



A92906

21R-347

Introduce: 8-2-21

RESOLUTION NO. A- 92906

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

2 That the Annexation Agreement for West O Street Development which is attached hereto
3 marked as Attachment "A" and made a part hereof by reference between the City of Lincoln, KDS
4 Investments, LLC and D & R Development, Inc., for the development and annexation of
5 approximately 18.04 acres on the property generally located at approximately SW 56th Street and
6 West "O" Street as set forth in the agreement is hereby approved and the Mayor is authorized to
7 execute Annexation Agreement on behalf of the City.

8 BE IT FURTHER RESOLVED that the City Clerk is directed to return one original fully
9 executed copy of this Agreement to Tim Sieh, Assistant City Attorney for distribution to the
10 Property Owners.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation
12 Agreement for West O Street Development with the Register of Deeds, filing fees to be paid in
13 advance by the Property Owners.

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

Introduced by:

Approved as to Form & Legality:

City Attorney

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

Approved this 16th day of Aug, 2021:

Mayor

ADOPTED
AUG 16 2021
BY CITY COUNCIL

**ANNEXATION AGREEMENT
FOR
WEST O STREET DEVELOPMENT**

This Annexation Agreement for West O Street Development (“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 **KDS Investments, LLC**, a Nebraska limited liability company (“KDS”), and **D & R Development, Inc.**, a Nebraska corporation (“D&R”). KDS and D&R are collectively referred to hereinafter as the “Property Owners”.

RECITALS

1. The Property Owners are the owners and developers of the real estate legally described on Exhibit “A” (the “Property”). The City and Property Owners desire to cause the urban development of the Property.

2. The City and Property Owners desire that the Property be annexed and zoned in phases pursuant to this Agreement.

3. Property Owners have requested that the City (i) annex that portion of the Property legally described on Exhibit “B” which is not already annexed, and (ii) rezone from AG Agricultural District to H-3 Highway Commercial District and from AG Agricultural to I-1 Industrial those portions of the Property legally described on Exhibit “C” as the first phase of zoning of the Property (“First Phase Rezoning”).

4. The City’s annexation and First Phase Rezoning are collectively referred to herein as “First Phase Governmental Action”.

forward by the Property Owners (collectively “Subsequent Phase Governmental Actions”); provided that, the arterial street infrastructure improvements are constructed in a timely manner to serve and properly accommodate development of the Property.

6. Property Owners have also submitted a preliminary plat on the Property as shown on Exhibit “D” for the City’s review and approval (“Preliminary Plat”).

7. This Agreement identifies the Property Owners’ and City’s responsibilities regarding the construction of arterial street impact fee facility infrastructure improvements necessitated upon annexation, zoning 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 that portion of the Property legally described on Exhibit “B”.
2. Rezoning that portion of the Property legally described and shown on Exhibit “C” from AG Agricultural District to H-3 Highway Commercial District and from AG Agricultural to I-1 Industrial.
3. Approval of the Preliminary Plat.

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 Owners understand and agree 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 Owners, 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. Phases of Zoning and Development. The City and Property Owners agree that the First Phase Governmental Action will permit the development of the first phase of the Property which is identified on the phasing map attached hereto as Exhibit "E" ("First Phase Property"). The City and Property Owners agree that the remainder of the Property will be zoned and developed in two or more phases which are identified on Exhibit "E" as the "D&R Second Phase Property" and the "KDS Second Phase Property". The Property Owners and the City recognize and understand that as part of this Agreement, the Property Owners and City are identifying the public arterial street 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. O Street Adjacent to the Property.

1. Existing Conditions. Presently, O Street adjacent to the Property (“O Street”) is designated as a “Major Arterial” in the 2040 Lincoln City – Lancaster County Comprehensive Plan and in the City’s Access Management Policy. No improvements to this segment of O Street are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period.

2. Access Points. The City and Property Owners agree that full turn movement intersections allowing ingress and egress to and from the Property from O Street will be limited to two quarter mile access points at SW 59th Street and SW 52nd Street and one half mile access point at SW 56th Street, as shown on the Preliminary Plat.

3. Half Mile Access/SW 56th Street. The City and Property Owners agree that the development of the First Phase Property will require the construction of right and left turn lanes in O Street at the intersection of SW 56th Street that are designed to provide required turning motor vehicular storage along with the required deceleration lane length required by the standards of the City’s Access Management Policy (“SW 56th Turn Lanes”). In addition, the City and Property Owners acknowledge that the full development of the Property will likely warrant the installation of a traffic signal at the intersection SW 56th Street and O Street (“SW 56th Signal”). The SW 56th Turn Lanes and SW 56th Signal are arterial street impact fee facility improvements. The City does not currently have funding to pay for the SW 56th Turn Lanes and the SW 56th Signal. The Property Owners may, on the City’s behalf, jointly design, competitively bid, and construct at their cost and expense, with each Property Owner responsible for one-half of the costs, the SW 56th Turn Lanes

through the City's Executive Order process as part of the final plat process. The turn lanes shall be constructed prior to or simultaneous with the street(s) to which they are connected. In the event Property Owners design and construct the SW 56th Turn Lanes described herein, then the City agrees to reimburse the Property Owners for said costs, as set forth in Section B. below. In addition, each Property Owner shall, as a condition of approval of the second final plat of the Property, contribute Forty-six Thousand Eight Hundred Seventy-five and No/100 Dollars (\$46,875) to the City for a total contribution of Ninety-three Thousand Seven Hundred Fifty and No/100 Dollars (\$93,750) ("Traffic Signal Contribution"), which represents one-fourth the estimated cost of designing and installing the SW 56th Signal. The City shall be responsible for installing the SW 56th Signal at such time as it is warranted and recommended for installation by the City. The Property Owners shall be entitled to reimbursement for the Traffic Signal Contribution from arterial street impact fees as described in Section B. below.

4. Quarter Mile Access/SW 59th Street. The City and Property Owners agree that the development of the D&R Second Phase Property will require the construction of right and left turn lanes in O Street at the intersection with SW 59th Street designed to provide required turning motor vehicular storage along with the required deceleration lane length ("SW 59th Turn Lanes"). The SW 59th Turn Lanes are arterial street impact fee facility improvements. The City does not currently have funding to pay for the SW 59th Turn Lanes. D&R shall, on the City's behalf, design, competitively bid, construct and fund the SW 59th Turn Lanes through the City's Executive Order process as part of the final plat process. The turn lanes shall be constructed prior to or simultaneous with the street(s) to which they are connected. In the event D&R designs and constructs the SW 59th Turn Lanes described herein, then the City agrees to reimburse D&R for said costs, as set forth in Section B. below.

5. Quarter Mile Access/SW 52nd Street. The City and Property Owners agree that the development of the KDS Second Phase Property will require the construction of right and left turn lanes in O Street at the intersection with SW 52nd Street designed to provide required turning motor vehicular storage along with the required deceleration lane length (“SW 52nd Turn Lanes”). The SW 52nd Turn Lanes are arterial street impact fee facility improvements. The City does not currently have funding to pay for the SW 52nd Turn Lanes. KDS shall, on the City’s behalf, design, competitively bid, construct and fund the SW 52nd Turn Lanes through the City’s Executive Order process as part of the final plat process. The turn lanes shall be constructed prior to or simultaneous with the street(s) to which they are connected. In the event KDS designs and constructs the SW 52nd Turn Lanes described herein, then the City agrees to reimburse KDS for said costs, as set forth in Section B. below.

B. City Reimbursement from Arterial Street Impact Fees. The SW 56th Turn Lanes, SW 56th Signal, SW 59th Turn Lanes and SW 52nd Turn Lanes may collectively be referred to hereinafter as the “O Street Improvements”. The City agrees to segregate arterial street impact fees collected by the City from each phase of development of the Property as shown on Exhibit “E”. Arterial street impact fees collected by the City from the First Phase Property shall be considered “First Phase Segregated Arterial Street Impact Fees”. Arterial street impact fees collected by the City from the D&R Second Phase Property shall be considered “D&R Second Phase Segregated Arterial Street Impact Fees”. Arterial street impact fees collected by the City from the KDS Second Phase Property shall be considered “KDS Second Phase Segregated Arterial Street Impact Fees”.

1. First Phase Property. In the event First Phase Segregated Arterial Street Impact Fees are not available to fund the SW 56th Turn Lanes at the time they are constructed by

the Property Owners, the Property Owners shall jointly fund said SW 56th Turn Lanes with each Property Owner responsible for one-half of such costs, and said costs shall be reimbursed to the Property Owners quarterly by the City from First Phase Segregated Arterial Impact Fees actually collected with one-half paid to each Property Owner.

2. D&R Second Phase Property. In the event D&R Second Phase Segregated Arterial Street Impact Fees are not available to fund the SW 59th Turn Lanes at the time they are constructed by D&R, D&R shall fund said SW 59th Turn Lanes and said costs shall be reimbursed to D&R quarterly by the City from D&R Second Phase Segregated Arterial Impact Fees actually collected.

3. KDS Second Phase Property. In the event KDS Second Phase Segregated Arterial Street Impact Fees are not available to fund the SW 52nd Turn Lanes at the time they are constructed by KDS, KDS shall fund said SW 52nd Turn Lanes and said costs shall be reimbursed to KDS quarterly by the City from KDS Second Phase Segregated Arterial Impact Fees actually collected.

4. Traffic Signal Reimbursement. In the event the Property Owners make the required Traffic Signal Contribution to the City for the SW 56th Signal, the Traffic Signal Contribution shall be reimbursed to the Property Owners by the City from the arterial street impact fees generated and collected as a result of development of the Property and not otherwise required to reimburse either of the Property Owners for the turn lanes as described in Subsections B.1. through B.3. above with one-half paid to each Property Owner until they are reimbursed for the amount of their Traffic Signal Contribution.

C. Dedication of ROW. At the time of final platting or upon the earlier request by the City, the Property Owners agree to dedicate or convey, at no cost to the City, the additional

right-of-way needed at the SW 59th Street, SW 56th Street and SW 52nd Street intersections with O Street for the SW 59th Turn Lanes, SW 56th Turn Lanes and SW 52nd Turn Lanes.

IV.

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 Owners:

KDS Investments, LLC
151 SW 48th Street
Lincoln, NE 68522

D & R Development, Inc.
1354 Pelican Bay Place
Lincoln, NE 68528

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.

V.

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 Owners 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 Owners, 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 Owners, 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 Owners default in fulfilling any of their 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 Owners 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 V, 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 Property Owners' 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 Owners 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. 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.

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 Owners and their 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. Contingency. This Agreement is contingent upon the City and Property Owners executing and delivering the Annexation Agreement and the City approving the Annexation Agreement and the First Phase Governmental Action.

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

T. 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.

EXHIBIT "A"

THE PROPERTY

KDS PROPERTY:

LOT 53 I.T., LOCATED IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

D&R PROPERTY:

LOT 17 I.T., LOCATED IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

LOTS 5 AND 29 I.T., LOCATED IN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 10 NORTH, RANGE 5 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

EXHIBIT "B"

ANNEXED PROPERTY

LOT 17, IRREGULAR TRACT LOCATED IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

EXHIBIT "C"

CHANGES OF ZONE

'AG' TO 'H-3'
LEGAL DESCRIPTION

A portion of Lot 53 of Irregular Tracts located in the Northwest Quarter of Section 30, Township 10 North, Range 6 East, of the 6th P.M., Lancaster County, Nebraska and more particularly described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of said Section 30; Thence on the west line of said Northwest Quarter of Section 30, S00°08'44"W, a distance of 89.81 feet to the POINT OF BEGINNING;

Thence continuing on the west line of the Northwest Quarter of said Section 30, also the west line of said Lot 53, S00°08'44"W, a distance of 396.09 feet;

Thence N90°00'00"E, a distance of 503.07 feet;

Thence N00°00'00"E, a distance of 395.25 feet to a point on the south right-of-way line of West O Street, also U.S. Highway 6, also the north line of said Lot 53;

Thence on the south right-of-way line of West O Street, also U.S. Highway 6, also the north line of said Lot 53, N89°54'13"W, a distance of 502.06 feet to the POINT OF BEGINNING and containing a calculated area of 198,847.91 square feet or 4.56 acres.

'AG' TO 'I-1'
LEGAL DESCRIPTION

A portion of Lots 17 and 53 of Irregular Tracts located in the Northwest Quarter of Section 30, Township 10 North, Range 6 East, of the 6th P.M., Lancaster County, Nebraska and more particularly described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of said Section 30; Thence on the west line of said Northwest Quarter of Section 30, S00°08'44"W, a distance of 485.90 feet to the POINT OF BEGINNING;

Thence continuing on the west line of the Northwest Quarter of said Section 30, also the west line of said Lots 53 and 17, S00°08'44"W, a distance of 1320.48 feet;

Thence N90°00'00"E, a distance of 389.93 feet to a point on the center of Old Middle Creek;

Thence for the next nine (9) courses on the center of Old Middle Creek, also the common line of said Lots 17 and 53, N56°54'42"E, a distance of 13.10 feet;

Thence N28°34'02"E, a distance of 181.61 feet;

Thence N42°22'24"E, a distance of 92.40 feet;

Thence N19°00'53"E, a distance of 83.16 feet;

Thence N17°48'25"W, a distance of 331.92 feet;

Thence N41°15'49"W, a distance of 76.35 feet;

Thence N42°58'29"E, a distance of 92.74 feet;

Thence N02°58'49"E, a distance of 345.15 feet;

Thence N00°00'00"E, a distance of 220.99 feet;

Thence S90°00'00"W, a distance of 503.07 feet to the POINT OF BEGINNING, and containing a calculated area of 657,778.91 square feet or 15.10 acres.

H-4

WEST O DEVELOPMENT
Change of Zone Exhibit

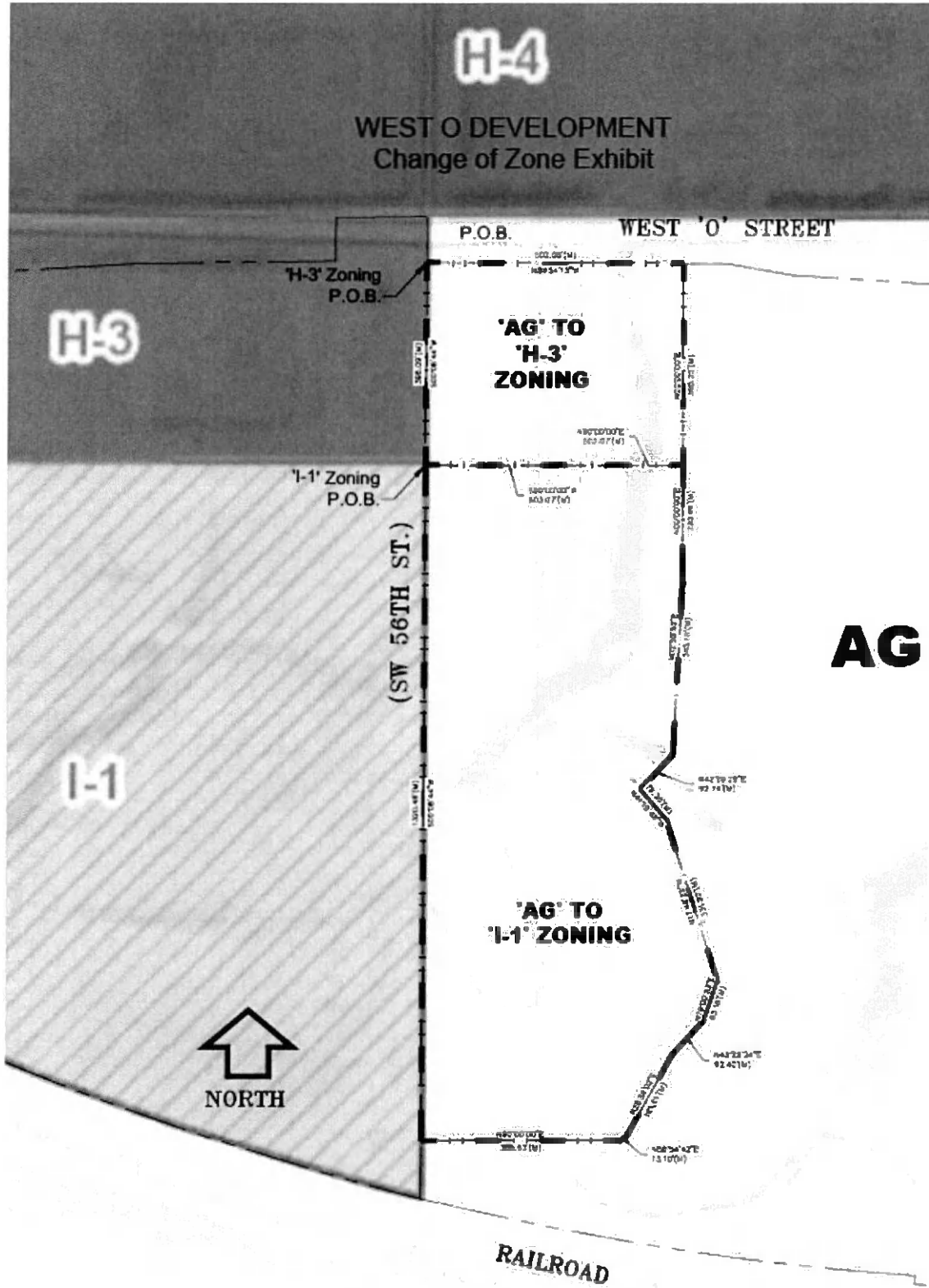


EXHIBIT "E"

PHASING MAP AND IMPACT FEE COLLECTION AREAS

