



71766

Smart # 04110069

11-5-04/law/tb



**CITY OF LINCOLN**  
**NEBRASKA**  
MAYOR COLEEN J. SENG

**EXECUTIVE  
ORDER**

NO. 71766

**BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln,  
Nebraska:**

The attached First Amendment to Conditional Annexation and Zoning Agreement for Fallbrook made and entered into by and between NEBCO, Inc. and the City of Lincoln, Nebraska is hereby approved and I have executed said Agreement on behalf of the City of Lincoln.

The City Clerk is directed to send a copy of this Executive Order and the Agreement to the Planning Department.

Dated this 16<sup>th</sup> day of Nov., 2004.

Coleen J. Seng, Mayor

Approved as to Form & Legality:

Approved:

Chief Assistant City Attorney

Public Works & Utilities

71766

**FIRST AMENDMENT TO  
CONDITIONAL ANNEXATION AND ZONING  
AGREEMENT FOR FALLBROOK**

This First Amendment to the Conditional Annexation and Zoning Agreement for Fallbrook ("First Amendment") is made and entered into as of this 16<sup>th</sup> day of Nov., 2004, by and between the City of Lincoln, Nebraska, a municipal corporation ("City"), and NEBCO, Inc., a Nebraska corporation ("Owner").

**RECITALS**

A. The City and Owner previously entered into the Conditional Annexation and Zoning Agreement for Fallbrook dated February 1, 2000 ("Annexation Agreement").

B. Under the Annexation Agreement, Owner and City agreed to certain street improvements which needed to be installed to serve the property including identification of each party's cost responsibilities for the design and installation of said improvements including the design and installation of traffic signals at Fallbrook Boulevard and U.S. Highway 34, North 1st Street and U.S. Highway 34, and North 1st Street and Pennsylvania Avenue, the paving south of U.S. Highway 34 and the acquisition of right-of-way for improvements to North 1st Street from U.S. Highway 34 to Alvo Road. Said cost obligations and responsibilities are set forth in Article III, Transportation Improvements, of the Annexation Agreement.

C. Notwithstanding each party's cost responsibilities for the design, installation and construction of said improvements, the improvements were actually installed without regard to those cost responsibilities due to circumstances which changed following execution of the Annexation Agreement.

D. The parties desire to revise and clarify each party's financial responsibilities and obligations under the Annexation Agreement through this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises of and the benefits to the parties, the parties hereby agree that notwithstanding the requirements of Article III of the Annexation Agreement, the responsibilities of the City and Owner to pay for the construction of the improvements listed in the chart attached hereto marked as Exhibit 1 and incorporated herein by this reference shall be the actual payments as shown in Exhibit I rather than the agreed upon obligations. The parties further agree that in order to correct the disparity between the actual cost and the original agreed upon obligations, the City shall provide a subsidy in the amount of \$9,999.00 for Owner's cost of constructing the improvements identified in Executive Order No. 59903 and a subsidy in the amount of \$9,999.00 for Owner's construction costs under Executive Order No. 59899. The City further agrees to pay \$9,800.00 for the design of the improvements constructed under Executive Order No. 59903 and to pay \$16,500.00 for the design of improvements constructed under Executive Order No. 59899. Finally, the City agrees to pay all costs for the future signal installation at 1st Street and Pennsylvania Avenue, which amount is estimated to be approximately \$25,000.00.

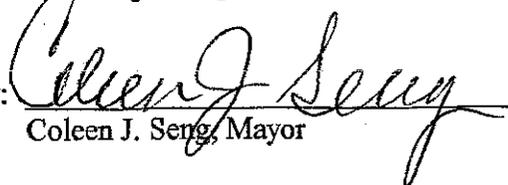
Except as specifically amended herein, all other terms and conditions of the Annexation Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day and year first written above.

ATTEST:



THE CITY OF LINCOLN, NEBRASKA  
a municipal corporation

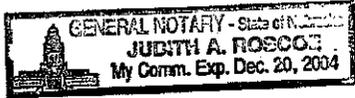
By:   
Coleen J. Seng, Mayor

NEBCO, INC., a Nebraska corporation

By: *Stan Maly*  
Stan Maly, Vice President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER    )

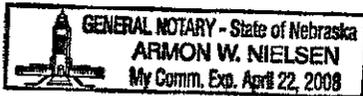
The foregoing instrument was acknowledged before me this 16th day of November, 2004, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, on behalf of the City.



*Judith A. Roscoe*  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 1 day of November, 2004, by Stan Maly, Vice-president of NEBCO, Inc., a Nebraska corporation, on behalf of said corporation.



*Armon W. Nielsen*  
Notary Public

**ANNEXATION AGREEMENT EXPENSES**

**E.O. 59903: FALLBROOK BLVD. & HIGHWAY 34 TRAFFIC SIGNAL**

	Total	Nebco (50%)	City (50%)	<u>ACTUAL PAYMENTS</u>	
				Nebco	City
Construction	\$43,424.37	\$21,712.19	\$21,712.19	\$43,424.37	\$0.00
Design	\$9,800.00	\$4,900.00	\$4,900.00	\$9,800.00	\$0.00
City Contributed Material	\$8,160.00	\$4,080.00	\$4,080.00	\$0.00	\$8,160.00
<b>TOTAL:</b>	<b>\$61,384.37</b>	<b>\$30,692.19</b>	<b>\$30,692.19</b>	<b>\$53,224.37</b>	<b>\$8,160.00</b>

**E.O. 59899: NORTH 1ST STREET, US 34 TO ALVO ROAD**

**N. 1st Street & US 34 Traffic Signal**

		Nebco (0%)	City (100%)	Nebco	City
Construction	\$26,703.00	\$0.00	\$26,703.00	\$26,703.00	\$0.00
Design	\$8,250.00	\$0.00	\$8,250.00	\$8,250.00	\$0.00
City Contributed Material	\$5,926.50	\$0.00	\$5,926.50	\$0.00	\$5,926.50
<b>TOTAL:</b>	<b>\$40,879.50</b>	<b>\$0.00</b>	<b>\$40,879.50</b>	<b>\$34,953.00</b>	<b>\$5,926.50</b>

**N. 1st Street & Pennsylvania Traffic Signal**

		Nebco (50%)	City (50%)	Nebco	City
Construction	\$44,675.00	\$22,337.50	\$22,337.50	\$44,675.00	\$0.00
Design	\$8,250.00	\$4,125.00	\$4,125.00	\$8,250.00	\$0.00
City Contributed Material	\$5,926.50	\$2,963.25	\$2,963.25	\$0.00	\$5,926.50
<b>TOTAL:</b>	<b>\$58,851.50</b>	<b>\$29,425.75</b>	<b>\$29,425.75</b>	<b>\$52,925.00</b>	<b>\$5,926.50</b>

**Paving South of HWY. 34**

		Nebco (0%)	City (100%)	Nebco	City
Construction	\$49,247.15	\$0.00	\$49,247.15	\$49,247.15	\$0.00
<b>TOTAL:</b>	<b>\$49,247.15</b>	<b>\$0.00</b>	<b>\$49,247.15</b>	<b>\$49,247.15</b>	<b>\$0.00</b>

**RIGHT-OF-WAY ACQUISITION**

		Nebco (50%)	City (50%)	Nebco	City
South Leg	\$57,024.00	\$28,512.00	\$28,512.00	\$0.00	\$57,024.00
North Leg	\$12,970.00	\$12,970.00	\$0.00	\$0.00	\$12,970.00
<b>TOTAL:</b>	<b>\$69,994.00</b>	<b>\$41,482.00</b>	<b>\$28,512.00</b>	<b>\$0.00</b>	<b>\$69,994.00</b>

**GRAND TOTAL:      \$280,356.52      \$101,599.94      \$178,756.59      \$190,349.52      \$90,007.00**

**DIFFERENCE: \$88,749.58**

**PROPOSED COST MAKE-UP: \$9,999 CITY SUBSIDY FOR E.O.59903**  
**\$9,999 CITY SUBSIDY FOR E.O.59899**  
**\$9,800 CITY PAYS FOR DESIGN OF E.O. 59903**  
**\$16,500 CITY PAYS FOR DESIGN OF E.O. 59899**  
**\$25,000+/- CITY PAYS FOR FUTURE SIGNAL INSTALLATION AT 1ST & PENN.**  
**TOTAL: \$71,300+/-**