

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating to
2 zoning by adding a new section numbered 27.82.010 to provide a title, authority and
3 applicability; adding a new section numbered 27.82.020 to provide legislative findings and
4 purpose; adding a new section numbered 27.82.030 to provide intent; adding a new section
5 numbered 27.82.040 to provide definitions; adding a new section numbered 27.82.050 to
6 provide for imposition of impact fees; adding a new section numbered 27.82.060 to provide
7 exemptions from impact fees; adding a new section numbered 27.82.070 to provide for the
8 creation of an impact fee fund and impact fee accounts; adding a new section numbered
9 27.82.080 to provide for refunds of impact fees paid; adding a new section numbered
10 27.82.090 to provide for post-ordinance developer agreements regarding Impact Fee Facilities;
11 adding a new section numbered 27.82.100 to provide for developer reimbursement for
12 participation in financing or constructing Impact Fee Facilities; adding a new section
13 numbered 27.82.110 to provide for miscellaneous provisions.

14 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

15 Section 1. That Title 27 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 27.82.010 to read as follows:

17 **27.82.010 Short Title, Authority and Applicability.**

18 (a) This ordinance may be known and cited as the "Impact Fee Ordinance," and is
19 referred to herein as "this ordinance."

1 (b) This ordinance is enacted pursuant to the authority granted to the City by the
2 Constitution of the State of Nebraska, the Nebraska revised statutes, and the City's home rule
3 charter.

4 (c) The provisions of this ordinance shall apply to all of the territory within the
5 corporate limits of the City.

6 Section 2. That Title 27 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 27.82.020 to read as follows:

8 **27.82.020 Legislative Findings and Purpose.**

9 The City Council of Lincoln, Nebraska finds that:

10 (a) Both population and employment within the City are growing, and are creating
11 demands for new residential and nonresidential development.

12 (b) New development within the City is creating additional demand and need for
13 public facilities, including water and wastewater systems, arterial streets, and neighborhood
14 parks and trails. The Comprehensive Plan's land use assumptions indicate that new
15 development will continue and will place ever increasing demands on the City to provide
16 such facilities.

17 (c) The protection of the health, safety, and general welfare of the citizens of the
18 City requires that the public facilities of the City be expanded to meet the demand of new
19 development for public facilities.

20 (d) Under the City's current laws, taxes, fees, utility charges, and other forms of
21 revenue generated from new development do not generate sufficient funds to provide those
22 public facilities required to serve the new development.

1 (e) It is only proper that those property owners who benefit by the expansion of
2 public facilities for new development should bear their proportionate share of the cost of that
3 expansion.

4 (f) The creation of an equitable impact fee system would enable the City to impose
5 a more proportionate share of the costs of required improvements to the water and wastewater
6 systems, arterial streets, and neighborhood parks and trails on those developments that create
7 the need for them.

8 (g) All types of development that are not explicitly exempted from the provisions
9 of this ordinance will generate demand for the types of facilities for which impact fees are
10 being imposed pursuant to this ordinance.

11 (h) The Lincoln Impact Fee Study prepared by Duncan Associates dated October
12 2002 sets forth reasonable methodologies and analyses for determining the impacts of various
13 types of development on the City's public facilities, and for determining the cost of acquiring
14 land and the cost of acquiring or constructing facilities and equipment necessary to serve new
15 development.

16 (i) The assumptions and service standards referenced in the Lincoln Impact Fee
17 Study are those used by the City in evaluating the need to expand or construct public facilities.

18 (j) The impact fees described in this ordinance are based on the Lincoln Impact Fee
19 Study, and do not exceed the costs of acquiring additional land and the costs of acquiring or
20 constructing additional facilities or equipment required to serve the new developments that
21 will pay the fees.

1 (k) The types of improvements to each type of public facility considered in the
2 Lincoln Impact Fee Study will benefit all new development in the City, and it is therefore
3 appropriate to treat the entire City as a single service area for purposes of calculating the
4 impact fees for each type of facility. However, the service area may be divided into multiple
5 benefit areas in order to show a greater link between fees paid and benefit received.

6 (l) It is in the public interest and consistent with the Comprehensive Plan and other
7 public policies of the City to promote the construction and preservation of Low Income
8 Housing and therefore impact fees should be waived in whole or part for such development.

9 (m) The City recognizes that new development in certain areas of the City was
10 previously approved and regulated on a case-by-case basis by agreements between the City
11 and the developer wherein the City and the developer made individualized determinations
12 of the projected impact full development and operation of the property would have on the
13 City's arterial streets, water or wastewater facilities, and neighborhood parks and trails and
14 agreed upon the necessary improvements to be paid for and/or constructed by the developer
15 as said developer's proportionate share of the cost of providing public facilities for the
16 proposed development. Therefore, the City finds that impact fees should be categorically
17 waived for those specific types of impact fee facility improvements which were paid for or
18 constructed by such developers under said agreements.

19 (n) There is both a rational nexus and a rough proportionality as required by Nollan
20 v. California Costal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S.
21 374 (1994) between the development impacts created by each type of development covered
22 by this ordinance and the impact fees that such development will be required to pay.

1 (o) There is a reasonable relationship or nexus as required by Simpson v. City of
2 North Platte, 206 Neb. 240, 292 N.W.2d 297 (1980) between the development impacts
3 created by each type of development covered by this ordinance and the impact fees that such
4 development will be required to pay.

5 (p) This ordinance creates a system by which impact fees paid by new
6 developments will be used to expand or improve the type of public facility for which the fee
7 was paid, so that the new development that pays each fee will receive a corresponding benefit
8 within a reasonable period of time after the fee is paid.

9 (q) This ordinance creates a system under which impact fees will not be used to
10 cure existing deficiencies in public facilities; nor used for their maintenance and operation.

11 (r) The City recognizes that under Nebraska law the power of eminent domain is
12 superior to the zoning power and that the City, under its zoning authority, is not permitted to
13 prevent or place limitations upon a public use of property in the furtherance of which a
14 governmental entity has been granted condemnation power by the State Legislature.
15 Therefore, the City finds that impact fees cannot be collected for governmental projects for
16 the construction of which the agency in question has the power to condemn or appropriate
17 lands by eminent domain.

18 (s) Due to the shortfall of funds necessary to address the community's existing and
19 future public infrastructure needs, the Mayor has created the Mayor's Infrastructure Finance
20 Committee ("Committee") to develop a comprehensive financial package in addition to impact
21 fees that ensures maintenance of the City's existing public infrastructure and the delivery of
22 future public infrastructure to facilitate community growth. The Committee is responsible for

1 preparing an integrated package of recommendations for the Mayor and City Council that
2 combines the work product of three work groups: infrastructure cost savings/efficiencies,
3 financial options and state legislation, operating under the Committee's direction as outlined
4 in the Mayor's Infrastructure Finance Committee: Charge to the Committee dated October 3,
5 2002, as the same may be amended from time to time ("Charge to the Committee"). The
6 Charge to the Committee calls for the Committee's overall work to be completed no later than
7 June 1, 2003.

8 Section 3. That Title 27 of the Lincoln Municipal Code be amended by adding
9 a new section numbered 27.82.030 to read as follows:

10 **27.82.030 Intent.**

11 (a) The intent of this ordinance is to ensure that adequate water and wastewater
12 systems, arterial streets, and parks and trails are available to serve new growth and
13 development in the City of Lincoln and to regulate the use and development of land so as to
14 ensure that new growth and development bears its proportionate share of the cost of
15 improvements to the City's water and wastewater systems, arterial streets, and neighborhood
16 parks and trails needed to serve such new growth and development; to ensure that the
17 proportionate share for each type of public facility does not exceed the cost of providing that
18 type of public facility to the new development that paid the fee; and to ensure that funds
19 collected from new developments are actually used to construct public facilities that benefit
20 such new developments.

1 (b) It is not the intent of this ordinance to collect any money from any new
2 development in excess of the actual amount necessary to offset demands generated by that
3 new development for the type of public facility for which the fee was paid.

4 (c) It is not the intent of this ordinance that any monies collected from any impact
5 fee and deposited in an impact fee account ever be co-mingled with monies from a different
6 impact fee account or ever be used for a type of public facility different from that for which
7 the fee was paid.

8 (d) It is the intent of this ordinance to base water and wastewater impact fees on the
9 typical usage in a new building or other facility. Extinguishing of fires is not a part of typical
10 usage; maintaining pressure and flow to serve fire-fighting needs is a part of the system
11 overhead that is calculated into system costs in general and should not be charged to a
12 particular site or location. To allow adequate fire flow to sprinklers and internal hydrants at
13 some large and at-risk properties, it may be necessary for fire protection purposes to install a
14 larger water meter than would be necessary to meet day-to-day needs of that facility. In those
15 cases, it is the policy of the City that the impact fee for water and wastewater should be based
16 on the meter size needed by that facility for its typical usage, without regard to fire-flow.

17 Section 4. That Title 27 of the Lincoln Municipal Code be amended by adding
18 a new section numbered 27.82.040 to read as follows:

19 **27.82.040 Definitions.**

20 Unless the context specifically indicates otherwise, the meaning of terms used in this
21 chapter shall be as follows:

1 **Building permit.** The City permit required to erect, construct, enlarge, alter, repair,
2 remove, convert, or demolish any building, structure, swimming pool, or parking lot pursuant
3 to the Lincoln Building Code.

4 **Connection.** The physical tie-in of a private water or wastewater service or system to
5 the City's public water or wastewater system.

6 **Cost of construction.** All design costs, construction costs, engineering fees, testing
7 expenses, inspection fees, and related miscellaneous costs.

8 **Developer.** Any person or legal entity undertaking development.

9 **Development.** Any construction expansion or conversion of a building, structure or
10 use which creates additional demand for Impact Fee Facilities, any change in use of a building
11 or structure which creates additional demand for Impact Fee Facilities, or any change in the
12 use of land, which creates additional demand for Impact Fee Facilities, or any connection to
13 the City's public water or wastewater system which creates additional demand for Impact Fee
14 Facilities.

15 **Downtown/Antelope Valley Exclusion Area.** The area established and shown on the
16 Downtown/Antelope Valley Exclusion Area Map.

17 **Duplex.** Shall have the same meaning as two-family dwelling, as defined in section
18 27.03.200.

19 **Encumber.** To legally obligate by contract or otherwise commit to use by
20 appropriation or other official act of the City.

21 **Fee payor.** That person or entity who pays an impact fee.

1 **Gross Floor Area.** The floor area within the inside perimeter of the exterior walls of
2 the building under consideration, exclusive of vent shafts and courts, without deduction for
3 corridors, stairways, closets, the thickness of interior walls, columns or other features. The
4 floor area of a building, or portion thereof, not provided with surrounding exterior walls shall
5 be the usable area under the horizontal projection of the roof or floor above. The gross floor
6 area shall not include shafts with no openings or interior courts.

7 **Impact Fee Administrator.** The person or persons designated by the City to be
8 responsible for administering this ordinance.

9 **Impact Fee Facility.** One or more elements of the City’s water and wastewater
10 systems, arterial streets, and neighborhood parks and trails included in the calculations of the
11 impact fees in the Impact Fee Study.

12 **Impact Fee Facility Improvement.** Planning, engineering design, construction
13 inspection, on-site construction, off-site construction, equipment purchases, and financing
14 costs including the issuance of bonds or other obligations of indebtedness associated with new
15 or expanded facilities, buildings, and equipment that expand the capacity of an Impact Fee
16 Facility and that have an average useful life of at least fifteen (15) years, but not including
17 maintenance, operations, or improvements that do not expand capacity. An Impact Fee
18 Facility Improvement shall also include land acquisition for water storage reservoirs, water
19 pumping stations, wastewater trunk lines, and neighborhood parks.

20 **Income Area, Low.** An area where 50% or more of the households within a census
21 block make 60% or less of the median gross income adjusted for household size.

1 **Income Area, Moderate.** An area where 50% or more of the households within a
2 census block make 80% or less of the median gross income adjusted for household size.

3 **Lincoln Impact Fee Study or Impact Fee Study.** The Lincoln Impact Fee Study
4 prepared by Duncan Associates dated October 2002.

5 **Low Income Owner-Occupied Housing.** An owner-occupied unit, under local, state,
6 or federal regulations, which is sold to a household whose income is 80% or less of the area
7 median gross income adjusted for household size.

8 **Low Income Rental Housing.** A tenant-occupied unit which is rented to a household
9 whose income is 80% or less of the median gross income adjusted for household size and
10 which is rent restricted under local, state or federal regulations, to households whose income
11 is 80% or less of the median gross income adjusted for size, and which restrictions through
12 means of a land use restriction agreement or similar legal document runs with the property for
13 a period of at least fifteen years.

14 **Mobile home.** Shall be defined as in Section 27.03.430.

15 **Mobile home court.** The use of land for sites for mobile homes not located on
16 individual platted lots.

17 **Multi-family.** Shall have the same meaning as multiple dwelling, as defined in Section
18 27.03.210, except that it excludes townhouses.

19 **Neighborhood Park and Trail Impact Fee Exclusion Area.** The area established and
20 shown on the Neighborhood Park and Trail Impact Fee Benefit Areas Map as the Existing
21 Neighborhood Park and Trail Impact Fee Exclusion Area.

1 **Person** shall include a natural person, joint venture, joint stock company, partnership,
2 association, club, company, corporation, business, trust, organization, or the manager, lessee,
3 agent, servant, officer, or employee of any of them.

4 **Present Value.** The current value of past, present, or future payments, contributions
5 or dedications of goods, materials, construction or money, taking into account when
6 appropriate depreciation and inflation.

7 **Qualified Professional.** A professional engineer, surveyor, financial analyst or planner
8 providing services within the scope of his license, education, or experience.

9 **Single-family detached.** A single-family dwelling, as defined in Section 27.03.190, that
10 is not attached to any other dwelling by any means and that is the only dwelling unit on the
11 lot. This term shall include a mobile home located on a separately platted lot.

12 **Site-related improvements.** All site specific improvements primarily planned,
13 designed, or built to provide necessary access and service to the proposed development,
14 including all site driveways and local and collector streets leading only to the proposed
15 development; all traffic control devices that primarily give access to the development;
16 acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning movements
17 into or out of the development from site driveways and local and collector streets.

18 **Tap.** The act of connecting to a public water main or public wastewater collector.

19 **Tap fee.** The permit fee required pursuant to Lincoln Municipal Code Section
20 17.10.040 to cover the City's cost in making the tap and of furnishing the required supply
21 connection, water meter with meter stops, and meter couplings, and other required meter
22 apparatus.

1 **Townhouse.** Shall have the same meaning as townhouse, as defined in Section
2 27.03.630.

3 Section 5. That Title 27 of the Lincoln Municipal Code be amended by adding
4 a new section numbered 27.82.050 to read as follows:

5 **27.82.050 Imposition of Impact Fees.**

6 (a) Requirement. On and after June 2, 2003 and the adoption of impact fee
7 schedules by resolution of the City Council, any person who applies for a building permit for
8 a development or who applies for any other permit for a development where a building permit
9 is not required, or who seeks to engage in a development for which no permit is required,
10 shall pay a water system impact fee, water distribution impact fee, wastewater impact fee,
11 arterial street impact fee, and neighborhood park and trail impact fee unless the type of
12 development described in the permit or to be engaged in is specifically exempted, waived or
13 subsidized by this ordinance, or unless the type of development described in the permit or to
14 be engaged in is not located in an impact fee benefit district for the above-described impact
15 fees.

16 (b) Payment of Impact Fees. A person applying for any of the permits for a
17 development listed in subsection (a) above shall pay each impact fee required by this
18 ordinance to the Impact Fee Administrator prior to the issuance of any such permit. If the
19 issuance of a permit is not required for the development (e.g. golf course, park, change of use,
20 etc), then the person seeking to engage in the development shall pay each impact fee required
21 by this ordinance prior to the occurrence of any one of the following events, whichever occurs
22 first:

1 (1) Completion of any connection to the City's water and wastewater
2 systems; or

3 (2) The date when any part of the development opens for business or goes
4 into use.

5 No such permits shall be issued, no such connections shall be made, and no
6 such other development shall be opened for business or allowed to go into use until each
7 impact fee require by this ordinance has been paid.

8 All impact fees paid by a person pursuant to this ordinance shall be promptly
9 deposited in the appropriate impact fee accounts described in Section 27.82.070.

10 (c) Calculation of Impact Fees from Impact Fee Schedules.

11 (1) Unless the person applying for any of the permits for a development
12 listed in subsection (a) above or the person seeking to engage in a development for which no
13 permit is required requests that the City determine the amount of such fee pursuant to an
14 independent fee calculation study, the Impact Fee Administrator shall determine the amount
15 of each required impact fee through the use of impact fee schedules adopted by the City
16 Council.

17 (2) If the type of development or meter size that a permit is applied for or
18 the type of development to be engaged in for which no permit is required is not listed in a
19 schedule, then the Impact Fee Administrator shall use the fee applicable to the most nearly
20 comparable type, land use, or meter size in such schedule. In the case of arterial street impact
21 fees, decisions about what use is most nearly comparable shall be guided by the most recent
22 edition of "Trip Generation" and the companion "Trip Generation Manual" prepared by the

1 Institute of Transportation Engineers, or if such publications are no longer available, then by
2 a similar publication.

3 (3) If the type of development or meter size that a permit is applied for or
4 the type of development to be engaged in for which no permit is required includes a mix of
5 those uses or meter sizes listed in a schedule, then the fee shall be determined by adding up
6 the fees that would be payable for each use or meter size if it was a free-standing use pursuant
7 to such schedule.

8 (4) If a person is applying for a permit to allow a change of use or meter size
9 or for the expansion, redevelopment, or modification of an existing development, the fee shall
10 be based on the net increase in the fee for the new use or meter size as compared to the
11 previous use, provided that the previous use was in operation within fifteen years prior to the
12 first building permit for the redevelopment.

13 (5) If no use was in operation on the site within the last fifteen years, the
14 redevelopment shall be treated the same as a new development.

15 (6) If the proposed change of use, meter size, expansion, redevelopment, or
16 modification results in a net decrease in the fee for the new use or development as compared
17 to the previous use, meter size, or development, there shall be no refund of or credit for
18 impact fees previously paid.

19 (7) In the case of a demolition or termination of an existing use or structure,
20 the impact fee for future redevelopment of that site shall be based upon the net increase in the
21 impact fee for the new or proposed land use as compared to the previous use. Credit for the
22 prior use shall not be transferable to another location, except that if the old location was

1 acquired by the City for use for an Impact Fee Facility and will not be redeveloped, the City
2 will receive a credit against future impact fees equal to the impact fee that would have been
3 assessed against the relocated use which may be transferred by the City to a community
4 redevelopment project in another location within the same benefit area..

5 (8) In the case of a relocation of a use, an impact fee shall be assessed to the
6 relocated use at its new location. Credits from the old location shall not be transferable to the
7 new location. Future redevelopment of the old location from which the use was removed will
8 receive a credit against the impact fee assessed equal to the impact fee that would have been
9 assessed against the relocated use.

10 (d) Calculating Fees Through an Independent Fee Calculation Study.

11 (1) General Provisions. If in the judgment of the Impact Fee Administrator
12 there is no comparable type, land use or meter size in such fee schedules which can be used
13 to accurately describe the impacts resulting from any proposed development, the person
14 applying for a permit for such development or the person seeking to engage in such
15 development for which no permit is required shall provide to the Administrator for the
16 Administrator's review and evaluation an independent fee calculation prepared at such
17 person's cost by a qualified professional in the preparation of an impact fee analysis. In
18 addition, if such person elects not to have the impact fee determined according to the impact
19 fee schedules, such person may request that the Impact Fee Administrator determine the
20 amount of a required impact fee for the proposed development by reference to an
21 independent fee calculation study prepared at such person's cost by a qualified professional
22 in the preparation of such analysis. Any such study shall be based on the same service

1 standards and unit costs for facilities used in the Impact Fee Study, and shall document the
2 methodologies and assumptions used. Any independent fee calculation study submitted by
3 such person may be accepted, rejected, or accepted with modifications by the impact Fee
4 Administrator as the basis for calculating an impact fee. If such study is accepted or accepted
5 with modifications as a more accurate measure of the demand for Impact Fee Facilities created
6 by the proposed development than the applicable impact fee shown in the appropriate impact
7 fee schedules, then the impact fee due under this ordinance shall be calculated according to
8 such study.

9 (2) Additional Requirements for Arterial Street Impact Fee Studies. In
10 addition to those requirements listed in subsection (d)(1) above, any independent fee calcula-
11 tion study submitted by a person for purposes of calculating an arterial street impact fee shall
12 show the traffic engineering and economic methodologies and assumptions used, including
13 but not limited to the following forms of documentation:

14 (i) Such studies must include documentation of trip generation rates,
15 trip lengths, the percentage of trips from the site that represent net additions to current trips
16 from the site (if any), the percentage of trips that are new trips as opposed to pass-by or
17 diverted-link trips, and any other trip data for the proposed land use.

18 (ii) Such studies must include documentation of any special factors
19 that such person believes will reduce the traffic volumes otherwise attributable to the
20 proposed land uses.

21 Section 6. That Title 27 of the Lincoln Municipal Code be amended by adding
22 a new section numbered 27.82.060 to read as follows:

1 **27.82.060 Exemptions From Impact Fees.**

2 (a) Exemptions From All Impact Fees. The following types of development shall
3 be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

4 (1) Replacement of a destroyed or partially destroyed residential building or
5 structure with a new building or structure of the same use, and with the same number of
6 residential units, provided that the rebuilding or replacement occurs no later than fifteen years
7 after the demolition or removal of the previous structure.

8 (2) Replacement of a destroyed or partially destroyed nonresidential building
9 or structure with a new building or structure of the same gross floor area and use, provided
10 that the rebuilding or replacement occurs no later than fifteen years after the demolition or
11 removal of the previous structure.

12 (3) Installation or replacement of a mobile home on a lot or site where all
13 impact fees for such lot or site have previously been paid pursuant to this ordinance or where
14 a mobile home legally existed on such lot or site on or prior to June 2, 2003.

15 (4) Room additions, remodeling, rehabilitation or other improvements to an
16 existing structure, provided that there is no increase in the number of dwelling units for
17 residential use or in the amount of gross square footage for nonresidential use.

18 (5) Construction pursuant to a building permit issued prior to June 2, 2003,
19 provided the construction proceeds according to the terms of the building permit. If said
20 building permit expires, application for a new building permit shall be treated the same as a
21 new development.

22 (6) Low Income Owner-Occupied Housing.

1 (i) An Owner-Occupied unit which is sold to a household whose
2 income is 60% or less of the area medium gross income adjusted for a household size shall
3 be entitled to a 100% exemption from all Impact Fees.

4 (ii) An Owner-Occupied unit which is sold to a household whose
5 income is more than 60% but is 80% or less of the area medium gross income adjusted for
6 a household size shall be entitled to a 50% exemption from all Impact Fees.

7 (7) Low Income Rental Housing located outside of a low or moderate
8 income area.

9 (i) A Tenant-Occupied unit which is restricted to rental to a
10 household whose income is 60% or less of the area medium gross income adjusted for
11 household size shall be entitled to a 100% exemption from all Impact Fees.

12 (ii) A Tenant-Occupied unit which is restricted to rental to a
13 household whose income is 80% or less of the area medium gross income adjusted for a
14 household size shall be entitled to a 50% exemption from all Impact Fees.

15 (8) Development or construction by any governmental entity for which the
16 governmental entity has the statutory power of eminent domain shall not pay any impact fees
17 since these entities are exempt from local zoning.

18 (b) Exemptions From Specific Impact Fees. The following types of projects shall be
19 exempted from the following types of impact fees:

20 (1) Development, pursuant to a written annexation agreement between the
21 City and a developer which was executed prior to June 1, 2002, and which specifically
22 addressed the additional demand for Impact Fee Facilities created by such development shall

1 be exempt from the impact fee charged for those specific types of Impact Fee Facilities the
2 Developer agreed to finance or construct in whole or in part. Agreements qualifying for such
3 exemptions are listed in Table 27.82.060(b) at the end of this chapter. The Impact Fee
4 Administrator shall determine whether or not any other annexation agreement qualifies for an
5 exemption.

6 (2) Where the Bureau of Fire Prevention requires that a water meter be
7 increased in size above that required for the ordinary usage of a building or other facility for
8 the purposes of maintaining fireflow to internal lines, the water and wastewater fees for that
9 building or other facility shall be based on the meter size that would be required without
10 regard to the fireflow requirements.

11 (3) Any separate water meter connected only to an irrigation system and not
12 to any building or other facility designed for human occupancy shall not be included in the
13 calculation of the wastewater impact fee.

14 (4) Other types of development shall be exempted from payment of specific
15 impact fees otherwise due pursuant to this ordinance if the person applying for a permit for
16 such development or the person seeking to engage in such development for which no permit
17 is required can demonstrate that the proposed land use and development will produce no
18 additional demand for a specific Impact Fee Facility beyond what was generated from such
19 site prior to the proposed development, using an average cost (not marginal cost)
20 methodology. The fact that a proposed development has direct access to, or is located close
21 to, an existing facility of the type covered by an impact fee, shall not by itself be evidence that

1 the proposed development will have no impact on the need for Impact Fee Facilities of the
2 type covered by the impact fee.

3 (c) Request for Exemption Required. If a permit is required for the proposed
4 development, any such claim for exemption must be made no later than the date of the
5 application for the permit for the proposed development except that a claim of exemption for
6 Low-Income Owner-Occupied Housing or Low Income Rental Housing must be made no later
7 than 30 days following the date the housing is first occupied. If the issuance of a permit is not
8 required for the development, then any such claim for exemption must be made no later than
9 the occurrence of any one of the following events, whichever occurs first:

10 (1) Completion of any connection to the City's water and wastewater
11 systems; or

12 (2) The date when any part of the development opens for business or goes
13 into use.

14 Any claim for exemption not made at or before that time provided above shall
15 be deemed waived.

16 (d) Determination of Validity. The Impact Fee Administrator shall determine the
17 validity of any claim for exemption pursuant to the criteria set forth in this ordinance. An
18 exemption for Low-Income Owner-Occupied Housing or Low Income Rental Housing shall
19 not become valid until after the City receives verification that such housing is occupied by an
20 eligible household.

1 (e) Funding of Exemptions. The proportionate share of any Impact Fee Facility or
2 Impact Fee Facility Improvement cost directly related to the exemptions granted pursuant to
3 Subsections (a) and (b) above shall be funded from a revenue source other than impact fees.

4 Section 7. That Title 27 of the Lincoln Municipal Code be amended by adding
5 a new section numbered 27.82.070 to read as follows:

6 **27.82.070 Impact Fee Funds.**

7 (a) Creation of Benefit Districts. Impact fees shall be spent only within the benefit
8 district in which they were collected, except that (1) water system impact fees, water
9 distribution impact fees, and wastewater impact fees may be spent for water system impact
10 fee facility improvements, water distribution impact fee facility improvements, and wastewater
11 impact fee facility improvements, respectively, outside the corporate limits of the City which
12 benefit the district in which they were collected; and (2) any arterial street used as a boundary
13 between two arterial street benefit districts shall be considered as included within both benefit
14 districts and may be improved with fees collected in either benefit district. The following
15 benefit districts are hereby created:

16 (1) Water System Impact Fee Benefit District shall be the area served by the
17 Lincoln water system;

18 (2) Water Distribution Benefit District Nos. 1 through 7, inclusive, shall be
19 the respective incorporated areas of the City established and shown on the Water Distribution
20 Impact Fee Benefit Areas Map as Water Distribution Benefit Area Nos. 1 through 7, inclusive.

1 (3) Wastewater Impact Fee Benefit District shall be the area served by the
2 Lincoln Wastewater System;

3 (4) Arterial Street Impact Fee Benefit District Nos. 1 through 7, inclusive,
4 shall be the respective incorporated areas of the City established and shown on the Arterial
5 Street Impact Fee Benefit Areas Map as Arterial Street Benefit Area Nos. 1 through 7, inclusive,
6 except for that portion of the Downtown/Antelope Valley Exclusion Area located within any
7 of areas.

8 (5) Neighborhood Park and Trail Impact Fee Benefit District Nos. 1 through
9 7, inclusive, shall be the respective incorporated areas of the City established and shown on
10 the Neighborhood Park and Trail Impact Fee Benefit Areas Map as Neighborhood Park and
11 Trail Benefit Area Nos. 1 through 7, inclusive, except for that portion of the Neighborhood
12 Park and Trail Impact Fee Exclusion Area located within said areas.

13 (b) Creation of Impact Fee Fund. An Impact Fee Fund is hereby created and shall
14 include a separate impact fee account for each impact fee benefit district as an interest bearing
15 account distinct from the General Fund of the City:

16 (c) Monies in an Impact Fee Account. Each impact fee account shall contain only
17 those impact fees collected pursuant to this ordinance for the types of Impact Fee Facilities
18 reflected in the title of the account plus any interest which may accrue from time to time on
19 such amounts.

20 (e) Use of Monies in an Impact Fee Account. The monies in each impact fee
21 account shall be used only:

1 (1) To acquire or construct Impact Fee Facilities or Impact Fee Facility
2 Improvements of the type reflected in the title of the account and in the location specified in
3 Section 27.82.070(a); or

4 (2) As described in Section 27.82.080 (Refunds) or as described in Section
5 27.82.090 (Post-Ordinance Agreements), or as described in Section 27.82.100 (Pre-Ordinance
6 Reimbursements), or

7 (3) To retire bonds, or other obligations of indebtedness issued to fund the
8 construction of Impact Fee Facility Improvements.

9 (4) To pay consultant fees to update the impact fees.

10 Section 8. That Title 27 of the Lincoln Municipal Code be amended by adding
11 a new section numbered 27.82.080 to read as follows:

12 **27.82.080 Refunds of Impact Fees Paid.**

13 (a) Passage of Time. Any monies in any impact fee account that have not been
14 spent or encumbered within eight years after the date on which such fee was paid shall, upon
15 application to the Impact Fee Administrator by the fee payor, be returned to such person with
16 interest since the date of payment at the rate earned by the City on the fees. Fees shall be
17 deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within
18 six months of the end of the eight-year period from the date on which the unspent impact fee
19 was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at
20 the address listed with the Impact Fee Administrator. In order to receive such refund, the fee
21 payor shall be required to submit an application for such refund within twelve months after
22 the expiration of such eight-year period. Any monies in an impact fee account for which no

1 application for a refund has been timely made shall be retained by the City and expended on
2 the type of Impact Fee Facilities reflected in the title of the account without further limitation
3 as to time of expenditure.

4 (b) Expiration of Permit. If a person has paid an impact fee required by this
5 ordinance and has obtained a building permit or any other permit for a development or
6 extensions thereto, and the permit or extension for which the fee was paid later expires
7 without the possibility of further extension, and the development activity for which the impact
8 fee was imposed did not occur and no impact has resulted, then such fee payor shall be
9 entitled to a refund of the fee paid, with interest. In order to be eligible to receive such
10 refund, such fee payor shall be required to submit an application for such refund within six
11 months after the expiration of the permit or extension for which the fee was paid.

12 (c) No Refund for Altered Development. After an impact fee has been paid
13 pursuant to this ordinance, no refund of any part of such fee shall be made if the development
14 for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or
15 reconfigured so as to reduce the size of the development, the number of units in the
16 development, or the amount of traffic generated by the development.

17 (d) Notice to Fee Payor. At the time of payment of any impact fee under this
18 ordinance, the Impact Fee Administrator shall provide the person paying such fee with written
19 notice of those circumstances under which refunds of such fees will be made. Failure to
20 deliver such written notice shall not invalidate any collection of any impact fee under this
21 ordinance.

1 Section 9. That Title 27 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 27.82.090 to read as follows:

3 **27.82.090 Post-Ordinance Developer Agreements Regarding Impact Fee Facilities.**

4 (a) General Provision. On and after June 2, 2003, where a proposed development
5 includes or requires the construction of Impact Fee Facilities in connection with such
6 development, the City and developer may agree in writing to have the developer participate
7 in the financing or construction of part or all of such Impact Fee Facilities.

8 Such agreement may provide for future cash reimbursements to the developer
9 for the developer's participation in the financing or construction of the Impact Fee Facilities
10 consistent with the following requirements:

11 (1) Reimbursement for each type of Impact Fee Facility financed or
12 constructed by the developer may be paid with interest at the rate earned by the City or its
13 impact fee fund account.

14 (2) No reimbursement shall be paid from impact fees received for a different
15 type of Impact Fee Facility or against any other monies due to the City from such development
16 and any reimbursement to be paid from impact fees shall not constitute general liability of the
17 City.

18 (3) The reimbursement shall be calculated and documented as follows:

19 (i) The value of land dedicated or donated for water storage
20 reservoirs, water pumping stations, wastewater trunk lines, and neighborhood parks shall, at
21 such person's option, be valued at (a) 100% of the most recent assessed value for such land
22 as shown in the records of the County Assessor, or (b) the land's fair market value based on

1 its appraised land value on the date of transfer of ownership to the City, as determined by a
2 certified appraiser who was selected and paid for by such person, and who used generally
3 accepted appraisal techniques. If the City disagrees with the appraised value, the Impact Fee
4 Administrator may engage another appraiser at the City's expense, and the value shall be an
5 amount equal to the average of the two appraisals. If either party rejects the average of the
6 two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being
7 shared equally by such person and the City. The third appraiser shall be selected by the first
8 two appraisers, and the third appraisal shall be binding on both parties.

9 (ii) If only a portion of a parcel of land is dedicated or donated for the
10 uses described in 3(i) above, the value of such land shall, at such person's option, be valued
11 at (a) 100% of the land's assessed value for such land based upon the most recent assessed
12 value for the parent parcel as shown in the records of the County Assessor, or (b) the land's
13 fair market value based on the appraised land value of the parent parcel on the date of transfer
14 of ownership to the City, as determined by a certified appraiser who was selected and paid
15 for by such person, and who used generally accepted appraisal techniques. If the City
16 disagrees with the appraised value, the Impact Fee Administrator may engage another
17 appraiser at the City's expense, and the value shall be an amount equal to the average of the
18 two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall
19 be obtained, with the cost of such third appraisal being shared equally by such person and the
20 City. The third appraiser shall be selected by the first two appraisers, and the third appraisal
21 shall be binding on both parties.

1 (iii) The value of Impact Fee Facilities constructed by the developer
2 shall be based upon the actual cost of construction as verified by receipts submitted by the
3 developer.

4 (4) The reimbursement shall only be paid to the developer who participated
5 in the financing or construction of part or all of the Impact Fee Facilities or the developer's
6 legal successor in interest with an express right or entitlement to any reimbursement which
7 has been expressly transferred or assigned to the successor in interest.

8 (5) In the absence of an express transfer or assignment of the right or
9 entitlement to the reimbursement, the right or entitlement shall be deemed "not to run with
10 the land."

11 Section 10. That Title 27 of the Lincoln Municipal Code be amended by adding
12 a new section numbered 27.82.100 to read as follows:

13 **27.82.100 Developer Reimbursement for Pre-Ordinance Participation in Financing or**
14 **Construction of Impact Fee Facilities.**

15 (a) General Provisions. On and after June 2, 2003, where a pre-ordinance
16 development not subject to an exemption from impact fees pursuant to Section
17 27.82.060(b)(1) included or required the participation by the developer in the financing or
18 construction of Impact Fee Facilities, said developer or the developer's legal successor in
19 interest with the right or entitlement to a reimbursement which has been expressly transferred
20 or assigned to the successor in interest will be entitled to a cash reimbursement for the present
21 value of land dedicated or donated for water storage reservoirs, water pumping stations,
22 wastewater trunk lines and neighborhood parks and/or the present value of the Impact Fee
23 Facilities constructed by said developer as provided in (b) below.

1 (b) Reimbursement shall be calculated as follows:

2 (1) No reimbursement shall be provided under this section for dedications,
3 contributions, payments or construction made more than fifteen (15) years prior to June 2,
4 2003.

5 (2) The present value of land dedicated or donated shall, at such person's
6 option, be valued at (a) 100% of the most recent assessed value for such land as shown in the
7 records of the County Assessor, or (b) the land's present fair market value based on its
8 appraised land value on the date of transfer of ownership to the City, as determined by a
9 certified appraiser who was selected and paid for by such person, and who used generally
10 accepted appraisal techniques. If the City disagrees with the appraised value, the Impact Fee
11 Administrator may engage another appraiser at the City's expense, and the value shall be an
12 amount equal to the average of the two appraisals. If either party rejects the average of the
13 two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being
14 shared equally by such person and the City. The third appraiser shall be selected by the first
15 two appraisers, and the third appraisal shall be binding on both parties.

16 (3) If only a portion of a parcel of land is dedicated or donated, the present
17 value of such land shall, at such person's option, be valued at (a) 100% of the land's assessed
18 value for such land based upon the most recent assessed value for the parent parcel as shown
19 in the records of the County Assessor, or (b) the land's present fair market value based on the
20 appraised land value of the parent parcel on the date of transfer of ownership to the City, as
21 determined by a certified appraiser who was selected and paid for by such person, and who
22 used generally accepted appraisal techniques. If the City disagrees with the appraised value,

1 the Impact Fee Administrator may engage another appraiser at the City's expense, and the
2 value shall be an amount equal to the average of the two appraisals. If either party rejects the
3 average of the two appraisals, a third appraisal shall be obtained, with the cost of such third
4 appraisal being shared equally by such person and the City. The third appraiser shall be
5 selected by the first two appraisers, and the third appraisal shall be binding on both parties.

6 (4) The amount of the reimbursement for a contribution payment or
7 construction made to an Impact Fee Facility prior to the effective date of the ordinance shall
8 be the present value of the contribution payment or the cost of construction, less the total
9 amount of impact fees for the same type of Impact Fee Facility that would have been due and
10 payable for development already undertaken within the whole development had that
11 development been subject to the impact fees imposed pursuant to Section 27.82.050.

12 (c) Procedure. No reimbursement shall be provided unless the developer who
13 participated in the financing or construction of the Impact Fee Facilities or the developer's
14 legal successor in interest makes application on forms provided by the City for the
15 reimbursement within one year following the effective date of this ordinance or such
16 developer's claim for the reimbursement shall be deemed waived. The application for
17 reimbursement must contain a statement under oath of the facts that qualify such developer
18 or the developer's legal successor in interest to receive a reimbursement, and must be
19 accompanied by documents evidencing the developer, at the request and demand of the City,
20 dedicated specific parcels of land for specific Impact Fee Facilities, or contributed to the cost
21 of constructing specific Impact Fee Facilities, or constructed specific Impact Fee Facilities in
22 accordance with all applicable state or city design and construction standards.

1 (d) Payment of the Reimbursement. Reimbursements for each type of Impact Fee
2 Facility shall be paid from and shall not exceed the impact fees which become due and
3 payable under this ordinance within the development for that same type of Impact Fee Facility
4 or against any other monies due to the City from such development and the reimbursement
5 shall not constitute a general liability of the City.

6 Section 11. That Title 27 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 27.82.110 to read as follows:

8 **27.82.110 Miscellaneous Provisions.**

9 (a) Interest. Interest earned on monies in any impact fee account shall be
10 considered part of such account, and shall be subject to the same restrictions on use
11 applicable to the impact fees deposited in such account.

12 (b) First-In/First-Out Accounting. Monies in each impact fee account shall be
13 considered to be spent in the order collected, on a first-in/first-out basis.

14 (c) No Operation or Maintenance. No monies from any impact fee account shall
15 be spent for periodic or routine operation or maintenance of any facility of any type.

16 (d) No Restriction on Development Conditions. Nothing in this ordinance shall
17 restrict the City from requiring a person to construct reasonable project improvements required
18 to serve such person's project, whether or not such improvements are of a type for which
19 reimbursements are available under Section 27.82.090.

20 (e) Records. The Impact Fee Administrator shall maintain accurate records of the
21 impact fees paid, including the name and address of the person paying such fees, the project
22 for which the fees were paid, the date of payment of each fee, the amounts received in

1 payment for each fee, and any other matters that the Impact Fee Administrator deems
2 appropriate or necessary to the accurate accounting of such fees, and such records shall be
3 available for review by the public during City business hours.

4 (f) Assignment of Impact Fee Account Monies. The approved Capital Improvement
5 Program which includes any Impact Fee Facilities scheduled for construction shall assign
6 monies to fund in whole or in part such Impact Fee Facilities from the Impact Fee Fund
7 Account of the type for which the fees in that account were paid. Any monies, including any
8 accrued interest, not assigned to specific projects within such capital improvements program
9 and not expended pursuant to Section 27.82.080 (Refunds) or 27.82.090 (Reimbursements)
10 shall be retained in the same impact fee account until the next fiscal year.

11 (g) Administrative Costs. The City shall be entitled to collect an additional charge
12 of not more than two percent of each impact fee collected as payment for the expenses of
13 collecting the fee and administering this ordinance. In the case of refunds of impact fees
14 under Section 27.82.080, or reimbursements under Sections 27.82.090 and 27.82.100, the
15 City shall be entitled to retain not more than two percent of the impact fee payment made by
16 the applicant or the reimbursement due to the applicant as payment for the expenses of
17 processing the refund or reimbursement request.

18 (h) Mistake or Misrepresentation. If an impact fee has been calculated and paid
19 based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by
20 a person shall be refunded by the City to such person within thirty days after the City's
21 acceptance of the recalculated amount, with interest since the date of such overpayment at
22 the rate earned by the City on the funds. Any amounts underpaid by such person shall be paid

1 to the City within thirty days after the Impact Fee Administrator's acceptance of the
2 recalculated amount, with interest since the date of such underpayment at the rate then earned
3 by the City on its impact fee funds. In the case of an underpayment to the City, the City may
4 refuse to issue any additional permits or approvals for the project for which the impact fee was
5 previously underpaid until such underpayment is corrected, and if amounts owed to the City
6 are not paid within such thirty-day period, the City may also repeal any permits issued in
7 reliance on the previous payment of such impact fee and refund such fee to the then current
8 owner of the land.

9 (i) Discretion to Reduce Impact Fees. In order to promote the economic
10 development of the City or the public health, safety, and general welfare of its residents, the
11 Mayor may agree to pay some or all of the impact fees imposed on a proposed development
12 or redevelopment from other funds of the City that are not restricted to other uses. Any such
13 decision to pay impact fees on behalf of a proposed development shall be at the discretion of
14 the Mayor and shall be made pursuant to goals and objectives adopted by the City Council
15 to promote such development.

16 (j) Appeals. Any determination made by any official of the City charged with the
17 administration of any part of this ordinance may be appealed by the aggrieved party to the City
18 Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2) a
19 written explanation of why the appellant feels that a determination was in error. Appeals must
20 be filed with the City Clerk within ten days after the determination for which the appeal is
21 being filed. At the regular meeting following the filing of the appeal, the City Council shall
22 fix a time and place for hearing the appeal, and the City Clerk shall mail notice of the hearing

1 to the appellant at the address given in the Notice of Appeal. The hearing shall be conducted
2 at the time and place stated in such notice given by the City Council. In an appeal of an
3 impact fee, the Council shall not waive the fees, although the fees may be reduced pursuant
4 to subsection (i) above or may be reduced upon a finding that the impact fee was incorrectly
5 calculated, or that unusual circumstances of the development demonstrate that application of
6 the fee to the development would be unfair or unjust. The determination of the City Council
7 shall be final.

8 (k) Periodic Review. The impact fees and the administrative procedures established
9 by this ordinance shall be reviewed at least once every three fiscal years to ensure that:

10 (1) The demand and cost assumptions underlying such fees are still valid,

11 (2) The resulting fees do not exceed the actual cost of constructing Impact
12 Fee Facilities of the type for which the fee was paid and that are required to serve new
13 development,

14 (3) The monies collected or to be collected in each impact fee fund have
15 been or are expected to be spent for Impact Fee Facilities of the type for which such fees were
16 paid, and

17 (4) That such Impact Fee Facilities will benefit those developments for which
18 the fees were paid.

19 (l) Adjustments for Inflation. Beginning on January 1, 2004, and on January 1 of
20 each following year unless and until the impact fee schedules are otherwise revised or
21 replaced by City Council, each fee amount set forth in each schedule shall be adjusted to
22 reflect the effects of inflation on those costs set forth in the Impact Fee Study by multiplying

1 such amount by a fraction, the numerator of which is the U.S. Consumer Price Index for All
2 Items for the most recent period for which figures are available, and the denominator of which
3 is U.S. Consumer Price Index for All Items for the period one year prior to the period reflected
4 in the numerator. Such adjustments in such fees shall become effective upon approval by
5 resolution of the City Council.

6 (m) Violations. Violation of this ordinance shall be a misdemeanor and shall be
7 subject to those remedies provided in Section 27.81.070. Knowingly furnishing false
8 information to any official of the City charged with the administration of this ordinance on any
9 matter relating to the administration of this ordinance, including without limitation to
10 knowingly furnishing false information regarding the expected size, use, or traffic impacts from
11 a proposed development, shall be a violation of this ordinance. In addition to or in lieu of any
12 criminal prosecution, the City or any person applying for a permit of the types described in
13 Section 27.82.050(a) or any person seeking to engage in a development for which no permit
14 is requested shall have the right to sue in civil court to enforce the provisions of this
15 ordinance.

16 Section 14. That if any section, subsection, sentence, clause, phrase, part or
17 portion of this ordinance, including those parts adopted by reference, is for any reason held
18 to be invalid or unconstitutional by any court or agency of competent jurisdiction, such
19 decision shall not affect the validity of the remaining portions of this ordinance.

20 Section 15. That Sections 1 through 13 hereof be codified in the Lincoln
21 Municipal Code as Chapter 27.82, Impact Fees.

1 Section 16. That the Downtown/Antelope Valley Exclusion Area Map, the
2 Water Distribution Impact Fee Benefit Areas Map, the Arterial Street Impact Fee Benefit Areas
3 Map, and the Neighborhood Park and Trail Impact Fee Benefit Areas Map, attached hereto
4 marked as Exhibit Nos. 1 through 4, are hereby adopted and incorporated herein by reference.

5 Section 17. The Lincoln Impact Fee Study prepared by Duncan Associates
6 attached hereto and marked as Exhibit No. 5 is hereby adopted and incorporated herein by
7 reference.

8 Section 18. Notwithstanding the foregoing or any language to the contrary
9 contained in this ordinance, no person shall be obligated to pay and the Impact Fee
10 Administrator shall not be allowed to collect any impact fee under this ordinance unless on
11 or before June 1, 2003, the Mayor's Infrastructure Finance Committee or Mayor has prepared
12 and filed with the City Clerk an integrated package of recommendations consistent with the
13 Charge to the Committee.

14 Section 19. That this ordinance shall be in full force and effect as of June 2,
15 2003, after its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2002:

Mayor