

LICENSE AGREEMENT FOR PARKING

THIS LICENSE AGREEMENT FOR PARKING ("Agreement") is made and entered into by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation ("City"), and THE SALVATION ARMY, an Illinois nonprofit corporation ("Salvation Army").

WHEREAS, the parties entered into a Memorandum of Understanding as shown on Exhibit "A" authorized by Ordinance No. 18258 on October 27, 2003 ("MOU") regarding the vacation of Potter Street and operation, maintenance, and repair responsibilities for the Pentzer Park parking lot adjacent to the Salvation Army Corps Community Center located at or about 2625 Potter Street, Lincoln, Nebraska ("Center");

WHEREAS, the Center is classified as a Neighborhood Support Service which is permitted by right in the B-3 Commercial District, but has a Special Permit in conformance with the requirements of Chapter 27.63, which effectively allowed a waiver to the strict application of parking requirements;

WHEREAS, Special Permit No. 590, approved in 1972, identified that eighteen (18) parking stalls are required for the Center and only fourteen (14) stalls are currently provided;

WHEREAS, Salvation Army has applied for a building permit and an amendment to the Special Permit for an expansion of the premises for storage space that will require coming into compliance with the parking requirements provided by Special Permit No. 590 by providing eighteen (18) total off-street parking stalls;

WHEREAS, pursuant to the MOU, patrons of the Salvation Army utilize the public parking lot at Pentzer Park immediately north of the Center;

WHEREAS, the parties have agreed that Salvation Army shall be entitled to exclusive use of four (4) parking spaces plus one (1) handicapped parking space in the public parking lot for Pentzer Park, pursuant to certain terms in the MOU;

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

1. PARKING SPACES. Subject to the terms and conditions herein contained, City hereby provides a license to Salvation Army of four (4) parking spaces plus one (1) handicapped parking space ("Stalls") for exclusive use on the following described property, within the Pentzer Park parking lot on said property hereinafter called the "Premises," to wit:

A portion of Fairview, Lot 23-24, Ex Street and Vacated Potter Street, between North 26th Street and North 27th Street, all in Section 13, Township 10N, Range 6E, Lincoln, Lancaster County, Nebraska as shown in Exhibit "B."

2. TERM. This Agreement shall become effective on the date of execution and shall continue for a term of approximately fifteen (15) years and ending on January 31, 2028 unless sooner terminated or renewed as hereinafter provided.

3. USE. Salvation Army agrees to utilize the Stalls for parking as provided by the City. The Premises shall not be utilized for any other purposes or other improvements other than parking as shown on Exhibit "B." Salvation Army shall not keep or store on or about the Premises any objects except as permitted by the City in writing. Salvation Army agrees not to make any alterations, additions or improvements to the Premises without first obtaining the written consent of the City.

4. COMPENSATION. In return for use of the Premises, Salvation Army shall complete regular snow removal on the entire Pentzer Parking Lot, including sidewalks to the north curb line of the parking lot. This contribution by the Salvation Army shall constitute consideration for this Agreement.

5. RESTRICTION OF ASSIGNMENT, SUBLETTING. Salvation Army agrees not to assign, sublet, or in any manner transfer this Agreement or any estate or interest therein without the previous written consent of City.

6. RENEWAL. Salvation Army may have the option to renew this Agreement for two (2) additional terms of fifteen (15) years, provided Salvation Army is not in default with any of the provisions or covenants contained within this Agreement. Each renewal shall be exercised at least ninety (90) days prior to the expiration of the current Agreement.

7. TERMINATION AND CANCELLATION. Either party has the right to terminate this Agreement if the other party substantially breaches the terms of this Agreement. Termination rights for breach may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice.

8. RETURN OF PROPERTY TO ITS PRESENT CONDITION. Upon the termination of this Agreement or any renewals thereof, Salvation Army agrees to return the Stalls to the City in its present condition, ordinary wear and tear excepted. City hereby further covenants and agrees that City shall be permitted to enter upon the Stalls at all reasonable times to examine the condition of the same.

9. PERSONAL PROPERTY AT RISK OF SALVATION ARMY. All personal property on the Premises shall be at the risk of the Salvation Army only. City shall not be or become liable for any damage to such personal property or for Salvation Army's improvements on the Premises or to Salvation Army or any other persons or property on the Premises or for any damage arising from any act or neglect of Salvation Army, Salvation Army's employees, or invitees of the Premises.

10. INSURANCE. Salvation Army shall maintain general liability insurance at its own expense during the life of this Agreement, naming and protecting City of Lincoln, its

officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from use or on or upon the Premises under this Agreement. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
3. Personal Injury Damage - \$1,000,000 each Occurrence; and
4. Contractual Liability - \$1,000,000 each Occurrence; and
5. Medical Expenses (any one person) - \$5,000.

A Certificate of Insurance shall be attached to this Agreement and renewed every year on January 31, and City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance. Salvation Army is required to provide City with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

11. NOTICES. Any and all notices or demands required or permitted to be given hereunder shall be deemed to be properly served if sent by registered or certified mail, postage prepaid, addressed to the City to the Director of the Parks & Recreation Department at 2740 A Street, Lincoln, NE 68502 or addressed to the Salvation Army to Bramwel Higgins, Corporate Secretary, The Salvation Army, 10 West Algonquin Road, Des Plains, IL 60016, or at such other address or addresses as either party may hereafter designate in writing to the other. Any notice or demand so mailed shall be effective for all purposes at the time of deposit thereof in the United States mail.

12. NO OTHER AGREEMENTS. This Agreement contains the entire understanding and agreement of the parties, supersedes all prior understandings and agreements. This Agreement cannot be revised, adjusted or modified unless in writing signed by the party against whom the same is to be enforced.

13. INDEMNIFICATION. Salvation Army, by acceptance of this Agreement, agrees to indemnify and hold City, its employees, officers, agents, successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees for any loss, injury, death, or damage to persons or property which at any time is suffered or sustained by City, its employees, the public, or by any person whosoever may at any time be using, occupying, visiting, or maintaining the Premises that is the subject of said Agreement, or be on or about the Premises that is the subject of said Agreement, when such loss, injury, death, or damage is asserted to have been caused by any negligent act or omission or intentional misconduct of Salvation Army or its agents, servants, employees, invitees, or contractors. City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. City shall not be liable, and Salvation Army waives and releases City from all claims for damage to persons or property sustained by Salvation Army or its employees, agents, servants, invitees, contractors, or customers resulting by reason of the use of the Premises. This section survives any termination of this Agreement.

14. EXPLANATORY PROVISIONS. The provisions of this Agreement shall be binding upon, inure to the benefit of and apply to the respective heirs, executors, administrators,

successors and assigns of the parties hereto. Headings are given to the paragraphs of this Agreement solely as a convenience to facilitate reference and shall not be deemed material or relevant to the construction of the Agreement or any provision thereof.

15. IMPROVEMENTS AND MAINTENANCE. Salvation Army agrees to do no remodeling or install any permanent fixtures or additions to the Premises without first obtaining the written approval of the City. All improvements shall become the property of the City upon termination of this Agreement unless the parties hereto agree otherwise. Salvation Army agrees to comply with applicable laws, ordinances, rules and regulations of the City of Lincoln, State of Nebraska, or United States government. Salvation Army agrees to pay promptly for any work done or materials furnished on or about the Premises, will not suffer or permit any lien to attach to the Premises, and further agrees to cause any such lien or any claims thereof to be released promptly; provided, however, that in the event Salvation Army contests any such claim, Salvation Army agrees to indemnify and secure City to City's satisfaction. Salvation Army shall apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to use of the Premises and to conduct all activities related to use of the Premises in a lawful manner. City agrees as owner of Premises to provide infrastructure maintenance to the Premises, such striping and painting, asphalt and concrete repair. City shall maintain the area lights associated with the parking lot, including the light poles, light fixtures and electrical service. City shall do routine parking lot and grounds maintenance activities, such as litter pickup, graffiti removal, landscape maintenance, on the same schedule as Pentzer Park. Salvation Army agrees to do regular snow removal on the Premises including sidewalks to the north curb line of the parking lot. Salvation Army shall be responsible for seven percent (7%) of capital improvement costs for the Pentzer Park parking lot to maintain good condition and repair. City will use best efforts to provide one (1) year notice to Salvation Army of capital improvements needed for the parking lot.

16. ADVERTISING. No display signs or advertising shall be placed on the Premises structure, or affixed in any manner, except signage for purposes of identification or notification of use of the Stalls for parking for Salvation Army. Salvation Army agrees any other signage or advertising is excluded except upon written approval of the City in advance.

17. "AS IS". Salvation Army agrees that it is accepting the Premises "as is," that Salvation Army has inspected the Premises and has determined the Premises to be suitable for the uses intended. No representations have been made by the City as to the condition of the Premises.

18. HAZARDOUS MATERIAL. Salvation Army shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the Premises by the Salvation Army, its agents, employees, contractors, or invitees, without the prior written consent of the City (which City shall not unreasonably withhold as long as Salvation Army demonstrates to City's reasonable satisfaction that such hazardous material is necessary or useful to Salvation Army's business and will be used, kept and stored in a manner that complies with all laws regulating any such hazardous material so brought upon or used or kept in or about the Premises). If Salvation Army breaches the foregoing obligations, or if the presence of hazardous material on the Premises caused or permitted by Salvation Army results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs therefrom,

the Salvation Army shall indemnify City as described in paragraph 13 above, to include costs incurred in connection with any investigation of site conditions or any clean-up, remedials, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any hazardous material on the Premises caused by or permitted by Salvation Army results in any contamination of the Premises, Salvation Army shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such hazardous material to the Premises; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority or the United States Government.

19. 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.

20. NEBRASKA LAW. This Agreement shall be governed and interpreted by the applicable laws of the Nebraska, without reference to analysis of conflict of laws principles.

21. CAPACITY. The undersigned persons do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2013.

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2013 by Chris Beutler, the Mayor of the City of Lincoln, on behalf of the City.

(S E A L)

Notary Public



**MEMORANDUM OF UNDERSTANDING
FOR THE PENTZER PARK PARKING LOT
(located on vacated Potter Street between 26th and 27th)**

**BETWEEN
THE CITY OF LINCOLN, PARKS & RECREATION DEPARTMENT ("CITY") AND
THE SALVATION ARMY CORPS**

The City and Salvation Army, collectively referred to as the "Parties", are entering into an Agreement as described by this Memorandum of Understanding (MOU) with respect to operation, maintenance and repair responsibilities associated with the Pentzer Park parking lot (lot located on vacated Potter Street, 26th to 27th Streets). In consideration of Salvation Army relinquishing their interest in the vacation of Potter Street, 26th to 27th:

- The City agrees as owner of parking lot to provide infrastructure maintenance, i.e.: striping and painting, asphalt and concrete repair.
- The City will maintain the area lights associated with the parking lot, i.e. light poles, light fixtures and electrical service.
- The City will do routine grounds maintenance activities, i.e. litter pickup, graffiti removal, landscape maintenance on the same schedule as Pentzer Park.
- The Salvation Army agrees to do regular snow removal in the parking lot including sidewalks to the north curb line of the parking lot.

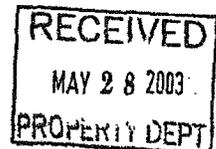
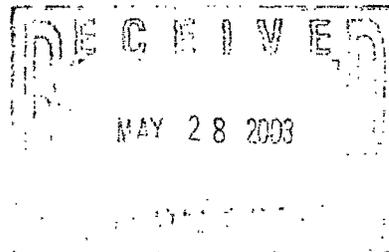
The Parties have executed this Agreement as of this 21st day of May, 2003.

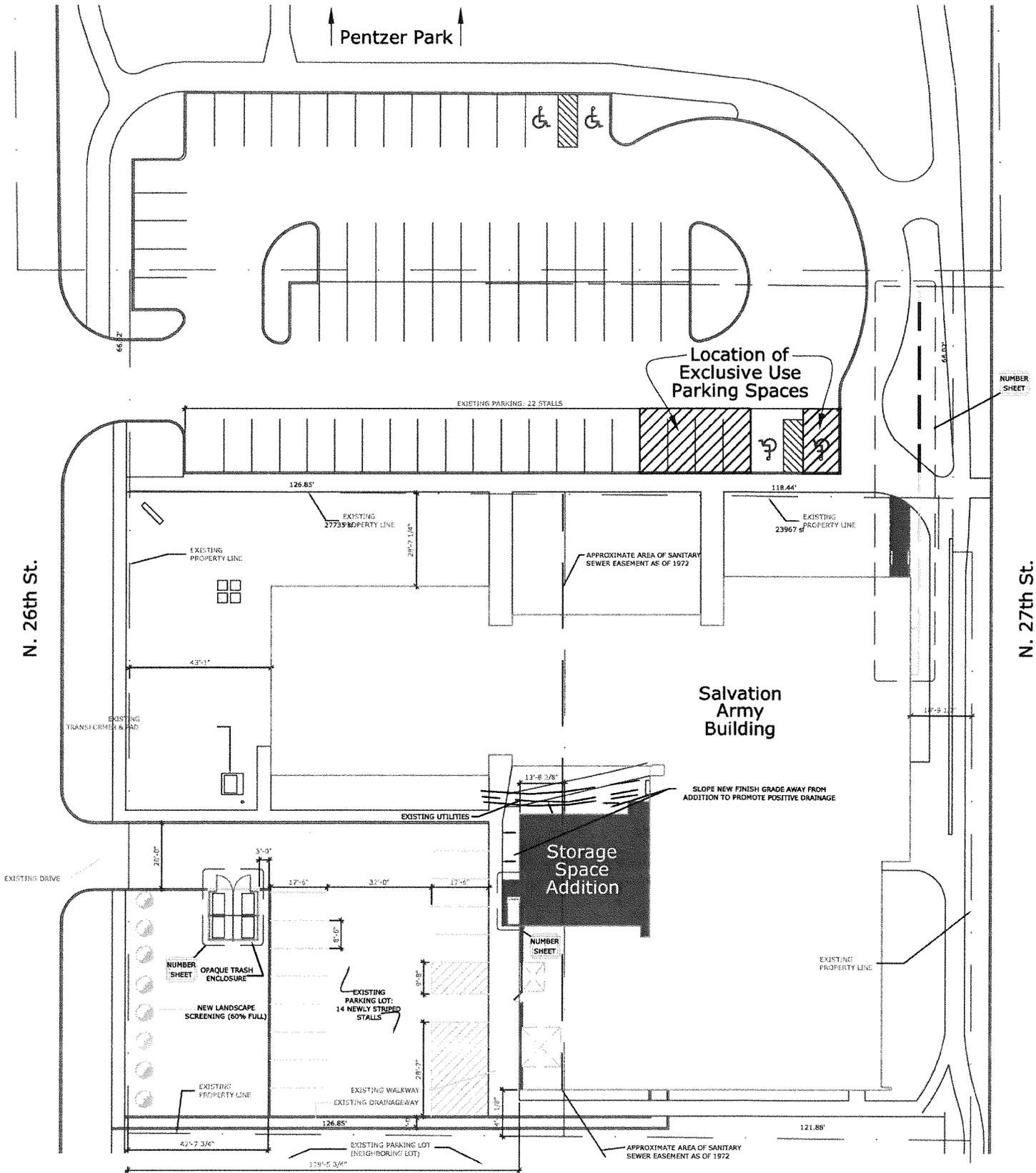
The City of Lincoln, Nebraska

By: Lynn Johnson
Director of Parks & Recreation

The Salvation Army Representative
an Illinois corporation

By: Richard Amick
Richard Amick, Asst. Treasurer
Harold Winkler
Harold Winkler, Secretary





Salvation Army License Agreement
 for 4 Regular Parking Spaces
 and 1 Handicapped Parking Space

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 1"=40'

Exhibit B