

CERTIFICATE

STATE OF NEBRASKA)
)
 COUNTY OF LANCASTER) ss:
)
 CITY OF LINCOLN)

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. A-80940 for Kawasaki Annexation Agreement relating to the annexation of land generally located at NW 27th Street & Highway 34 as it appears of record in my said office and is now in my charge remaining as City Clerk aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, this 28th of June 2001.

Joan E. Ross
 City Clerk



RESOLUTION NO. A- 80940

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

2 That the agreement titled Kawasaki Annexation Agreement (Annexation
3 Agreement), which is attached hereto, marked as Attachment "A" and made a part hereof by
4 reference, between the City of Lincoln and Kawasaki Motors Manufacturing Corporation, U.S.A.
5 (Owner) outlining certain conditions and understandings between the City and said Owner
6 relating to the annexation of land generally located at NW 27th Street and Highway 34 is
7 approved.

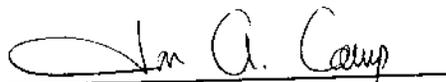
8 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the
9 Annexation Agreement on behalf of the City.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully
11 executed copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to
12 the Owner.

13 BE IT FURTHER RESOLVED that the City Clerk is directed to record the
14 Annexation Agreement with the Register of Deeds, filing fees to be paid by the Owner.

See further Council Proceedings
on next page.

Introduced by:



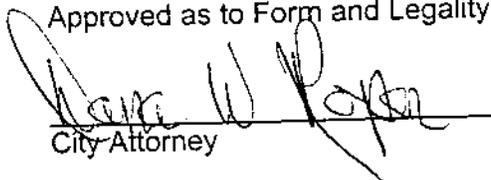
AYES: Camp, Cook, Friendt,
McRoy, Seng, Svoboda, Werner
NAYS: None.

ADOPTED

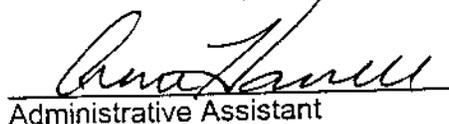
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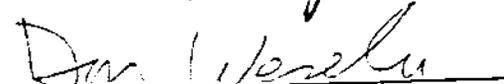
By City Council

Approved as to Form and Legality:


City Attorney

Staff Review Completed:


Administrative Assistant

Approved this 29 day of June, 2001:

Mayor

BILL 01R-146

06/18/01 Council Proceedings:

CAMP Moved to delay action on Bill 01R-146 for one week to 6/25/01.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Friendt, McRoy, Seng, Svoboda, Werner; NAYS: None.

KAWASAKI ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT for Kawasaki is made and entered into on this 29 day of June, 2001, by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as "City", and **KAWASAKI MOTORS MANUFACTURING CORPORATION, U.S.A.**, hereinafter referred to as "Kawasaki."

RECITALS

1. In order to facilitate a major expansion of the Kawasaki plant, Kawasaki has requested that the City annex all of Lots 29 and 30, Irregular Tracts in the South One-Half of Section 33, Township 11 North, Range 6 East and the adjacent right-of-way, all located east of the 6th P.M., Lancaster County, Nebraska. Lot 29 is owned by Lincoln Electric System. Lot 30 is owned by Kawasaki. Lot 30 is hereinafter referred to as the "Property".

2. Kawasaki has requested that the City initiate an amendment to Figure 65 of the Lincoln City-Lancaster County Comprehensive Plan entitled "Anticipated 2015 Lincoln Service Limit and Phasing Plan" to designate the Property as "Blue Area" (Phase I - ready for immediate development).

3. The City is willing to annex the Property and to designate the Property as "Blue Area" (Phase I); provided that necessary municipal infrastructure improvements are constructed in a timely manner to serve and properly accommodate Kawasaki's existing plant and proposed expansion; and, provided further, that Kawasaki's discharge of industrial wastes is in compliance with the City's industrial pretreatment provisions as set forth in Chapters 17.58 and 17.60 of the Lincoln Municipal Code.

L29 SW 1/4
L31 S 1/2

4. The City and Kawasaki recognize that the City does not currently have sufficient funds to devote to this area to provide for the construction of all necessary infrastructure improvements. The parties also recognize that in order for the City to approve the annexation and Comprehensive Plan amendment, it is necessary that Kawasaki assume certain cost responsibilities for various portions of the necessary municipal infrastructure improvements.

5. The parties are entering into this Annexation Agreement for the purpose of providing for the construction of the infrastructure improvements necessary to serve the Property and for the allocation of cost responsibilities for such infrastructure between the City and Kawasaki.

6. Although the annexation of Kawasaki would typically cause a financial impact on the Malcolm School District, that financial impact has been addressed in a separate agreement between Lancaster County School District No. 001, a/k/a Lincoln Public Schools and the Malcolm School District.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

**I.
COMPREHENSIVE PLAN AMENDMENT AND ANNEXATION**

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

1. Amending Figure 65 of the Lincoln City-Lancaster County Comprehensive Plan to designate the Property as "Blue Area" (Phase I); and
2. Annexing the Property.

B. **Conditional Approval.** Said annexation and Comprehensive Plan amendment are conditioned upon the terms, conditions, and understandings as set forth in this Agreement being fulfilled.

II. COSTS DEFINED

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, but shall exclude City personnel costs (except for inspection and testing fees associated with executive order construction work, which shall be included), unless otherwise defined herein.

III. INFRASTRUCTURE IMPROVEMENTS

The City and Kawasaki covenant and agree that the following infrastructure improvements will be needed to serve the Property:

A. STREET IMPROVEMENTS

1. **NW 27th Street.** The City shall grade and pave NW 27th Street from West Fletcher Avenue north to the north ramp of Highway 34. The right-of-way along the east side of NW 27th Street shall be 60 feet in width as measured from the centerline. The street improvements shall include a 16-foot wide raised median, a 13-foot wide paved single-lane, and an 8-foot wide crushed rock shoulder on each side of the median, and shall also include the construction of left-turn lanes at approved access locations.

2. West Fletcher Avenue from NW 27th Street to NW 20th Street.

The City shall grade and pave West Fletcher Avenue from NW 27th Street east to the half section line (i.e. NW 20th Street). The right-of-way shall be 60 feet on both sides of the centerline of West Fletcher Avenue. The street improvements shall include grading West Fletcher to accommodate a 16-foot wide raised median, a 13-foot wide single lane, and an 8-foot wide crushed rock shoulder on each side of the median, and shall also include the construction of left-turn lanes at approved access locations.

3. West Fletcher Avenue from NW 20th Street to NW 13th Street.

(a) The City shall include a \$150,000 appropriation in its capital budget for fiscal year 2001-2002 for the preliminary engineering of West Fletcher Avenue from NW 20th Street to NW 13th Street as a suburban section roadway with a 16-foot wide raised median, a 13-foot wide single lane and an 8-foot wide crushed rock shoulder on each side of the median. The total a right-of-way width shall be 120 feet. It is anticipated that the intersection at NW 13th Street and West Fletcher Avenue shall be designed as a roundabout.

(b) The City shall recommend a Comprehensive Plan Amendment to include West Fletcher Avenue from NW 13th Street to NW 31st Street as part of the City's future urban street and road network.

(c) The City, through its Planning Department, shall use its best efforts to meet with the Highlands Neighborhood Association regarding the proposed connection of West Fletcher Avenue with NW 13th Street.

(d) The City shall use its best efforts to include an appropriation to fund the grading and paving of West Fletcher Avenue from NW 20th Street to NW 13th Street in its capital budget for fiscal year 2003-2004. It is anticipated that said construction shall be completed by December 31, 2004.

4. Roundabout. The intersection at NW 27th Street and West Fletcher Avenue shall be designed and constructed at the City's cost and expense as a roundabout.

5. Completion of Construction. The City shall use its best efforts to complete the grading and paving of NW 27th Street (excluding the railroad spur connection by others), and West Fletcher Avenue from NW 27th Street to NW 20th Street by no later than October 31, 2002, and West Fletcher Avenue from NW 20th Street to NW 13th Street by no later than December 31, 2004.

Notwithstanding subparagraphs III.A.3 and III.A.5 above, Kawasaki understands and agrees that the City cannot contract away the legislative discretion of future City Councils and, thus, the duty of the City to use its best efforts to construct West Fletcher Avenue from NW 20th Street to NW 13th Street by December 31, 2004 is contingent upon the City Council (a) approving the Comprehensive Plan Amendment to include West Fletcher Avenue from NW 13th Street to NW 31st Street as part of the City's future urban street and road network; (b) including an appropriation to fund the construction of West Fletcher Avenue from NW 13th to NW 20th Street in its capital budget for fiscal year 2003-2004.

6. Conveyance of Right-of-way. Kawasaki agrees to convey by Warranty Deed at no cost to the City:

(a) The additional right-of-way needed to equal the 60 feet in width as measured from the centerline along the east half of NW 27th Street abutting the Property;

(b) The additional right-of-way needed to equal the 60 feet in width as measured from the centerline along the north and south halves of West Fletcher Avenue abutting the Property (i.e. Lot 30) and any other property owned by Kawasaki from NW 27th Street to NW 13th Street;

(c) Any additional right-of-way needed for the construction of the two roundabouts at the intersection of NW 13th Street and West Fletcher Avenue and at the intersection of NW 27th Street and West Fletcher Avenue;

(d) Any additional right-of-way needed for the construction of a roundabout at the intersection of NW 20th Street and West Fletcher Avenue if the City later determines that such improvement is needed as part of the extension of West Fletcher Avenue to NW 13th Street.

Kawasaki further agrees to convey at no cost to the City a permanent twenty (20) foot wide public access easement along the west side of NW 13th Street from West Fletcher Avenue to Highway 34 and such temporary construction or grading easements necessary for construction of the Street Improvements described in Article III.A above. Said right-of-way and easements shall be granted to the City within thirty (30) days of the City's completion of the final construction plans and specifications for the respective street improvements described in Article III.A above.

Notwithstanding the above, in the event the City does not complete construction of West Fletcher Avenue from NW 13th Street to NW 20th Street by December

31, 2004, then Kawasaki shall not be obligated to convey at no cost to the City the additional right-of-way for West Fletcher Avenue from NW 13th Street to NW 20th Street and the roundabout at NW 20th Street and West Fletcher Avenue

7. Kawasaki Contribution. Kawasaki shall pay the City \$533,000 as Kawasaki's share of the cost for the design and construction of the improvements in NW 27th Street. Kawasaki shall pay the City \$260,000 as Kawasaki's share of the cost of the improvements in West Fletcher Avenue from NW 27th Street to NW 20th Street. Kawasaki shall pay the City \$300,000 as Kawasaki's share of the cost of the improvements in West Fletcher Avenue from NW 20th Street to NW 13th Street provided said construction is completed by December 31, 2004. Each contribution shall be paid to the City within thirty (30) days notice from the City that the respective street improvement has been completed.

8. County Contribution. The parties understand that Lancaster County has agreed to contribute Four Hundred Thousand and No/100ths Dollars (\$400,000.00) to the Highway 34 ramp improvements project. Any remaining County funds from the Highway 34 ramp project shall be applied to Kawasaki's share of the NW 27th Street improvements.

9. Optional Executive Order Construction. In lieu of Kawasaki's contributions described in paragraph 7 above, the parties shall have the option to mutually agree that Kawasaki shall construct any or all of the road improvements described in paragraph 7 above through the City's executive order process. In the event the parties exercise this option the City shall contribute toward the total cost of the said street improvements all reasonable costs in excess of \$533,000 for NW 27th Street; \$260,000 for West Fletcher Avenue from NW 27th to NW 20th Street; and \$300,000 for West Fletcher Avenue from NW 20th Street to NW 13th

Street. Due to the amount of the subsidy being provided, the construction of said street improvements shall be bid and awarded only after competitive bidding in accordance with City procedures and final approval of the bids by the City.

B. PUBLIC SANITARY SEWER

1. Construction. Kawasaki understands and acknowledges that the Property is not presently sewerable by the City's public sanitary sewer system and that in order to make the Property sewerable, the 18-inch sewer main located north of the airport runway needs to be extended to the point of connection with Kawasaki's facilities and a 15-inch sewer main needs to be constructed from said point of connection to the north property line of the Property. Kawasaki further understands that the City did not intend to extend its public sanitary sewer system to serve the Property within the next one to six years. Kawasaki desires to be immediately connected to the public sanitary sewer and therefore agrees to construct by executive order construction the said 18-inch and 15-inch sewer mains from the existing 18-inch sewer main located north of the airport runway to the north line of the Property. The construction shall be completed by no later than December 1, 2001. The total cost of the construction of the 18-inch and 15-inch sewer mains is estimated to be \$209,000.

2. Conveyance of Easement. Kawasaki agrees to convey at no cost to the City the necessary permanent and temporary construction easements for the extension of the sanitary sewer main.

The total cost of the design and construction of the 18-inch and 15-inch sanitary sewer lines shall be paid by Kawasaki, except that the City agrees to pay to Kawasaki (i) the cost attributable to oversizing the 18-inch sewer main with pipe and accessories that are larger

than 15-inch and (ii) the cost attributable to oversizing the 15-inch sewer main with pipe and accessories which are larger than 8-inch. The City's subsidy is estimated to be \$40,000. Because the amount of the City's subsidy will be in excess of \$10,000.00, Kawasaki agrees that the contract for the construction of the sanitary sewer extension shall be awarded only after competitive bidding in accordance with City procedures.

C. PUBLIC WATER MAIN

1. NW 27th Street. Kawasaki agrees to construct at its own cost and expense a 16-inch water main in NW 27th Street from West Fletcher Avenue north to the north property line abutting Highway 34. Said construction shall be constructed through the City's executive order process and the water main shall be completed by no later than December 1, 2001. The total cost of construction of the 16-inch water main is estimated to be \$135,000.00 and the actual cost of the design and construction shall be paid by Kawasaki, except that the City agrees to contribute to Kawasaki the cost attributable to oversizing the water main with pipe and accessories that are larger than 12-inch. The City's subsidy is estimated to be \$54,000.00. Because of the amount of the City's subsidy being provided, the parties agree that the contract for the construction of the water main extension shall be awarded only after competitive bidding in accordance with City procedures.

2. NW 13th Street. Kawasaki agrees to convey at no cost to the City a 10-foot wide permanent utility easement in addition to the 20-foot wide public access easement to be conveyed to the City and such temporary construction easements as may be necessary for the extension of the 16-inch water main in NW 13th Street from West Fletcher Avenue north to the south right-of-way of Highway 34. Notwithstanding the above, Kawasaki agrees that in the

event NW 13th Street is constructed at no cost to Kawasaki, Kawasaki will convey at no cost to the City the land encompassed by the 10-foot wide utility easement and 20-foot wide permanent access easement to the City by Warranty Deed.

3. Connection Fee. If Kawasaki subsequently desires to be connected to the 16-inch water main in West Fletcher Avenue, Kawasaki agrees to pay to the City at the time of connection a connection fee of \$79,560.00 based upon the equivalent cost of constructing an 8-inch water main along its frontage.

D. ON-SITE STORM WATER DETENTION

Kawasaki understands and acknowledges that present storm water runoff from the Property does not meet the City's Land Subdivision Design Standards for Storm Water. Kawasaki further acknowledges and agrees that the plant expansion will cause an increase in runoff due to additional impervious area and that the drainage channel may exhibit reduced channel stability. In order to reduce such impact, Kawasaki agrees to provide on-site storage of storm water in accordance with the Kawasaki Motor Corp. (Job No. 52-81-2677) plans prepared by HWS dated May 2001. Said work shall be completed by December 31, 2005.

IV. INDUSTRIAL WASTEWATER DISCHARGE

Kawasaki agrees to comply with all requirements of Chapter 17.58 (Regulation of Wastewater Discharge) and Chapter 17.60 (Wastewater Charge) of the Lincoln Municipal Code with respect to Kawasaki's discharge of industrial wastes into the City's public sanitary sewer system.

**V.
CONSTRUCTION STANDARDS**

Unless otherwise stated herein, all construction of required municipal infrastructure improvements, shall be completed in accordance with the City of Lincoln's standard specifications for municipal construction which are on file in the Office of the City Engineer and shall be subject to inspection and approval by the City Engineer.

**VI.
SECURITY**

Within thirty (30) days from the execution of this Agreement, Kawasaki shall provide to the City a bond, escrow, deed of trust, or other security agreement, approved by the City Attorney, in the amount of \$1,343,000 to guarantee Kawasaki's contribution toward and/or construction of the improvements described in Article III above.

**VII.
FUTURE COST RESPONSIBILITIES**

Except as stated herein, it is understood and agreed between the parties that the provision of the above described municipal infrastructure improvements and the allocation of cost responsibilities therefore for the Property in no way limits the right of the City to impose reasonable conditions or to require reasonable additional dedications, contributions, or construction in conjunction with the approval of future annexation, zoning requests, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the Property or any portion thereof. Such future dedications, contributions and construction may include, but shall not be limited to, local sewers, water mains, paving, trails, detention ponds, storm sewers, or transportation improvements relating

to development, including necessary street widening, traffic signals and added turn lanes necessitated, in the opinion of the City, by such future development.

**VIII.
NOTICES**

Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or at such future addresses as may be designated in writing:

City: City of Lincoln, Nebraska
 Attn: Public Works Director
 555 South 10th Street
 Lincoln, Nebraska 68508

with a copy to: City Clerk
 555 South 10th Street
 Lincoln, Nebraska 68508

Kawasaki: Richard Grundman, Plant Manager
 Kawasaki Motors Manufacturing Corporation USA
 P. O. Box 81469
 Lincoln, NE 68501

**IX.
BINDING EFFECT**

This Agreement shall run with the land and shall be binding upon and inure to the benefit and burden of the successors and assigns of the respective parties.

**X.
AMENDMENTS**

This Agreement may only be amended or modified in writing, signed by the parties hereto.

**XI.
FURTHER ASSURANCES**

The parties agree to use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein, and the parties shall cooperate in good faith with the others 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 to carry out the intents and purposes of this Agreement.

**XII.
GOVERNING LAW**

All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

**XIII.
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.

**XIV.
ESSENTIAL NEXUS**

The parties agree that an essential nexus exists between the annexation and Comprehensive Plan amendment requested by Kawasaki and the City's requirement that Kawasaki construct the improvements being required herein. Further, Kawasaki agrees that the cost responsibilities imposed upon Kawasaki by this Agreement are roughly proportional,

both in nature and extent, to the impact of Kawasaki's development of the Property pursuant to the annexation and Comprehensive Plan amendment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

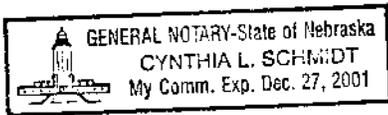
By: Don Wesely
Don Wesely, Mayor

KAWASAKI MOTORS MANUFACTURING
CORP., U.S.A., A Nebraska Corporation

By: Shin-ichi Tamba
Shin-ichi Tamba, President

STATE OF NEBRASKA)
) ss.
LANCASTER COUNTY)

The foregoing Annexation Agreement was acknowledged before me on this 29th day of June, 2001, by Shin-ichi Tamba, President of Kawasaki Motors Manufacturing Corp., U.S.A., a Nebraska corporation, on behalf of said corporation.



Cynthia L. Schmidt
Notary Public

