



A87575

13R-214

Introduce: 9-23-13

RESOLUTION NO A- 87575

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

2 That the attached Agreement Regarding Annexation Fees between Rural Water

3 District No. 1, Lancaster County, Nebraska and City of Lincoln, Nebraska setting forth the

4 agreement between the parties for payment of annexation fees by the City or a private

5 party to Rural Water District No 1, Lancaster County, Nebraska ("RWD") for land that is

6 annexed and will no longer be served by RWD, is hereby approved and the Mayor is

7 authorized to execute the same on behalf of the City of Lincoln

8 The Mayor is further authorized to approve amendments to this Agreement

9 without further action of City Council.

10 The City Clerk is directed to return executed originals of the Agreement to the

11 Planning Department for transmittal to RWD.

Introduced by

AYES: Camp, Christensen,
 Cook, Emery, Eskridge, Fellers,
 Gaylor Baird; NAYS: None.

Approved as to Form & Legality.

City Attorney

ADOPTED
 SEP 30 2013
BY CITY COUNCIL

Approved this 3rd day of Oct., 2013

Mayor

CITY OF LINCOLN

Request for Ordinance
 Resolution

(Do Not Write in this Space)

Bill Control No 13B-214 Date 9/11

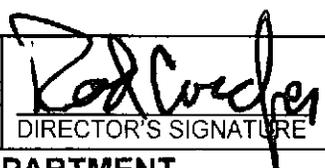
Docketing Date 9/23 PM: 9/30/13

(To Be Entered by City Clerk)

| | | |
|--|--|--------------------------|
| DATE September 10, 2013 | REQUEST MADE BY Jocelyn Golden | DEPARTMENT Law |
| DESIRED DOCKET DATE: Sept 23, 2013 | Emergency Measure Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No REASON (See Art 6, Sec 2 of Charter) | |
| Director's Est'd Time/Testimony <input type="checkbox"/> 0 - No Hearing (Consent Agenda) <input checked="" type="checkbox"/> 1 - Short <input type="checkbox"/> 2 - Average <input type="checkbox"/> 3 - Long | | |

REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

Approving the Agreement Regarding Annexation Fees between Rural Water District No. 1, Lancaster County, Nebraska (RWD) and the City of Lincoln, Nebraska for payment of annexation fees by the City for land that is annexed and no longer served by RWD

| | | | |
|---|--|--|------------------------|
| REQUESTOR <input type="checkbox"/> DOES <input type="checkbox"/> DOES NOT | WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION |  DIRECTOR'S SIGNATURE | <u>9-10-13</u> DATE |
|---|--|--|------------------------|

TO BE USED BY THE FINANCE DEPARTMENT

| | | | | | |
|-------------------------------|-------------|--|-------------|-----------------------------------|-------------|
| BUDGET REVIEW | DATE | ACCOUNT NUMBER AND APPROPRIATE BALANCES | DATE | FUND AVAILABILITY APPROVED | DATE |
| | | | | | |
| DIRECTOR OF FINANCE SIGNATURE | | | | | |

DISTRIBUTION

Return two (2) copies to City Clerk for Docket Number

FACTSHEET

TITLE Resolution adopting proposed
**AGREEMENT REGARDING ANNEXATION FEES
BETWEEN RURAL WATER DISTRICT NO. 1,
LANCASTER COUNTY, NEBRASKA, AND THE
CITY OF LINCOLN, NEBRASKA**, requested by the
Director of Planning

SPONSOR Planning Department

BOARD/COMMITTEE N/A

STAFF RECOMMENDATION Approval

FINDINGS OF FACT:

- 1 This is a request to adopt an agreement between Rural Water District #1 (RWD) and the City of Lincoln which would resolve a longstanding disagreement over the fee charged to land annexed within the District's boundary. RWD #1 serves a large area of southeastern Lancaster County and parts of Cass and Otoe Counties. The District serves approximately 1,600 agricultural and acreage residential customers in addition to providing water to Roca, Bennet and Panama. The RWD states that it is protected from incursions into boundaries per federal statute 7 U.S.C. 1926(b), that in general prohibits local governments from limiting or curtailing water service from a rural water district that has a federal loan. The RWD consistently uses federal rural area loans to construct capital improvements.
- 2 **History to 2010**
 - June 22, 1970 - City Council approved petition to incorporate RWD #1
 - 1993-1994 - First annexations by City into RWD boundaries for land south of Pine Lake Road and west of 40th Street. Issue of RWD reimbursement was not addressed
 - 1999 - RWD proposed to City an Interlocal Agreement regarding annexation reimbursement. After several months of discussion, no agreement was reached
 - September, 1999 - City Council approved first annexation agreement requiring developer to "pay all the cost needed to obtain District No. 1's approval for the City to furnish water" to the land within the RWD boundaries. RWD had established a reimbursement policy of \$5,000 per existing customer and \$3,500 per 20 acres of vacant land
 - 2008-2009 - City and RWD staff meet several times to discuss a potential agreement covering a large area rather than individual reimbursements. Ultimately, both sides could not agree on a reimbursement amount
 - June, 2010 - RWD adopted new policy requiring \$12,174.93 per three acres annexed
- 3 The new fee established in 2010 would have had a negative impact on the growth of Lincoln and of the City of Hickman. So, City and RWD staff met again to discuss a resolution. In other states, this dispute over the proper fee amount has been litigated between cities and rural water districts. However, in 2012, both parties agreed to set up an informal discussion group. The group met on a biweekly basis from January through May, 2013. The group included representatives from the RWD, City of Lincoln staff, City of Hickman staff, one County Commissioner and two representatives of Lincoln developers. The group worked out a proposed agreement that all members thought was a good compromise and would allow for the growth of Lincoln and Hickman with reasonable compensation of the RWD for their investment in the area. This agreement will replace a fee established by the RWD in June 2010 that was over \$4,000 per acre with a proposed fee of \$315 per acre for agricultural land.

4 Major points of proposed agreement

- A fee of \$6,300 per RWD customer will be charged at time of annexation. Inflation will be added annually starting in January, 2015. The inflation factor will be based on the "Consumer Price Index for All Urban Consumers" (CPI-U)
- For any property that has an existing RWD customer, the fee will be charged regardless if the property is one acre or 20 acres
- For land that is not a RWD customer, the fee would be charged at one customer per 20 acres. So the per acre fee would be \$315 per acre for property without a RWD customer.
- For existing RWD customers, the fee charged would be reduced 10% annually for every complete year that the RWD customer remains being actively served after annexation. When the City of Lincoln is the applicant, the maximum amount for existing customers will be determined in advance, but not paid until the 10 years is complete. For private customers, the amount paid would be held in escrow by the District. Example. If a house continued to remain a paying RWD customer for five full years after annexation, 50% of the fee would be refunded.
- A \$750 application fee will be required, regardless of the size of the land to be released. Multiple properties could be included within one application.

5 City staff, along with representatives of the RWD and Hickman, briefed the City Council and County Board on the proposed agreement on September 10, 2013. The proposed agreement was approved by the RWD Board on September 11, 2013. A similar agreement between the City of Hickman and the RWD is scheduled for action in October, 2013.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: September 16, 2013

REVIEWED BY: Marvin Krout, Director of Planning



DATE: September 16, 2013

REFERENCE NUMBER: FS\CC\2013\RWD Agreement

**AGREEMENT REGARDING ANNEXATION FEES BETWEEN RURAL WATER
DISTRICT NO. 1, LANCASTER COUNTY, NEBRASKA
AND CITY OF LINCOLN, NEBRASKA**

This Agreement Regarding Annexation Fees ("Agreement") is made and entered into on the dates provided below by and between RURAL WATER DISTRICT NO. 1, LANCASTER COUNTY, NEBRASKA, a political subdivision (hereinafter referred to as "RWD") and CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "City").

WHEREAS, the parties acknowledge that federal statute 7 U.S.C. § 1926(b) states that water service provided or made available by an association such as RWD shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation such as City during the term of a loan from the federal government for certain improvements or facilities provided therein; and

WHEREAS, pursuant to 7 U.S.C. § 1926(b), the parties have arranged for certain fees to be paid to RWD by developers or City for such land annexed by City that will no longer be served by RWD irrespective of whether the land annexed by City is owned by a land owner served by RWD; and

WHEREAS, changes in those fees prompted the parties to discuss and reach a reasonable and logical assessment of the amount of those fees in relation to the assets held by RWD and the number of rate payers in the district at or about the time of execution of this Agreement; and

WHEREAS, the parties desire to enter into this Agreement to memorialize the agreement reached regarding those annexation fees and accomplish such other purposes as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by the parties hereto as follows:

1. Purpose. The purpose of this Agreement is to set forth the resolution between RWD and City for payment of annexation fees by City or a private party to RWD for land that is annexed and will no longer be served by RWD, either immediately or at some time in the future. This includes payment to RWD of an annexation fee for a land owner holding a valid RWD Water Benefit Unit certificate (hereinafter referred to as "Existing Customer") or payment to RWD of an annexation fee for lands within the district not served but having the potential to be served by RWD (hereinafter referred to as "Potential Customer").

2. Termination. This Agreement shall become effective and binding upon its approval by appropriate action of the governing bodies of the parties and execution by all of the parties hereto. This Agreement may only be terminated by mutual written agreement of the parties or immediately upon the repeal of 7 U.S.C. § 1926(b) or amendment of U. S. Code to delete the prohibition; however, the Agreement shall continue if a state statute requiring compensation or imposing a similar prohibition is in effect at the time of said repeal or amendment.

3. Payment of Annexation Fees. The parties agree that RWD shall be compensated for the annexation of lands within RWD boundaries in the following manner:

- (a) Existing Customers. RWD Bylaws require each of its Existing Customers to hold and maintain a valid Water Benefit Unit issued by RWD. Ownership and the benefits arising from a RWD Water Benefit Unit follow the title of the land parcel served by RWD. Subject to the Annual Fee Adjustment as provided herein, any land parcel comprised of twenty (20) acres or less titled in the name of an Existing Customer, which is annexed into the City, shall result in RWD being paid an annexation fee in the amount of Six Thousand Three Hundred Dollars (\$6,300.00). Any land parcel of more than twenty (20) acres titled in the name of an Existing Customer, which is annexed into the City, shall result in RWD being paid an annexation fee of Six Thousand Three Hundred Dollars (\$6,300.00) plus Three Hundred Fifteen Dollars (\$315.00) for each additional acre contained in a land parcel of more than twenty (20) acres titled in the name of an Existing Customer.
- (b) Potential Customers. Subject to the Annual Fee Adjustment as provided herein, any land parcel located within the boundaries of RWD, excluding adjoining railroad right of way and excluding adjoining dedicated or conveyed road right of way, which is annexed into the City, shall result in RWD being paid an annexation fee in the amount of Three Hundred Fifteen Dollars (\$315.00) for each acre contained in a parcel annexed into the City regardless of the number of acres being annexed.
- (c) Reduction of Annexation Fee. Any annexation fee paid or to be paid for the loss of any land parcel comprised of twenty (20) acres or less titled in the name of an Existing Customer shall be reduced by ten percent (10%) for every twelve (12) month period elapsing after the effective date of any annexation ordinance passed by the City on the condition that said Existing Customer continues to hold a valid Water Benefit Unit certificate issued by RWD. In the event an Existing Customer holds title to a parcel of land comprising more than twenty (20) acres, the herein referenced reduction of the annexation fee shall only apply to the first twenty (20) acres making up the annexed parcel. The annexation fee for any acre owned by the Existing Customer in excess of twenty (20) acres shall not be reduced as the result of the Existing Customer continuing to hold a valid Water Benefit Unit but shall be tendered to RWD upon annexation. In those cases where City initiates the annexation of lands within the boundaries of RWD, the annexation fee shall be computed but shall not be paid until (1) the Existing Customer's Water Benefit Unit has been cancelled by RWD, and (2) after computing the amount of any reduction of the annexation fee resulting from the Existing Customer's continued status as the holder of a Water Benefit Unit. In those cases where a private party initiates the annexation of lands within the boundaries of RWD, the annexation fee shall be paid in full to and held in escrow by RWD and thereafter either refunded to the private party or paid to RWD depending on the date of the cancellation of the Water Benefit Unit and the computation of any reduction of

the annexation fee resulting from the Existing Customer's continued status as the holder of a Water Benefit Unit.

- (d) Annual Fee Adjustment. The annexation fee shall be adjusted annually starting in January 2015. The adjustment will be in an amount equal to the change in the "Consumer Price Index – For All Urban Consumers" (CPI-U) for the period from November 1 to October 31 of the prior year to take effect the following January 1. If the herein referenced Consumer Price index is discontinued, the parties shall apply the most comparable price index available.
- (e) Application Fee. The parties agree that a Seven Hundred Fifty Dollar (\$750.00) application fee shall be paid by applicant to RWD upon application for release and relinquishment of a land parcel or parcels located within the boundaries of RWD due to municipal annexation, regardless of the size of the land parcel to be annexed. Multiple land parcels may be included within one application with one application fee. This fee shall not be subject to change unless mutually agreed upon in writing.
- (f) Certificate of Release and Relinquishment. RWD shall, by its authorized representative, execute and deliver a Certificate of Release and Relinquishment of lands annexed into the City upon payment or computation of the annexation fee as provided herein, which shall release RWD's rights to provide service to the land parcel or parcels and any other rights under 7 U.S.C. § 1926.
- (g) City Utilities. Under those circumstances where City annexation has occurred and where RWD continues to provide service to Existing Customers within said annexed area, when city water service is requested by Existing Customers or the City initiates water service, subject to City Council approval, the City will use its best efforts to install utilities to an entire subdivision at one time. Providing city water service to many customers, rather than changing service a few houses at a time in a subdivision, will reduce the costs of transition to the RWD and City.

4. Mutual Indemnification. The parties agree to mutually indemnify, defend and hold harmless each other, including any officers, representatives, employees, officials, or agents, for any claims, losses, or damages arising out of the course of this Agreement. Neither party waives any governmental immunity by entering into this Agreement and retains all defenses and immunities as provided by law. This provision survives any termination of the Agreement.

5. Annual Meeting. The parties agree to arrange for an annual meeting, preferably at the beginning of each calendar year, to discuss upcoming changes or developments that may substantially affect the parties, including anticipated annexations, proposed installation, removal or modification to water lines or facilities of either party, or expansion of RWD's district.

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

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns

8. 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.

9. Severability. Each section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof.

10. Waiver. Any waiver by any party of a default of any other party of this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this Agreement shall be a waiver of any party's right to demand exact compliance with the terms of this Agreement

11. Equal Employment Opportunity. Each party agrees that in providing services pursuant to this Agreement, it shall not discriminate against any employee, applicant for employment, or any other person on the basis of race, color, religion, sex, disability, national origin, age, marital status, receipt of public assistance, or any other basis prohibited by applicable state or federal law.

12. Authorization. Each party shall approve this Agreement through appropriate action by ordinance, resolution, or otherwise pursuant to the governing laws of each to authorize execution of the Agreement. This Agreement may be executed on two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

13. 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. Nothing provided in this Agreement shall abridge or otherwise limit the powers and duties of RWD's Board of Directors as provided under Neb. Rev. Stat. § 46-1001, et seq.

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

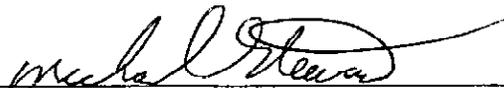
15. Assignment. In the case of the assignment of the obligations under this Agreement by any of the parties hereto, prompt written notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall 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 party to this Agreement.

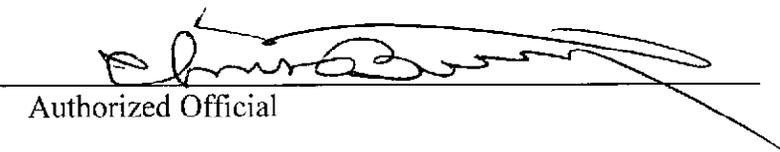
16. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed to create the relationship of partnership or of shared venture or of any association between the parties, other than contractual relationships stated in this Agreement. Nothing in this Agreement shall be construed or interpreted as authorizing either party, its agents or employees, to act as agents or representatives for or on behalf of the other party, or to incur any obligation of any kind on behalf of the other party. No separate legal or administrative entity is created for any of the cooperative undertakings established under this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this document by its duly authorized officer the date hereinafter shown.

RURAL WATER DISTRICT NO. 1, LANCASTER COUNTY, NEBRASKA

BY:  11 Sept 13
Authorized Official Date

CITY OF LINCOLN, NEBRASKA

BY:  10-3-13
Authorized Official Date