

MASTER FACILITY USE AGREEMENT

This Interlocal Agreement is made and entered into by and between LANCASTER COUNTY SCHOOL DISTRICT 001, a political subdivision, commonly known as Lincoln Public Schools ("LPS") and the CITY OF LINCOLN, NEBRASKA, a municipal corporation ("City").

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq., (the "Act"), of the State of Nebraska, provides that two or more public entities may enter into an agreement for joint or cooperation action, and this Agreement is made and entered into pursuant to the provisions the Act and no separate legal or administrative entity is created under this Agreement; and

WHEREAS, LPS and the City each own and manage public facilities that are used from time to time for programs and activities of the other party; and

WHEREAS, shared use of facilities, rather than duplication of facilities, results in efficiencies that are of mutual benefit to the parties in fulfilling their responsibilities to the public at a lesser cost than if each acted independently; and

WHEREAS, it is recognized that maintenance, operation, capital repair, and replacement expenses are associated with operation of facilities; and

WHEREAS, the parties wish to establish an equitable method of sharing costs associated with shared use of facilities.

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

1. **Term of Agreement.** This Agreement shall be in full force and effect from and after the execution of the Agreement by the parties through August 31, 2016. The parties may extend this Agreement for such additional terms as mutually agreed upon by the parties.
2. **Purpose.** The purpose of this Agreement is to create a cooperative working relationship between LPS and the City for sharing costs associated with mutual use of facilities. No separate legal entity is being created to conduct the cooperative undertaking by the parties. Types of facilities subject to this Agreement include, but are not limited to, the following: gymnasiums, sports fields, meeting rooms, classrooms, auditoriums, park rental shelters, golf courses, swimming pools, parking lots, police substations, cross-country courses, except as otherwise provided herein.
3. **Program Administrators.** Except as otherwise provided herein, the cooperative undertaking and the Agreement shall be administered by a program administrator from LPS and a program administrator from the City (the "Program Administrator(s)"). The City hereby designates the Director of the Parks and Recreation Department of the City of Lincoln as its Program Administrator under this Agreement. LPS hereby designates the Director of Operations for LPS as its Program Administrator under this Agreement. The Program Administrators shall be directly responsible for making decisions and for administering this Agreement, to include but

not limited to overseeing reservation of use of shared facilities and evaluation of shared facility use and compensation near the conclusion of this Agreement as provided herein. The Program Administrators may mutually administer this Agreement and agree on the rules, regulations, practices, procedures and parameters of utilization and programming provided herein. A Program Administrator may be changed from time to time by any party by appointment of a successor Program Administrator upon no less than seven (7) days advance written notice to the other party.

4. **Facility Usage Fee.** The City and LPS have each individually examined and assessed their respective uses of the other entity's facilities covered by this Agreement and have conferred with each other regarding those uses to reach a consensus on anticipated uses. A spreadsheet of uses compiled and agreed upon by the parties is attached hereto as Attachment "A" and incorporated herein by this reference. To balance out usages, an annual facility usage fee in the amounts and to be paid on the due dates for the contract periods shall be paid by LPS to the City on the following schedule.

Payment	Due Date	Amount	Contract Period
#1	October 1, 2014	\$ 29,023.00	Sept. 1, 2014 – Aug. 31, 2015
#2	October 1, 2015	\$ 29,823.00	Sept. 1, 2015 – Aug. 31, 2016

The facility usage fee herein, includes all preparations for the facility to be practice or performance ready depending on the usage. The parties shall meet on or about June 2016 to discuss additional extensions of this Agreement and the basis for compensation for further agreements based on the parties' reciprocal use of facilities at that time.

5. **Facility Use.** The parties agree that each party will have priority use of the other party's facilities that are subject to this Agreement after the needs and responsibilities of the managing party have been met. Requests for facility use shall be upon standardized form provided by the Program Administrators. Each party shall be responsible for retaining facility use request forms and for preparing a summary table of facility use at the end of each fiscal year. This Agreement excludes existing joint facility use agreements, such as agreements for Sherman Field, Belmont Recreation Center, Irving Recreation Center, Calvert Recreation Center, Arnold Elementary School gym, Heritage School, and Dan. A. Williams Branch Library; any facility use associated with community learning centers; and any other existing and future facilities excluded by mutual agreement. The parties agree to work together to update the Common Facility Use Guidelines.

6. **Capital Repair and Replacement Costs.** The parties recognize that in most instances shared use of a facility managed and/or owned by the other party will represent a small portion of the overall use of the facility. As such, the manager/owner party shall be responsible for all capital repair, maintenance, upkeep, and replacement costs of facilities covered under this Agreement, unless a separate agreement approving the plans and providing for cost sharing has previously been or is entered into by the parties prior to commencement of the capital repair or replacement cost being incurred.

7. **Compliance with Laws and Regulations.** The parties shall conduct and use the facilities strictly in compliance with laws, ordinances, rules and regulations of the City, the State of Nebraska, and the United States, now and hereafter in effect during the term of this

Agreement. The party using the facility shall be charged with overseeing and enforcing use of the premises by patrons or user in compliance with the laws, ordinances, rules and regulations of the City and the State of Nebraska now and hereafter in effect during the term of this Agreement.

8. **Premises Maintenance and Cleanup.** Each party shall, at its sole cost, except as herein otherwise specifically provided, keep, maintain and repair the facilities under its management and/or ownership, and all improvements and facilities placed thereon, in good order, condition and repair to keep the premises in a clean, safe condition.

9. **Termination.** Either party has the right to terminate this Agreement, without cost, if the other party shall at any time be in default in the payment of the amounts due hereunder. Either party has the right to terminate this Agreement if the other party is in default in the performance of any of the other party's obligations or covenants, terms, conditions or provisions of this Agreement. Termination for breach may occur only after the non-breaching party provides thirty (30) days written notice to the breaching party of the failure to perform and the breaching party fails to cure default within the thirty (30) days.

10. **Indemnification.** To the fullest extent permitted by law, the parties shall mutually indemnify, defend and hold harmless each other and any officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of either party, its agents and employees, or anyone for whose acts any of them may be liable. This section will not require either party to indemnify or hold harmless the other party for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of one party. Neither party waives its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. The facility owner assumes no responsibility for the property of the users, including no responsibility for loss from fire, theft, pilferage or malicious mischief. This section survives any termination of this Agreement.

11. **Insurance.** Both parties agree to maintain such insurance or be self-insured to the extent that will fully protect both parties from any and all other claims of whatsoever kind or nature for damage to property or for bodily injury including death made by anyone whomsoever which may arise from use of the facilities for this Agreement.

12. **Fair Employment and Treatment.** City, LPS, and anyone acting by virtue of this Agreement shall not discriminate against any employee (or applicant for employment) with respect to hire, tenure, compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended, nor shall City, LPS, or anyone else, in conducting the business covered by this Agreement, discriminate against any patrons of the Ball Fields because of such person's race, color, religion, sex, national origin, ancestry, disability or creed.

13. **Fair Labor Standards.** The parties shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

14. **Nebraska Law.** This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

15. **Integration, Amendment, Assignment.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement and any rights, privileges, and authorities associated with it may not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

16. **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their respective assigns, executors, heirs, personal representatives, and successors.

17. **Severability and Savings.** Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other 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.

18. **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.

19. **Execution of Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall be one instrument and all of which shall be considered duplicate originals.

20. **Capacity.** The undersigned individuals do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind their respective parties to this Agreement.

CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

ATTEST:

Chris Beutler, Mayor

Date

LANCASTER COUNTY SCHOOL DIST. 001
A Nebraska Political Subdivision

Liz Standish,
Superintendent of Business Affairs

Date

Comparison of Value of City and LPS Use of Facilities			
Prepared by Lynn Johnson, 8/18/13			
Updated by City, 5/29/14			
Facility Type - Use	City - Credit	LPS - Credit	Notes
City Sports Fields/Courts	\$ 28,815		
excluding Sherman Field, tennis courts			
Pioneers Park cross-country	\$ 2,520		
City Nature Center	\$ 4,557	\$ -	
City Golf Courses	\$ 41,369	\$ -	
City Park Shelters	\$ 1,650		
LPS Gyms			
Adams		\$ 780	
Campbell		\$ 780	
Cavett		\$ 780	
Dawes		\$ 5,760	
Everett		\$ 780	
Humann		\$ 780	
Huntington		\$ 780	
Lux		\$ 5,760	
Maxey		\$ 780	
Park		\$ 8,640	
Prescott		\$ 780	
Randolph		\$ 780	
Roper		\$ 780	
LPS Pools			
Parks and Recreation	\$ 138	\$ 900	
LPS Track		\$ 3,716	
Subtotal LPR compared to LPS	\$ 79,049	\$ 32,576	
LPS Pools			
Fire Dive Rescue Training		\$ 50	one or two times per year
LPS Parking Lots			
North Star - Big Red Express		8250	
Seacrest, North Star - recycling sites		3600	two sites
LLHD household hazardous waste collection		200	zero to two times per year
LPS Multi-purpose rooms - PWU public meetings		1050	12 to 16 times per year
LPS Police substations- Schoo, Hawthorne		5100	
TOTAL City Compared to LPS		\$ 50,826	
BASE AMOUNT DUE		\$ 28,223	