



A93231

22R-71

Introduce: 2-14-22

RESOLUTION NO. A- 93231

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

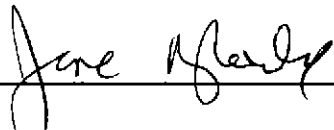
2 That the Conditional Annexation Agreement for West Old Cheney Road and South
3 Folsom Street which is attached hereto marked as Attachment "A" and made a part hereof by
4 reference between the City of Lincoln, and the Housing Authority of the City of Lincoln, Nebraska,
5 for the development and annexation of approximately 13.59 acres on the property generally
6 located at the northwest corner of the intersection of West Old Cheney Road and South Folsom
7 Street, as set forth in the agreement is hereby approved and the Mayor is authorized to execute
8 Annexation Agreement on behalf of the City.

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

12 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Conditional
13 Annexation Agreement for West Old Cheney Road and South Folsom Street with the Register of
14 Deeds, filing fees to be paid in advance by the Property Owners.

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

Introduced by:




Approved as to Form & Legality:


City Attorney
ADOPTED

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

MAR 07 2022
BY CITY COUNCIL

Approved this 11th day of MARCH, 2022:


Mayor

After recording, please return to:

Thomas C. Huston
Cline Williams Wright Johnson & Oldfather, LLP
233 South 13th Street, Suite 1900
Lincoln, NE 68508

**CONDITIONAL ANNEXATION AGREEMENT
FOR WEST OLD CHENEY ROAD AND SOUTH FOLSOM STREET**

THIS CONDITIONAL ANNEXATION AGREEMENT FOR WEST OLD CHENEY ROAD AND SOUTH FOLSOM STREET (the “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”) and **The Housing Authority of the City of Lincoln, Nebraska**, a body corporate and politic, (“LHA”)

RECITALS

A. LHA has requested City to annex approximately 13.59 acres of land generally located at the northwest corner of the intersection of West Old Cheney Road and South Folsom Street in southwest Lincoln (AN21009). The land being requested for annexation is legally described on Exhibit “A” attached and incorporated by this reference (the “Annexation Area” or “LHA Property”). The Annexation Area is depicted on Exhibit “B” which shows the location of the Annexation Area located north of Old Cheney Road and west of South Folsom Street;

B. Concurrently with the annexation request, LHA requests that City approve a change of zone

for the LHA Property from the AG Agriculture District to the R-4 residential zoning classification (CZ21051). AN21009 and CZ21051 are collectively referred to as the “Governmental Actions.” LHA concurrently sought the approval of a Special Permit for a Community Unit Plan for an affordable housing development containing not more than 128 dwelling units to be developed in two or more phases. The Lincoln/Lancaster County Planning Commission approved Special Permit #21050 for the Community Unit Plan(the “Special Permit”) at its meeting held on January 5, 2022; and

C. City is willing to approve the Governmental Actions, conditioned on LHA’s agreement to develop the Annexation Area for affordable housing opportunities and assist in addressing the impacts of the development of the Annexation Area as provided in the terms and conditions of this Agreement.

NOWHEREFORE, in consideration of the mutual promises described below, the Parcel Owners and City agree as follows:

1. **Annexation.** City agrees to approve AN21009 and annex the LHA Property, as described on Exhibit “A” and depicted on Exhibit “B” concurrent to the approval of this Agreement via an ordinance which shall extend the corporate boundaries of the City to include the Annexation Area.

2. **Change of Zone.** City agrees to approve CZ21051 and change the zoning designation for the LHA Property from the “AG Agricultural” zoning district to the “R-4” residential zoning district.

3. **Pedestrian Trail.** LHA shall contribute the sum of Ninety-Six Thousand Seven Hundred Fifty-Five and No/100 Dollars (\$96,755.00) to City for the construction of a pedestrian trail located in the western portion of the Right of Way of South Folsom Street on the east edge of

the Annexation Area. LHA shall be relieved of any responsibility for the construction of a sidewalk or pedestrian trail on the eastern edge of the LHA Property.

4. **Intersection Improvements.** LHA shall be responsible for design and construction of intersection improvements to include left and right turn lanes in South Folsom Street and West Old Cheney Road, to the satisfaction of Lincoln Transportation and Utilities Department. LHA shall not be entitled to impact fee reimbursement for any intersection improvement costs.

5. **Contribution for Rural Fire District.** LHA understands and acknowledges that City may not annex any portion of Annexation Area lying within the boundaries of the Southwest Rural Fire District except by City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the portion of LHA Property being annexed. LHA desires to have the LHA Property annexed by City and therefore agrees to pay the amount which must be paid to the Southeast Rural Fire Protection District, if any amount is due, in order for the annexation to be complete. The parties anticipate that no payment shall be required.

6. **Binding Effect.** This Agreement shall run with the Annexation Area and be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. LHA intends to convey the Annexation Area to affiliated entities which shall take title to the LHA Property subject to the terms of this Agreement.

7. **Further Assurances.** Each party will use 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 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.

8. **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.*

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

10. **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.

11. **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 City, LHA, 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.

12. **Assignment.** In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties 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 other parties to this Agreement.

13. **Default.** LHA and City agree that the annexation and change of zone promote the public health, safety, and welfare so long as LHA fulfills all of the conditions and responsibilities set forth in this Agreement. In the event LHA defaults in fulfilling any of its

covenants and responsibilities as set forth in this Agreement, City may, in its legislative authority, rezone the rezoned property to its previous designation or such other designations as City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which City may have to enforce this Agreement or to obtain damages for its breach.

14. **Definitions.** 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. For the purpose of this Agreement the words and phrases “building permit”, “development”, “Impact Fee Facility”, “Impact Fee Facility Improvements”, and “site-related improvements” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

15. **Recordation.** This Agreement or a memorandum thereof shall be filed in the office of the Register of Deeds of Lancaster County, Nebraska at the Parcel Owners’ cost and expense.

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

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

- Exhibit “A” – Legal Description
- Exhibit “B” – Location Map of Annexed Area and Change of Zone Area

[SIGNATURE PAGES TO FOLLOW]

Dated as of February 4, 2022 by The Housing Authority of the City of Lincoln.

“LHA”



The Housing Authority of the City of Lincoln, a body corporate and politic

By: [Signature]
Chris Lamberty, Executive Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

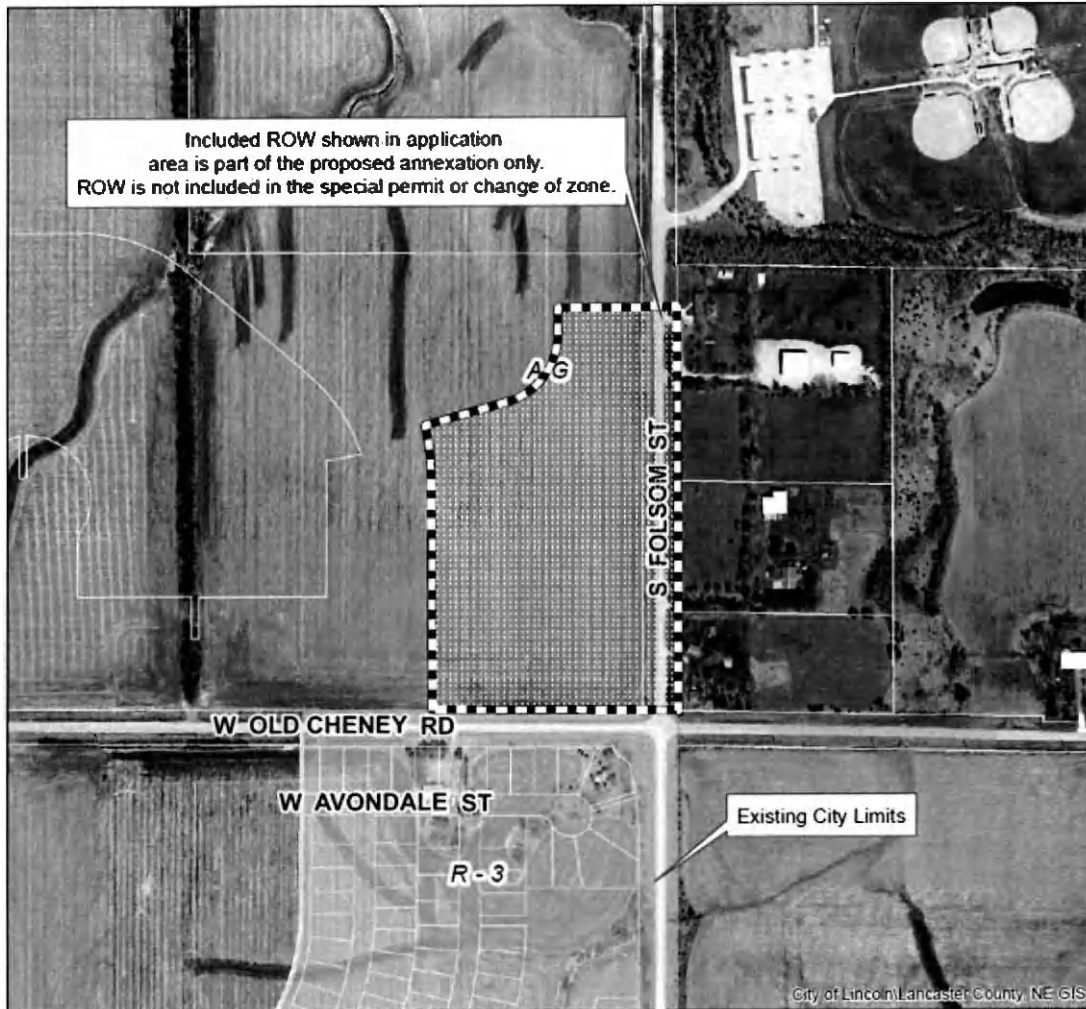
The foregoing instrument was acknowledged before me this 4th day of February, 2022, by Chris Lamberty, Executive Director of the Housing Authority of the City of Lincoln, on behalf of the Authority

[Signature]
Notary Public

EXHIBIT "A"
Legal Description

Lot 63, Irregular Tracts, Section 10, Township 10 North, Range 6 East, of the 6th P.M., Lancaster
County, Nebraska

EXHIBIT "B"
Location Map of Annexed Area and Change of Zone Area



**Annexation #: AN21009, Change of Zone #:
 C2210501 (AG to R-4) & Special Permit #: SP21050
 Lincoln Housing Authority CUP
 S Folsom St & W Old Cheney Rd**

2020 aerial

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District



One Square Mile:
 Sec.10 T09N R06E

