

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the Lancaster County Agricultural Society, hereinafter referred to as the “Society” and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as the “City”.

### RECITALS

#### I.

The Society is the owner of approximately 160 acres of real property located generally in the vicinity of 84th and Havelock Avenue in the north half of Section 11, Township 10 North, Range 7 East, Lancaster County, Nebraska (“hereafter referred to as “Fairgrounds” ”).

#### II.

The Society is requesting the City to annex a portion of the Fairgrounds comprising 25.75 acres, more or less, generally located at the southeast corner of 84th and Havelock Avenue and more particularly described on Attachment A-1.

#### III.

The Society is desirous of obtaining a Comprehensive Plan commercial designation on approximately 14.4 acres of land located on the northwest corner of the Fairgrounds as shown on Attachment A hereto (“NW Corner”). Thereafter Society desires to rezone the NW Corner to H-4 General Commercial District and to develop said NW Corner under a planned service commercial development special permit generally in accordance with the concept commercial development plan as shown on Attachment A. In that regard, the Society as the first step in this process has made application for a Comprehensive Plan Amendment designated as Comprehensive Plan Amendment No. 08014, hereinafter referred to as the “Comprehensive Plan Amendment.”

#### IV.

The City is agreeable to proceeding with the annexation, Comprehensive Plan Amendment for the NW Corner and to thereafter support rezoning of the NW Corner and approval of the special permit planned service commercial development generally in accordance with the concept commercial development plan as described in Recital III above, subject to the terms and conditions of this Agreement.

## V.

The City has adopted Ordinance No. 18113, hereinafter referred to as the “Impact Fee Ordinance” based upon an impact fee study prepared by Duncan Associates dated October 2002 that went into effect on June 2, 2003. This Impact Fee Ordinance enables the City to impose a proportional share of the cost of improvement to the water distribution, water system, wastewater system and arterial streets impact fee facility improvements necessitated by and attributable to new development.

## VI.

The City Administration is willing to support annexation of the NW Corner and approve the change of zone as requested by Society, provided Society agrees (1) to pay or cause to be paid the City’s Water System, Water Distribution, Wastewater System, and Arterial Street Impact Fees necessitated by and attributable to the proposed development of the NW Corner; and (2) consent to and abide by the City’s Zoning Code (Title 27 of the LMC).

NOW THEREFORE, in consideration of the above Recitals and the mutual promises contained herein, the Society and City agree as follows:

1. **City Approvals.** The City agrees to approve Society’s request for annexation, Comprehensive Plan amendment, change of zone and special permit (City Approvals).
2. **Filling of the floodplain and floodprone area.** Development under the planned service commercial development proposed on the NW Corner of the Fairgrounds will require filling of the floodplain and floodprone areas of Stevens Creek. The NW Corner of this Fairgrounds is included within the “New Growth Areas” of the floodplain or floodprone areas within the zoning jurisdiction of the City and any filling of the floodplain or floodprone area on the Fairgrounds is subject to Chapter 27.53 of the Zoning Code “Flood Regulations for New Growth Areas.” These flood regulations require no-net rise in the 100 year water surface elevation by utilizing compensatory storage to offset any fill placed in the floodplain or floodprone areas. Society acknowledges and agrees that prior to any filling of any floodplain or floodprone area of the Fairgrounds, the Society shall apply for and obtain a floodplain fill permit and demonstrate that the “Flood Regulations for New Growth Areas” are met.
3. **Green Space Reservation.** Approval of the proposed change of designation in the Comprehensive Plan from Public/Semi-Public and Green Space to Commercial and the associated change of zone to H-4 and development under a planned service commercial development special permit will eliminate 3.8 acres of land within the floodplain, presently serving as green space. In order to compensate for this loss of green space, the Society agrees to preserve approximately 7.6 acres of undeveloped land in the floodplain or floodway in open space uses, such as farming, ball fields,

camping, pedestrian or horse trails or grass areas (which grass areas may be occasionally used as unpaved recreational vehicle or overflow parking for large events occurring at the Fairgrounds ) representing a 2:1 ratio of preservation of space to the amount lost. The area to be reserved is shown on Attachment B. It is understood and agreed that said 7.6 acres reserved for open space may be relocated in the course of approval of the planned service commercial development special permit or amendments thereto. In order to ensure preservation of said 7.6 acres, the Society will dedicate or convey a conservation easement to the City over such land subject to the stipulations above. Any use of said 7.6 acres, as shown in Attachment B or as it may be configured from time to time, by others other than the Society shall be subject to approval by the Society's Board of Directors.

4. **Off Site Traffic Improvements.** The Society and the City agree that based upon the traffic study submitted by the Society which is attached hereto as Attachment C, the current use of the Fairgrounds and the planned service commercial development of the NW Corner as described above will require the following identified intersection improvements to the City's existing street system:

Havelock Avenue east of 84th Street –

- a) Construction of a 200-foot eastbound to southbound right turn lane at all driveway intersections;
- b) Construction to widen Havelock Avenue to provide for a center turn lane from 84th Street to a maximum of 150 feet east of the farthest east driveway;

84th and Havelock Avenue –

- c) Construction of a 250-foot northbound to eastbound right turn lane;
- d) Construction of additional storage at the existing 200-foot eastbound to southbound right turn lane to a length to be determined by the Department of Public Works and Utilities but not to exceed a total length of 350 feet;
- e) Construction of a 200-foot westbound to northbound right turn lane.

In order to be fair, if the land to the north of Havelock Avenue, between 84th Street and Stevens Creek develops with land uses other than agricultural, the City intends to require any future developer to reimburse the Society fifty percent (50%) of the cost of the center turn lane in Havelock Avenue noted in subparagraph 4 b) above. Notwithstanding the foregoing, Society understands and agrees that the City cannot contract away any of its police powers and legislative discretion and thus the intent of the City to charge future developers 50% of the cost of the center turn lane in Havelock Avenue does not require the City Council for the City to adopt nor restrict the City Council from adopting ordinances affecting the City's ability to require future developers to make said reimbursement to the Society. Society further agrees

that the City shall not be liable to Society in the event of any failure on the part of the City by negligence or otherwise to require said reimbursement to the Society.

The specific design requirements for the above street improvements are Site-Related Improvements and thus are not eligible for reimbursement as Arterial Street Impact Fee Facility Improvements as defined in Section 27.82.040 of the Lincoln Municipal Code. The Society agrees to pay or require its lessees, as part of the lease requirements, to pay the cost of Site-Related Improvements attributable to the uses proposed by the Society or each such lessee, and to pay impact fees or contributions in lieu of impact fees as provided in paragraph 8 below. Society understands and agrees that no building permit shall be issued in the planned service commercial development area unless the above-described improvements have been completed, or a bond, escrow or security agreement approved by the City Law Department has been furnished to the City in an amount sufficient to guarantee installation of the requirement improvements. Society further agrees not to change any use of the Fairgrounds which increases the A. M. or P. M. Peak Hour traffic generation from the Fairgrounds in excess of that identified in the traffic study (Attachment C) without submission of a revised traffic study and constructing any additional transportation improvements identified in the revised traffic study to the satisfaction of the Director of Public Works and Utilities.

5. **Right-of-Way Dedication.** The Society agrees to dedicate to the City additional right-of-way along Havelock Avenue to provide 60 feet of right-of-way south of Havelock Avenue for a future four-lane street and to dedicate to the City additional right-of-way along north 84th Street to provide a total right-of-way width of 140 feet for a future six-lane road. In addition, the Society agrees to dedicate 10 feet of additional right-of-way at the location of all right hand turn lanes referenced in Section 4 above. It is recognized that this may require the dedication or conveyance of additional easements to the Lincoln Electric System (LES) for its existing 35kv and 115kv high voltage transmission lines and Society agrees to dedicate or provide such easements to LES. The parties agree that several options may exist regarding relocation of the LES transmission lines and in any event such cost of relocation shall be without cost to LES. All right-of-way dedication shall be completed prior to the issuance of building permits for the commercial uses. When requested by LES, the Society will provide a replacement easement.
  
6. **Commercial Area; Subject to Zoning; Off-Premise Signage.** The City and Society recognize that under Nebraska law the power of eminent domain is superior to the zoning power and that the City, under its zoning authority, is not permitted to prevent or place limitations upon a public use of the Fairgrounds, the furtherance of which the Society has been granted condemnation power by the State Legislature. Therefore, as an inducement for the City to approve the annexation, Comprehensive Plan Amendment and the future change of zone and special permit for the NW Corner, the Society agrees that, notwithstanding the fact that it is deemed to be a body corporate and politic and has the power of eminent domain as provided in *Neb.*

*Rev. Stat. § 2-262 (Reissue 1997)*, the NW Corner shall be subject to the zoning regulations of the City of Lincoln otherwise applicable to the zoning district in which the Fairgrounds is placed. As a further inducement, the Society specifically agrees that the presently existing Lancaster Event Center sign on the Fairgrounds, a portion of which is used for off-premise advertising, will be the only off-premise sign located on the Fairgrounds.

7. **Society's Responsibilities; Contingent on City Approvals.** The Society's responsibilities under this agreement, including dedication of right-of-way, reservation of open space, and insuring the installation of off site traffic improvements, will be contingent upon the City approving the City Approvals.
8. **Impact Fees for Commercial Development.** Society agrees to pay or will require any lessee to pay the applicable Water Distribution, Water System, Wastewater, and Arterial Street Impact Fees or any other impact fees in place at time of building permit or construction activity for the proposed planned service commercial development of the NW Corner of the Fairgrounds.
9. **Easements for Future Sanitary Sewer and Trail.** Society agrees to promptly provide to the City temporary construction and permanent sanitary sewer easements for the construction of the Stevens Creek sanitary sewer trunk line at no cost and upon request of the City. In addition, the Society will provide a 20 foot trail easement generally west of Stevens Creek, in a location mutually agreeable to the City and the Society, upon request of the City.
10. **Future Arena & Facilities Coordination.** <<Language under development>>
11. **Water Main in Havelock Avenue.** If required by the City's Department of Public Works and Utilities to provide adequate water pressure, the Society shall be responsible at its own cost and expense for the construction of a 16-inch water main in Havelock Avenue. The main shall be built from 84th Street east to a connection point for Fairgrounds system as determined by Public Works and Utilities. Society acknowledges and agrees that since the 16-inch water main is not part of the City's current 1-6 Year Capital Improvement Program and is only needed by the Society and that City's water revenues and water system impact fees are not intended to be used by the City for the construction of said main or to reimburse Society for the cost of the 16-inch water main, the Society does hereby waive any right to reimbursement for the cost of the 16-inch water main.

