



RESOLUTION NO. A- 83823

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

That the agreement titled Lincoln Federal Bancorp, Inc. Conditional Annexation and Zoning Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof by reference, between the City of Lincoln and Lincoln Federal Bancorp, Inc., outlining certain conditions and understandings relating to the annexation of approximately 64.11 acres of property generally located at South 40th Street and Rokeby Road, is approved.

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

BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owners.

BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid by the Owners.

Introduced by:

Robin Esche

AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

Approved as to Form and Legality:

Dana W. Roper  
City Attorney

**ADOPTED**  
**APR 17 2006**  
**BY CITY COUNCIL**

Approved this 20<sup>th</sup> day of Apr., 2006:  
Colleen J. Seng  
Mayor

**LINCOLN FEDERAL BANCORP, INC.  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Lincoln Federal Bancorp, Inc. Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this <sup>th</sup> 20 day of Apr., 2006, by and between **Lincoln Federal Bancorp, Inc.**, hereinafter referred to as "Owner," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

**RECITALS**

A. Owner has requested the City to annex approximately 64.11 acres more or less of land generally located north of Rokeby Road between South 27th Street and South 40th Street. The approximately 64.11 acres is hereinafter referred to as the "Lincoln Federal Property" and is legally described and shown on Attachment A attached hereto.

B. The Lincoln Federal Property is located immediately west of the property in Lancaster County proposed for annexation under the Southwood Lutheran Church, Buckshot Farms and Sundance Conditional Annexation and Zoning Agreement (collectively "Southwood Property").

C. The Southwood Property is not contiguous to the corporate limits of the City and may not be annexed without the City also annexing the Lincoln Federal Property.

D. Owner anticipates developing the Lincoln Federal Property for residential use under R-3 Residential District Zoning consisting of 61 single-family and 130 duplex lots.

E. Owner is not ready to develop the Lincoln Federal Property at this time but is willing to support Southwood Lutheran Church's, Buckshot Farms' and Sundance LLC's request that the City annex the Southwood Property, provided that all obligations of Owner to make contributions for Impact Fee Facility Improvements and/or to construct Impact Fee Facility Improvements needed for the future residential development of the Lincoln Federal Property are deferred until such time as Owner requests a change of zone and any other approvals from the City to develop the Lincoln Federal Property.

F. 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 proportionate share of the cost of improvements to the water and wastewater systems arterial streets and neighborhood parks and trails necessitated by and attributable to new development.

G. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prays for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees.

H. The City is willing to annex the Lincoln Federal Property as requested by Owner in order to facilitate the annexation of the Southwood Property prior to a determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to make a guaranteed nonrefundable contribution to the cost of improving the City's Water System, Water Distribution, and Wastewater System Impact Fee Facilities necessitated by and attributable to the proposed future development of the Lincoln Federal Property in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **Annexation by the City.** The City agrees to annex the Lincoln Federal Property.
2. **Payment of Impact Fees.** Owner understands that future development of the Lincoln Federal Property will be subject to the payment of impact fees unless the Impact Fee Ordinance is declared to be void, illegal, or otherwise unenforceable.

**3. Contributions for Impact Fee Facility Improvements.** In the event the Impact Fee Ordinance is for any reason declared to be void, illegal, or otherwise unenforceable, Owner agrees to make contributions to the City's Water Distribution, Water System, Wastewater, Neighborhood Park and Trail, Arterial Street Impact Fee Facility Improvements in an amount attributable to 100% development of the Lincoln Federal Property when said Lincoln Federal Property is rezoned from AG Agriculture District to a more intense land use. The amount of the Impact Fee Facility Contributions shall be based upon the 2006 Impact Fee Schedules for said Impact Fee Facilities if the future development occurs in 2006. If development occurs in 2007 or later, the Impact Fee Facility Contribution shall be based upon the Impact Fee Schedule for the year development occurs as adjusted for inflation as provided in the Impact Fee Ordinance. Notwithstanding the above, Owner agrees that in the event the City creates or establishes a new system which enables the City to impose a proportionate share of the cost of required improvements to the City's water and wastewater systems, arterial streets, and neighborhood parks and trails on those developments which create the need for them the Lincoln Federal Property will be subject to said new system. The estimated contribution based upon the January 1, 2006 Impact Fee Schedule is shown on Attachment B attached hereto.

**4. Guaranteed Payment of Contributions.**

A. Water Distribution, Water System, and Wastewater Impact Fee Facility Contributions. Owner shall, prior to the approval of each final plat of the Lincoln Federal Property, provide the City a bond, escrow, letter of credit, or other security agreement approved by the City Attorney in an amount equal to the Water Distribution, Water System, Wastewater, Arterial Street and Neighborhood Park and Trail Impact Fees attributable to full development of the lots within

each final plat or attributable to the density taken from the area included within each final plat based upon the Impact Fee Schedule in effect as provided in paragraph 2 above.

The above required payments of the Water Distribution, Water System, and Wastewater Impact Fee Facility Contributions shall be paid to City within thirty days written notice from the City that the following two events have occurred: (i) the City has constructed or awarded a bid and entered into a contract for the improvement of an eligible Water Distribution, Water System, and Wastewater Impact Fee Facility Improvement, and (ii) a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance invalid and unenforceable.

B. In the event a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance valid and enforceable, the City agrees to release the bond, escrow, letter of credit, or other security agreement provided by Owner to guarantee the above-described Contributions.

5. **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 Lincoln Federal Property.

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

7. **Further Assurances.** Each party will use its 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 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 the City, Owner, 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.** Owner and City agree that the annexation, preliminary plat, and change of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority

rezone the Lincoln Federal Property to its previous designation or such other designations as the City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which the 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 purposes of this Agreement the words and phrases "building permit", "development", "Impact Fee Facility", "Impact Fee Facility Improvement", and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

**15. Fair Share.** The City believes that it has a legitimate interest in the public health, safety and welfare and in providing for the safe and efficient movement of vehicles on the public arterial streets and the provision of adequate water and wastewater service as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay its fair share of the cost to construct such Impact Fee Facilities and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City has made an individualized determination and found that the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects full development of the Lincoln Federal Property under the annexation and future development would have on the City's Impact Fee Facilities.

**16. Recordation.** This Agreement or a notice or memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner's cost and expense.

