of the South 70th Street Improvements. The City shall timely seek permits and any special pipeline easement requirements to allow LPS to complete the S. 70th Street Improvements as provided in subparagraph A.4 above.

B. Saltillo Road.

1. Existing Conditions. Presently, Saltillo Road east of S. 70th Street is an existing two-lane paved county road and is designated as a minor arterial street in the 2040 Lincoln City – Lancaster County Comprehensive Plan. No improvements to this segment of Saltillo Road are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period. This segment of Saltillo Road is also described in the City’s Access Management Policy as a Minor Arterial Street.

2. Access Points. The City and LPS agree that ingress and egress to and from the Property along Saltillo Road will be limited to a roundabout (full turn movements) to be located at the approximately one-half (½) mile point east of S. 70th Street (“Saltillo RAB”), as generally shown on Exhibit “B”, which is attached hereto.

3. Saltillo Road Cross Section. Saltillo Road between the western terminus of the Saltillo RAB and the eastern terminus of the roundabout to be constructed by the State of Nebraska at the intersection of S. 70th Street and Saltillo Road will remain in its current configuration, but will be surface milled with an asphalt overlay for purposes of reconditioning (“Saltillo Overlay”). The Saltillo RAB described in subparagraph B.2. and the Saltillo Overlay described above in this subparagraph B.3 shall be collectively referred to hereinafter as the **“Saltillo Road Improvements”**.

4. On behalf of the City, LPS will be responsible to design, competitively bid, construct, and initially fund (subject to reimbursement provided in Paragraph 7 herein) the Saltillo Road Improvements through the City’s Executive Order process in one or more phases; provided that LPS shall consult with the City on the competitive bidding process to be followed so that both entities’ procurement requirements are met while also allowing LPS to utilize available economies of scale to develop a consolidated competitive bidding process for work on the Saltillo Road

Improvements, work on any other improvements described herein, and any work by LPS on the Property. The final design for the Saltillo Road Improvements will be submitted to the City for review and approval prior to commencement of construction. The parties acknowledge that construction costs for the Saltillo Road Improvements shall include testing and inspection fees. LPS will have the Saltillo Road Improvements completed by Summer 2023, subject to any delays in design and/or construction caused by approval processes, for any required wetlands permits or other related issues described in subparagraph B.9 below, delays in obtaining any necessary right-of-way as provided herein, and delays beyond the reasonable control of LPS which materially affect its performance and which could not reasonably have been foreseen or provided against.

Should the lowest responsible bid or bids for the cost of the construction work (not including design, administrative or testing costs) on the Saltillo Road Improvements exceed the amount of One Million, Three Hundred Ninety-Nine and No/100ths Dollars (\$1,399,000.00), LPS and the City reserve the right to reject all bids and to meet and confer regarding the design in an effort to identify cost savings for the Saltillo Road Improvements and to negotiate in good faith to reduce the total cost for constructing the Saltillo Road Improvements before rebidding said work.

5. Professional Consulting Services. For purposes of this Agreement, the City hereby recognizes and agrees that LPS's consultant, Olsson, has completed a significant amount of preliminary design work with respect to the Saltillo Road Improvements. The City has confirmed that Olsson has been deemed to be qualified to perform the design services for the Saltillo Road Improvements by the City's Purchasing Division. Finally, the City acknowledges that to select a different design consultant to reproduce such work product related to the Saltillo Road Improvements would be inefficient and likely to result in unnecessary delay in construction of the Saltillo Road Improvements. Therefore, based upon the recommendation of the Director of

Lincoln Transportation and Utilities, the City agrees to, and hereby does, waive those procurement procedures related to selection of consultants for professional consulting services as outlined in Executive Order No. 80199 dated October 9, 2007.

6. LPS Contributions. The City does not currently have funding to pay for the Saltillo Road Improvements. Therefore, LPS shall design and construct the Saltillo Road Improvements at its costs subject to reimbursement by the City as set forth below.

7. Dedication of Saltillo Road Right-of-Way. At the time of final platting, or upon the earlier request by the City, LPS, its successors and assigns, and any subsequent owner of the Property whose interest includes land needed for the Saltillo Road Improvements shall dedicate or convey to the City the necessary right-of-way for the improvements and any temporary construction easements without additional cost to the City ("Saltillo ROW"). Said Saltillo ROW shall also include sufficient right-of-way to allow the City to construct a future four-lane section of Saltillo Road, which includes 60 feet of right-of-way measured from the center line of Saltillo Road, with an additional ten (10) feet of right-of-way at intersections that are not roundabouts. The additional right-of-way for intersections that do not include roundabouts shall extend for two blocks from the centerline of the intersecting roadway.

8. Obtaining Third Party Right-of-Way and Easements. The City, with the cooperation of LPS, shall acquire all third party right-of-way and all temporary and permanent nonexclusive easements not otherwise located on the Property and necessary for the construction and operation of the Saltillo Road Improvements within twelve (12) months from the date LPS provides the City notice of the estimated timeframe for the construction of a particular street improvement. The City and LPS agree that all reasonable efforts shall be made to design the Saltillo Road Improvements in such a manner that right-of-way acquisition is minimized to the

extent possible. All costs of any 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, interest, and City staff time shall be paid by the City. If at any time the cumulative costs of any condemnation award and other funds paid for right-of-way acquisition from third parties for the South 70th Street Improvements and the Saltillo Road Improvements exceed \$10,000.00, any amount over \$10,000.00 shall be included in the construction cost of the project. The City is authorized to utilize condemnation, if necessary, to acquire the third-party right-of-way and temporary and permanent easements.

9. Wetlands. Wetlands have been identified on the north side of Saltillo Road in and around the Saltillo Road AP and within the proposed Saltillo ROW on the Property. The City, at its sole cost and expense, shall be responsible for applying for wetlands permits with appropriate federal agencies and coordinating with appropriate federal agencies on any required mitigation for impacts to wetlands caused by the Saltillo Road Improvements. All costs and expenses for any wetlands mitigation shall be at the City's sole cost and expense. The City shall timely seek permits and mitigation to allow LPS to complete the Saltillo Road Improvements as provided in subparagraph B.4 above.

C. City Reimbursement of LPS. LPS recognizes that the City does not have adequate funds on hand to pay for construction of the S. 70th Street Improvements and the Saltillo Road Improvements on a timeline that is consistent with intended construction and opening of LPS' high school facility and related improvements on the Property. LPS and the City acknowledge and agree that it is in the best interest of the community as a whole that the S. 70th Street Improvements and the Saltillo Road Improvements be constructed prior to when the City is projected to accumulate adequate funds to pay for said improvements.

The City recognizes that constructing the S. 70th Street Improvements and the Saltillo Road Improvements prior to completion of construction and opening of LPS' high school facility and related improvements on the Property, as LPS herein agrees to do, will result in more efficient and effective traffic movements as improvements are constructed on the Property. Therefore, the City agrees that LPS shall construct the S. 70th Street Improvements and the Saltillo Road Improvements on behalf of the City, but at LPS' cost and expense subject to contributions from the City as described herein.

1. Sales Tax Revenue. Recognizing the growing demand for additions to the City's arterial streets and the inability of existing revenue sources to generate adequate funds to meet such demand, the City approved the imposition of an additional ¼ cent sales tax to be used for restoring, rehabilitating, and expanding the City's road infrastructure in order to improve the road infrastructure of the City for the benefit of the entire community. Having imposed such a tax, the City Council subsequently identified the South 70th Street Improvements and the Saltillo Road Improvements described herein as projects toward which a portion of the sales tax revenue generated by the additional ¼ cent tax should be allocated.

Therefore the City, subject to future appropriation by the City Council, hereby agrees to allocate One Million, Four Hundred Thousand and No/100ths Dollars (\$1,400,000.00) from the revenue generated by the additional ¼ cent sales tax dedicated toward reimbursing LPS for actual costs incurred in designing and constructing the South 70th Street Improvements and the Saltillo Road Improvements. Said sales tax revenue shall, subject to appropriation by the City Council, be paid to LPS, conditioned upon satisfactory completion of the South 70th Street Improvements by Fall 2021 and the Saltillo Road Improvements by Summer 2023, according to the following schedule:

<u>City Fiscal Year</u>	<u>Payment Amount</u>
2023-2024	\$700,000.00
2024-2025	\$700,000.00

The sales tax revenue shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years.

2. Other City Sources. In addition to sales tax revenue described above, the City, subject to future appropriation by the City Council, hereby agrees to allocate an additional Eight Hundred Fifty Thousand and No/100ths Dollars (\$850,000.00) from other City revenue sources, to be identified solely at the City’s discretion, toward reimbursing LPS for actual costs incurred in designing and constructing the South 70th Street Improvements and the Saltillo Road Improvements. Said other City revenue sources shall be identified in the City’s Capital Improvement Program for a fiscal year no later than FY2024-2025, subject to appropriation by the City Council, and be paid to LPS according to the schedule set forth in the CIP, conditioned upon satisfactory completion of the South 70th Street Improvements by Fall 2021 and the Saltillo Road Improvements by Summer 2023.

3. LPS agrees that it shall select the construction company responsible for constructing the South 70th Street Improvements and the Saltillo Road Improvements using a competitive bidding process that meets the City’s requirements for procurement of such services; provided that LPS may utilize available economies of scale to develop a consolidated competitive bidding process for work on the South 70th Street Improvements and the Saltillo Road Improvements, work on any other improvements described herein, and any work on the Property.

4. LPS expressly acknowledges and agrees that nothing in this Agreement represents a general obligation on the part of the City to repay LPS for its actual costs incurred in

the design and construction of the South 70th Street Improvements and the Saltillo Road Improvements. LPS also agrees that in the event the actual cost to design and construct the South 70th Street Improvements and/or the Saltillo Road Improvements exceed the amount of the City's contribution as described above or in the event the City Council does not appropriate funds toward this contribution in any given year, LPS shall be solely responsible for said costs. The City does covenant that it will take all steps necessary to seek appropriations, to the extent permitted by law, each year as provided herein acknowledging that the South 70th Street Improvements and the Saltillo Road Improvements are essential to keeping LPS open and for fire / rescue and law enforcement vehicles to fight fires and protect the public.

D. Internal Streets.

1. Internal Streets within the Property. Additional City local streets may be required within the Property to serve development of the Property and/or development of adjacent to the Property (collectively "**Internal Streets**" and individually an "**Internal Street**"). The Internal Streets shall be constructed (or security provided in a form acceptable to the City Attorney, if required) by LPS, or its successors and assigns or subsequent owners of a parcel of the Property ("Parcel Owner"), whose parcel of the Property is included within a preliminary plat, special permit, use permit or planned unit development (collectively "**Governmental Entitlement**") which shows an Internal Street. Construction of the Internal Street shall be at the sole cost and expense of the Parcel Owner, under the authority of an executive order issued by the Mayor of the City in phases as part of the Governmental Entitlement.

2. Dedication of Internal Street Right-of-Way. As provided in Title 26 of the Lincoln Municipal Code ("**Land Subdivision Ordinance**"), the Parcel Owner whose parcel is being final platted or related parcel site improvements approved through a preliminary plat or

amendment thereto shall dedicate and convey the necessary right of way for the construction and operation of the Internal Streets that are located on said Parcel Owner's parcel.

III.

WATER MAIN AND SANITARY SEWER IMPROVEMENTS

A. Rokeby Road Sanitary Sewer Extension.

1. Sanitary Sewer Extension. In order to obtain a public sanitary sewer connection to the Property, the sanitary sewer line at or near S. 73rd Street must be extended in the Rokeby Road right-of-way. LPS shall be responsible for designing and constructing, at its cost and expense, the public sanitary sewer in the Rokeby Road right-of-way from S. 73rd Street to Friedman Street, as generally shown on Exhibit "C" attached hereto ("Rokeby Road Sanitary Sewer Extension"), through the City's Executive Order process. LPS shall substantially complete construction of the Rokeby Road Sanitary Sewer Extension by Spring 2021, subject to any delays in design and/or construction caused by approval processes and delays in obtaining any necessary right-of-way, and delays beyond the reasonable control of LPS which materially affect its performance and which could not reasonably have been foreseen or provided against.

2. The City and LPS recognize that the Rokeby Road Sanitary Sewer Extension is necessary for the operation of the LPS high school facility to be constructed on the Property and must be completed prior to the opening of the LPS high school facility and related improvements on the Property. LPS and the City acknowledge and agree that it is in the best interest of LPS, the City, and the community as a whole that the Rokeby Road Sanitary Sewer Extension be constructed prior to when the City is projected to construct and pay for said improvements. Therefore, the City agrees that LPS shall construct the Rokeby Road Sanitary

Sewer Extension on behalf of the City, but at LPS' cost and expense subject to any contributions from the City.

3. Upon completion of the Rokeby Road Sanitary Sewer Extension, such improvements shall become City property. LPS shall cooperate with the City for any necessary dedications or assignments of the infrastructure improvements.

B. S. 73rd Street / Ambrose Drive / S. 72nd Street Water Main and Sanitary Sewer.

1. Design, Construction, and Initial Payments by Developer. In order to obtain a public water main and sanitary sewer connection to the Property, the water main and sanitary sewer line at or near Rokeby Road must be extended through the property adjacent to and located immediately to the north of the Property ("North Development"). LPS shall design and construct, or cause to be designed and constructed, an extension of the public water main and sanitary sewer from Rokeby Road through the North Development to the Property ("Water Main & Sanitary Sewer Extension"), as generally shown on Exhibit "C". LPS may satisfy this obligation for the Water Main & Sanitary Sewer Extension either acting on its own behalf and at its own initial cost and expense, or by acting through a third party, in more than one phase through the City's Executive Order process and for dedicating any easements required by the City. LPS, however, shall be solely responsible to the City for design and Construction of the Water Main and Sewer Main Extension regardless of whether it contracts with a third party to cause the work to be completed. LPS shall be responsible for achieving substantial completion of construction of all phases of the Water Main & Sanitary Sewer Extension by July 1, 2021 subject to any delays in design and/or construction caused by approval processes and delays in obtaining any necessary

right-of-way, and delays beyond the reasonable control of LPS which materially affect its performance and which could not reasonably have been foreseen or provided against..

2. The City and LPS recognize that the Water Main & Sanitary Sewer Extension is necessary for the operation of the LPS high school facility to be constructed on the Property and must be completed prior to the opening of the LPS high school facility and related improvements on the Property. LPS and the City acknowledge and agree that it is in the best interest of LPS, the City, and the community as a whole that the Water Main & Sanitary Sewer Extension be constructed prior to when the City is projected to construct and pay for said improvements. Therefore, the City agrees that LPS, either on its own or in conjunction with a third party, shall cause the construction of the Water Main & Sanitary Sewer Extension on behalf of the City, but at the cost and expense of LPS and said third party, subject to any contributions from the City.

4. City Reimbursement Collection Efforts. The City agrees that the Water Main & Sanitary Sewer Extension will potentially sewer other properties that are not subject to this Agreement (collectively "Other Properties"). Therefore, pursuant to Lincoln Municipal Code §17.10.110 and §24.52.010, the City agrees to charge the owners of said Other Properties a fair share cost of said Water Main & Sanitary Sewer Extension based upon a per-acre formula or some other "fair share" formula approved by the City in order to permit said Other Properties to be platted, zoned, annexed, or subdivided, and to be connected to said Water Main & Sanitary Sewer Extension at a cost roughly equivalent to that paid by LPS to connect the Property on a per-acre basis. If said connection is made, the City agrees to pay the amount of any connection fees so collected to LPS. Notwithstanding the above, LPS 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 Other Properties their fair share of the cost of constructing the Water Main & Sanitary Sewer Extension 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 or wastewater collection system. LPS further agrees that the City shall not be liable to LPS in the event of any failure on the part of the City by negligence or otherwise to collect all or any part of such connection fees.

IV.

CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

LPS understands and acknowledges that the City's annexation of the Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection 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. LPS agrees to pay the City whatever amount which must be paid by the City to Southeast Rural Fire Protection District in order for the Property being annexed to be complete.

V.

PARCEL OWNERS – FUTURE RESPONSIBILITIES

LPS understands and acknowledges that the Internal Streets to be constructed by LPS under this Agreement may not reflect all of the minimum improvements required under Title 26 (Land Subdivision Ordinance) and Title 27 (Zoning Ordinance) of the Lincoln Municipal Code in a subdivision or development of the Property under a planned unit development, use permit, special permit, or community unit plan.

Therefore, LPS and the City agree that should LPS sell, transfer and/or convey a portion of the Property to another person ("Developer"), LPS shall make reasonable efforts to assign LPS'

obligations, duties and responsibilities under this Agreement to the Developer and obtain an assumption of LPS' obligations, duties and responsibilities under this Agreement from the Developer. Upon LPS receiving an assignment and assumption from said Developer, LPS shall be relieved of any further obligations, duties and responsibilities under this Agreement as to the parcel sold, transferred and conveyed. Provided that should LPS not receive an assignment and assumption from a Developer, LPS agrees that it will not be relieved of any future obligation which is required as part of the platting process or development of the Property pursuant to Title 26 and Title 27 of the Lincoln Municipal Code as to a parcel of the Property sold, transferred and conveyed.

VI.
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
555 South 10th Street
Lincoln, NE 68508

(2) If to LPS:

Associate Superintendent for Business Affairs
5905 O Street
Lincoln, NE 68510

with a copy to:

Perry, Guthery, Haase & Gessford, P.C., L.L.O.
233 S. 13th Street, Suite 1400
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.

VII.

MISCELLANEOUS

A. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit "A" The Property

Exhibit "B" South 70th Street and Saltillo Road Improvements

Exhibit "C" Water Main and Sanitary Sewer Improvements – North Property

B. **Amendments.** This Agreement may only be amended or modified in writing signed by the City and LPS.

C. **Further Assurances.** LPS 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, LPS, 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 LPS, 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 unless otherwise stated herein.

I. Default. Time is agreed to be of the essence. In the event LPS 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 LPS 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. 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.

K. 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.

L. 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.

M Authority. The City and LPS 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.

N. 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 one (1) acre 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) Parcel 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 other Parcel Owners to this Agreement. An “**Unrelated Third Party**” means a person, corporation, partnership, trust or other entity who is not a Parcel Owner or its successors or assigns 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.

O. Condemnation. The City shall, 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 and the related Internal Streets 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.

P. Representation. LPS is under contract to purchase and is, therefore, has an equitable ownership interest in the Property as described in Exhibit “A”. 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

Q. Contingency. This Agreement is contingent upon the City and LPS executing and

delivering the Annexation Agreement and the City approving the Annexation Agreement and the Governmental Actions.

R. 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.

[Remainder of Page Intentionally Left Blank]

Exhibit "A"
The Property

Lot 8 SW, Section 34, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

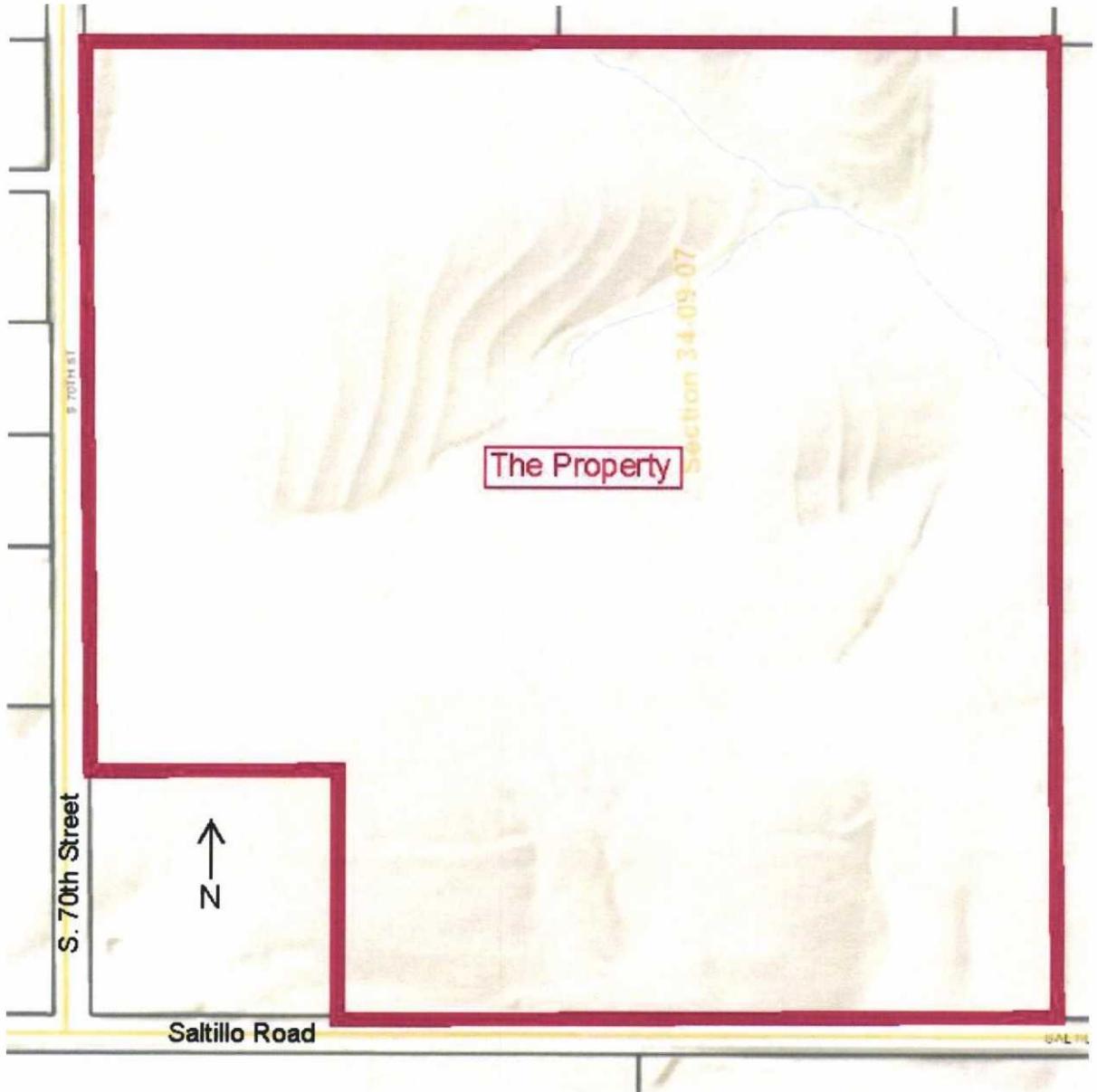


Exhibit "B"
South 70th Street and Saltillo Road Improvements



