

**AGREEMENT
REGARDING TRANSFER OF LAND AND
DEVELOPMENT IN HUSKERVILLE**

THIS AGREEMENT is made and entered into on this _____ day of _____, 2006, by and between the City of Lincoln, Nebraska, a municipal corporation (the "City"), the Airport Authority of the City of Lincoln, a body politic and corporation (the "Authority") and Lancaster County School District 001, a governmental entity, ("LPS").

WHEREAS, the City conveyed, transferred and assigned to the Authority, pursuant to Resolution No. A46618, passed by the City Council of the City on May 11, 1959, certain property legally described as a portion of Lot 17, Irregular Tracts in the Southwest Quarter of Section 6, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, excluding 20.35 acres, more or less, conveyed to the Housing Authority of the City of Lincoln by Deed No. 1994-021468 filed in the office of the Register of Deeds of Lancaster County, Nebraska, on March 24, 1994. Said property comprises 71.73 acres, more or less; and

WHEREAS, LPS wishes to acquire a site for a new school in the vicinity of Northwest 48th Street and West Cuming and the Authority is agreeable to transferring a portion of the above-described property to LPS for use as a school site, with the concurrence of the City; and

WHEREAS, the Authority may, pursuant to Neb. Rev. Stat. § 3-503(5) (2004 Cum. Supp.) surrender its use and occupancy of real property, which is no longer required for its corporate purposes to the City, but pursuant to restrictions on the diversion of Airport revenue contained in the "Policy and Procedures Concerning the Use of Airport Revenue" promulgated by the Department of Transportation Federal Aviation Administration [Policy 4910 -13], proceeds from the sale, lease, or other disposal of Airport property are considered Airport revenue and must be retained for payment of capital or operating costs of the Airport, the local Airport system, or other local facilities owned or operated by the Airport owner or operator; and

WHEREAS, the Authority also wishes to clarify future use of the remaining portions of said Lot 17 in anticipation of future development in the immediate vicinity of the proposed school site.

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

ARTICLE I

DESCRIPTION OF PROPERTY; SUBDIVISION

1.1 The property legally described as part of Lot 17, Irregular Tracts in the Southwest Quarter of Section 6, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, containing ±71.73 acres, excluding the East right-of-way (more or less) is, for purposes of this Agreement, divided into 8 tracts legally described as follows:

- (a) **Tract 1.** As shown and legally described on Exhibit "A"
- (b) **Tract 2.** As shown and legally described on Exhibit "A"
- (c) **Tract 3.** As shown and legally described on Exhibit "A"
- (d) **Tract 4.** As shown and legally described on Exhibit "A"
- (e) **Tract 5.** As shown and legally described on Exhibit "A"
- (f) **Tract 6.** As shown and legally described on Exhibit "A"
- (g) **Tract 7.** As shown and legally described on Exhibit "A"
- (h) **Tract 8.** As shown and legally described on Exhibit "A"

1.2 Subdivision. In order to effectuate the transfers hereunder, the parties agree to join, if necessary, in an application for the subdivision of that portion of Lot 17, Irregular Tracts in the Southwest Quarter of Section 6, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, that is the subject of this Agreement. All costs associated with obtaining approval of such subdivision shall be borne equally by LPS and the Authority.

ARTICLE II

TRANSFER TO SCHOOL DISTRICT

2.1 Sale. The Authority, with concurrence of the City, agrees to transfer and convey, and LPS agrees to purchase, upon the terms and conditions set forth in this Agreement, Tract 1 containing \pm 19.38 acres, as shown on page 1 of Exhibit "A" and legally described on page 2 of Exhibit "A." The sale shall include all improvements and fixtures located thereon and all rights and appurtenances thereunto pertaining. The City of Lincoln and Lincoln Public Schools agree to work cooperatively to develop a storm water management plan for Tract 1 and implement that plan. Tract 6 may be used as a component of the storm water management plan based on this cooperative planning and implementation.

2.2 Purchase Price. The purchase price for Tract 1 shall be Two Hundred Ninety Thousand Seven Hundred Dollars \$(290,700.00). It is understood and agreed by the parties hereto that the whole of the Purchase Price shall be paid directly to the Authority and the City shall be entitled to no part thereof.

2.3 Title Conditions. The Authority shall convey Tract 1 free and clear of all liens and encumbrances, except:

- (a) Zoning and building restrictions and regulations applicable thereto that are in effect at the date of Closing;

- (b) Covenants, easements and restrictions now recorded against or affecting Tract 1;
- (c) An Avigation and Noise Easement as required by Section 27.58.080 of the Lincoln Municipal Code.

2.4 Survey. Within forty-five (45) days from the date hereof, LPS, at its sole cost and expense, may obtain a current certified ALTA/ACSM land title survey of Tract 1.

2.5 Title Commitment.

(a) A title insurance commitment shall be obtained by LPS from the title company of its choice for an owner's policy of title insurance, insuring title to Tract 1 in LPS. The title commitment shall list as exceptions all easements, restrictions, encumbrances, reservations, liens, and other matters affecting Tract 1. The title commitment shall include legible copies of all instruments creating any such exceptions. Cost of the title commitment will be paid one-half by LPS and one-half by the Authority. LPS shall approve or disapprove title to Tract 1 within forty-five (45) days from the date of this Agreement. If any defect in title is discovered during the examination of the title commitment by LPS, LPS shall furnish Authority with a copy of the opinion, which reflects such defect. Authority shall have a reasonable time to cure such defect and Authority shall bear the expense of curing the same. If efforts to cure any such defect fail, the parties shall have the option to rescind this Agreement by delivering written notice to the other party.

In the event that any of the exceptions, in the opinion of LPS, materially detract from the ability of LPS to use the same, LPS shall notify the Authority who shall have a reasonable time to obtain release or removal of such exception and Authority shall bear the expense of curing the same. If efforts to remove the exception fail, LPS shall have the option to rescind this Agreement by delivering notice to the other parties.

(b) It is understood that the City holds the underlying legal title to Tract 1, subject to the use and occupancy of Tract 1 by the Authority. The City agrees to expeditiously take such steps as are necessary to declare the property surplus and to thereafter authorize its sale and transfer to LPS, and to authorize the Mayor to execute a good and sufficient deed and such other documents as may be necessary to effectuate the conveyance and transfer of Tract 1 to LPS.

2.6 (a) Environmental Assessment Study. LPS, at its sole cost and expense, shall have forty-five (45) days from the date hereof within which to conduct a Phase I and Phase 2 Environmental Assessment Study as it may elect in its sole judgment to determine the suitability of Tract 1 for LPS' purposes. If the Examination discloses matters that make Tract 1 unsuitable for LPS' purposes, or which require remediation or constitute a violation of applicable environmental law regulations, in LPS' sole opinion, then LPS may terminate this Agreement by giving written notice within such forty-five (45) day period to the Authority and parties hereto shall have no further obligation hereunder.

(b) Investigations. LPS, including any parties acting on behalf of LPS, at LPS' sole cost and expense, shall be entitled to enter upon Tract 1 to conduct any tests, studies, investigations, reports, surveys, and inspections that LPS deems necessary.

(c) Indemnification. LPS shall indemnify, defend, and save Authority harmless from and against all costs, claims, expenses, or damages arising out of its entry upon Tract 1 not caused by the negligence or willful misconduct of the Authority or its agents, employees, tenants or assigns. This obligation to indemnify shall survive the consummation or earlier termination of this Agreement.

2.7 Date of Closing. Closing on Tract 1 shall occur at the office of the title company selected by LPS at a time mutually agreed by the parties, on or before April 9, 2007, unless extended as provided herein (the "Closing Date").

2.8 Seller's Obligation. At Closing, the Authority shall deliver the following:

- (a) A quitclaim deed, fully executed and acknowledged by the Authority and the City, in proper form for recording, conveying fee simple title to Tract 1 to LPS, free and clear of all liens and encumbrances, except as provided in Paragraph 2.3 above.
- (b) Such other documents as may be reasonably required by LPS' counsel or the title company and acceptable to LPS to effectuate the purposes of this Agreement and convey title to Tract 1 to LPS.
- (c) Complete and exclusive possession of Tract 1 to LPS, subject to the exceptions described herein, in the same condition as Tract 1 is in on the date of this Agreement, ordinary wear and tear excepted.

2.9 Purchaser's Obligations. LPS shall deliver to the title company at Closing, in immediately available United States funds, the Purchase Price described in Paragraph 2.2 payable to the Airport Authority of the City of Lincoln.

2.10 Closing Costs, Adjustments and Prorations. It is understood and agreed that the entities involved in this Agreement are exempt from the payment of real property taxes and that no taxes have been levied upon Tract 1 for calendar year 2006 or prior years. Any other taxes or special assessments and charges, if any, that have been assessed, levied, or recorded as a lien on Tract 1 shall be paid by the Authority. All survey charges and recording costs shall be paid by LPS. Each party shall be responsible for its own attorneys' fees. Title commitment and title insurance policies and costs of Closing described above will be shared equally by both the Authority and LPS.

2.11 Default. In the event either party fails to comply with any of the material terms of this Agreement for a period of ten (10) days after receiving written notice from the non-defaulting party specifying the nature of the default, then the non-defaulting party may declare an event of default and thereupon, by written notice, terminate this Agreement.

2.12 No Broker. The parties agree that no party hereto should be liable for any real estate broker's commission, agent's commission, or finder's fee in connection with the

transaction contemplated by this Agreement. The parties represent that no broker, agent, or finder was used to bring about this sale.

2.13 “As-Is,” “Where-Is” Condition of Premises. Authority agrees to deliver Tract 1 in its present “As-Is” condition, except as otherwise specified herein. Authority certifies and represents that Authority knows of no latent defects of the property and knows of no facts materially affecting the value of the property. LPS has inspected Tract 1 and has not relied upon any representations made by any person and LPS accepts Tract 1 in its present “As-Is” condition.

ARTICLE III

TRANSFER OF RIGHT-OF-WAY AND OTHER PROPERTY TO CITY; PAVING OF WEST CUMING; TRANSFER OF LIBRARY AND RECREATIONAL CENTER SITE; BUILDING PERMIT; ETC.

3.1 Surrender of Right of Way and Open Space. The Authority and the City recognize and agree that the construction and development of roads within the vicinity of the remaining Tracts 2 and 3 to be developed by the Authority, the waiver of future connection fees to the twelve inch water main for Tract 3, and approval of rezonings as requested in Article IV enhance the value of Tracts 2 and 3 to an extent at least equal to the value of the right of way and other property being surrendered herein. Therefore, the Authority agrees to surrender to the City, at no cost to the City, the following properties currently under the control of the Authority, for right of way and other designated purposes:

3.1.1 Tract 4 as right of way for West Cuming Street.

3.1.2 Tract 5 as right of way for Northwest 56th Street.

3.1.3 Tract 6 for flood storage, recreational open space, utilities, and right of way.

3.1.4 Tract 7 as right of way for Northwest 48th Street.

3.2 The Authority also agrees to surrender to the City on or before closing, at no cost to the City, Tract 8, as shown on page 1 of Exhibit “A” and legally described on page 2 of Exhibit “A,” comprising approximately 4.47 acres to be used by the City as a site for a City library and for a community recreational center and accessory uses related thereto. If the City determines to not locate either a library, recreational center and/or some other public use on the Tract 8 site, the City shall first offer it for sale to LPS for its then appraised value as determined by an appraiser to be mutually agreed upon by the City and LPS. In the event LPS does not then desire to purchase the Tract 8 site, the City then may sell part or all of the land to another party for development that is appropriately located next to an elementary school.

3.3 Paving of West Cuming Street. The City agrees, at its own cost and expense, to pave West Cuming Street to a width of not less than two lanes from the intersection of West Cuming and Northwest 48th Street west to a point just beyond the northwesternmost entryway to the proposed school site, it being understood that such paving distance will be no more than 1,600 feet measured from the center line of the intersection of West Cuming and Northwest 48th

Street. Such pavement shall be to urban cross-section standards, and when completed the same shall be a public street of the City of Lincoln and subject to operation, maintenance, repair, and replacement by the City according to the standards and procedures typical for other public streets of the City. The City agrees that the paving of West Cuming as provided herein shall be completed and ready for access and traffic by the public no later than December 31, 2008. It is understood that the main entry to the school site, and location of the future median break in West Cuming will be approximately 1,000 to 1,320 feet west of the centerline of the intersection of Northwest 48th Street and West Cuming Street.

3.4 LPS Agreement on Waterline and Bike Path. LPS agrees to pay for the costs of for an 8 inch equivalent of a 12 inch water main along the northern boundary of the property it is receiving under this Agreement for a linear distance that runs from the northeast corner of its property line to the northwest corner of its property line as shown on Exhibit "A." The remainder of the cost of the 12 inch water main shall be paid for by the City. The City and LPS agree that the water mains will be installed so that Tract 1 will have workable fire hydrants located thereon by no later than October 15, 2007. In addition, LPS agrees to build and pay for a 10 foot wide bike path from such southwest corner to approximately the northeast corner of the site. Part or all of the path may be built with the construction of the school, or when the City or a developer builds the adjacent segment of bike path or as late as the time that both points (SW and NE corners) have been brought to the site.

3.5 School Building Permit. The City of Lincoln agrees that the approval of the LPS building permit for Tract 1 will not be conditioned upon having an adjacent paved public street. LPS will provide a construction access to Tract I to facilitate emergency and fire department vehicle access to the construction site.

ARTICLE IV

DEVELOPMENT BY AUTHORITY

4.1 Development Rights of Authority. The City and the Authority agree that the Authority shall have the right to develop or sell, transfer, and convey for development, Tracts 2 and 3 for residential purposes and to sell, lease, transfer, and convey the same to such persons or entities as the Authority may choose, in its sole discretion.

4.2 Consideration. Any consideration paid by any person or entity to whom such property is transferred by the Authority shall be paid to the Authority and the City shall be entitled to no portion thereof.

4.3 City Cooperation. The City agrees to take such steps as may be necessary, when requested by the Authority, to declare such property surplus and to thereafter authorize the sale, transfer, and conveyance of the same and to authorize the Mayor to execute such deeds and other documents as may be reasonably required to effectuate such sale, transfer, or conveyance. The City of Lincoln and the Authority further agree to work cooperatively to develop a storm water management plan for Tracts 2, 3 and 8 and to implement that plan. Tract 6 may be used as a component of the storm water management plan and site for storm water detention facilities based on this cooperative planning and implementation.

4.4 Zoning. The City agrees to support such changes of zone as are necessary to cause all of Tract 2 to be zoned R-3 Residential and all of Tract 3 to be zoned R-5 Residential. The Authority and the City agree to support such changes of zone as may be necessary to cause the LPS Tract to be zoned for school and related purposes or as necessary in order for LPS to develop its portion of Tract 1 for its lawful purposes.

4.5 No Additional Dedication Requirements. In consideration of the transfers of right of way contemplated under Article III hereof, and other considerations in this Agreement, the City agrees any subsequent subdivisions or other developments of Tract 2 and 3, whether by the Authority or a third party, shall not:

(a) Be conditioned upon the dedication of additional right of way for West Cuming Street or for Northwest 56th Street, or

(b) Be conditioned upon the dedication of additional land for public facilities (other than standard utility easements), including, but not limited to, land for parks, substations, or drainage facilities, or upon contributions in lieu thereof, other than impact fees imposed pursuant to Chapter 27.82 of the Lincoln Municipal Code.

(c) Be required to pay or reimburse for the cost of the 12 inch main in West Cuming Street from Northwest 48th Street to the western limit of the Tract 1 (Lincoln Public School site).

Nothing contained herein is intended to prevent the City from negotiating with any subsequent owner of Tract 2 for realignment of Northwest 56th Street if the City concludes a shift in alignment is more desirable and cost effective.

The Authority agrees that Tract 2 shall provide a 20 foot wide trail easement (as shown on page 1 of Exhibit "A") on the southern boundary of Tract 2, from the southwest corner to the southeast corner of Tract 2 and along the eastern boundary of Tract 2 from the southeast corner of Tract 2 to the trail connection on Tract 1 (the Lincoln Public School site).

4.6 No Surrender Until Sale. Unless and until the conditions set forth in Paragraphs 4.1 to 4.4 above are met, this Agreement or any other actions of the Authority shall not be construed as a surrender of the Authority's use and occupancy of Tracts 2 and 3.

ARTICLE V

GENERAL CONDITIONS

5.1 Notice. All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses:

If to Authority:

Executive Director
Airport Authority of the City of Lincoln
P.O. Box 80407

Lincoln, NE 68501

If to City: City Clerk
City of Lincoln
555 S. 10th Street, Room 103
Lincoln, NE 68508

If to LPS: Associate Superintendent for Business Affairs
Lincoln Public Schools
5901 O Street
Lincoln, NE 68510

Notice shall be deemed served three (3) days after deposit in an office of the United States Postal Service, or successor governmental agency, registered or certified mail, return receipt requested.

5.2 Integration. This Agreement constitutes the entire agreement between the parties related to the matters and issues set forth herein and shall be deemed to be a full, final and complete integration of all prior or contemporaneous understandings or agreements between the parties related thereto.

5.3 Additional Documentation. The parties shall execute such additional documentation as reasonably may be required to effectuate this Agreement.

5.4 Amendment. This Agreement may be amended or supplemented only by written instrument signed by all parties hereto.

5.5 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be considered an original, but together shall constitute but one and the same Agreement.

5.6 Captions. The captions or paragraph headings are for convenience and ease of reference only and shall not be construed to limit, modify, or alter the terms of this Agreement.

5.7 Calculation of Time. In the event the final date of any time period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday, in such event, such time period shall be extended to the next regular business day.

5.8 Time. Time is of the essence of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

AIRPORT AUTHORITY OF THE
CITY OF LINCOLN, a body
corporate and politic

By: _____
John Wood, Executive Director

CITY OF LINCOLN,
a municipal corporation

By: _____
Coleen Seng, Mayor

LANCASTER COUNTY SCHOOL
DISTRICT 001

By: _____
Dennis Van Horn,
Associate Superintendent for
Business Affairs

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The above and foregoing instrument was acknowledged before me on this _____ day of _____, 2007, by John Wood, Executive Director of the Airport Authority of the City of Lincoln, a body politic and corporate, and on its behalf.

Notary Public

