

**LEASE AGREEMENT BETWEEN LINCOLN PARKS AND RECREATION
DEPARTMENT AND LINCOLN PARKS AND RECREATION FOUNDATION**

This Lease Agreement (“Agreement”) is entered into by and between the City of Lincoln on behalf of Lincoln Parks and Recreation Department (“Parks”) and the Lincoln Parks and Recreation Foundation (“Foundation”) as of the date of execution by Parks below. In consideration of the mutual covenants and promises contained herein, Parks and Foundation do agree as follows:

1. FACILITY USE.

Parks grants Foundation the right to occupy a portion of office space at the Parks & Recreation Department’s administrative office, located at 2740 A Street, Lincoln, NE 68502 (the “Building”) of approximately 230 square feet located in the northeastern area of the building, which office space shall hereinafter referred to as “Premises.” The Foundation shall use the leased space solely for operating an office on behalf of the Foundation. Said use shall be a full-time use Monday through Friday with general office hours from 8:00 a.m. to 4:30 p.m. Foundation’s designated staff shall have access to the Premises outside of public hours. Any invited guests to the Building by Foundation outside of public hours shall be accompanied by Foundation staff, and Foundation assumes all responsibility for any invited guests at those times. Certain designated staff of Parks and designated contract workers shall have access to Foundation’s Premises.

2. TERM.

The term of this Agreement shall commence on October 1, 2011 and shall terminate on April 30, 2024.

3. COMPENSATION.

For the lease of the Premises provided pursuant to this Agreement, Foundation agrees to pay Parks a total of \$25,000.00 towards construction costs of the Premises for rental of the Premises for the term of the Agreement. City recognizes the \$25,000.00 contribution to construction as prepayment of rent for the space at \$8.00 per square foot on an annual basis for 13.5 years. Any new agreement after the expiration of the Agreement shall require new consideration beyond the cost of construction of the Premises.

4. TERMINATION FOR BREACH.

Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section 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. Foundation shall not be entitled to pro-rata return of its contribution to the construction of the Premises.

5. TERMINATION FOR CONVENIENCE.

Either party has the right to terminate this Agreement for any reason for its own convenience. If Parks terminates this Agreement for convenience, Parks shall provide Foundation with thirty

(30) days written notice of the termination. In the event of such termination by the City, the Foundation shall be entitled to pro-rata return of its contribution to the construction of the Premises.

6. RESPONSIBILITIES OF FOUNDATION.

Foundation agrees to apply for and obtain any and all necessary permits, certifications, licenses, variances and approvals required by any applicable law or regulations that relate to the use of the Premises. Foundation agrees to conduct all activities related to this Agreement in a lawful manner. Janitorial services and utilities of electricity/water/sewer/garbage are included in the rental payment. Foundation shall provide its own phone, phone service, and internet service and shall pay its own phone and internet service bill. Foundation shall keep the Premises in a clean and sanitary condition. All furnishings for the Premises shall be provided by Foundation. The Premises shall be occupied solely by individuals associated with Foundation and shall only be used in a manner consistent with operating the Foundation's business. Foundation shall pay all direct costs of paper, printing, postage, and copying; provided, however, the Foundation may utilize copying equipment of Parks subject to reimbursement by the Foundation for all accrued costs.

7. RESPONSIBILITIES OF PARKS.

Parks shall permit the Foundation to use Parks facilities, including parking, at no additional cost or expense for meetings in the Building for the Foundation Board of Directors or other meetings as reasonably requested in advance; however, Parks shall have first priority to use its own facilities. Such meetings shall not include use of facilities under an exclusive use permit unless such event is co-sponsored with Parks; any such arrangement must be agreed to in writing separate from this Agreement. Parks shall repair and maintain the foundations, exterior walls (except store fronts, plate glass doors, and other breakable materials used in structural portions) pipes, plumbing, heating and cooling systems, electrical wiring, switches, fixtures, provide for roof repairs/replacement of the Building, and perform exterior maintenance of the Building and the surrounding grounds. By taking possession of the Premises, Foundation accepts the Premises in its then "as is" condition and acknowledges that the Premises are in good and satisfactory condition at the time Foundation takes possession of the Premises. Parks is not responsible to make any repairs or alterations to the Premises once constructed, or to do any remodeling or decoration.

8. ALTERATIONS AND IMPROVEMENTS. Upon termination of the Agreement, Foundation shall surrender the Premises in the same condition as received, excluding ordinary wear and tear. Foundation shall make no alteration or additions to Premises without first obtaining written consent by Parks. Foundation shall have the right to construct, at its expense, on the Premises, improvements (all of which shall be considered to be the property of Foundation during the terms of this Agreement) and to make all alterations or additions thereto and to remove, remodel, demolish, and rebuild the same, provided Foundation obtain written consent of Parks that all work shall be in accordance with applicable laws. All additions, fixtures and improvements made in or upon the Premises shall be Parks' property, and shall remain upon the Premises at the termination of this Agreement without compensation to Foundation unless otherwise agreed to in writing. All Foundation's personal property not removed from the

Premises within thirty (30) days of termination of the Agreement shall be conclusively presumed to have been abandoned by Foundation and forthwith become Parks' property.

9. SIGNS.

Foundation may erect signs as needed to identify and advertise its operation in or on the Building. Foundation must obtain permission from Parks before placing any signs on or about the Building and have Parks approval of the appearance of signs. Foundation shall, at Foundation's expense, remove all signs at the termination of this Agreement, and the removal shall be in such manner as to avoid any injury, defacement or overloading of the Building or other improvements.

10. SEPARATION OF ENTITIES.

Foundation is nonprofit corporation and a separate and distinct entity from Parks. It is expressly understood that neither Foundation nor any of its staff are employees of City of Lincoln and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

11. INDEMNIFICATION. To the fullest extent permitted by law, Foundation shall indemnify, defend and hold harmless Parks, its 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 claims 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 there from that is caused by the intentional or negligent act or omission of Foundation or anyone for whose acts any of them may be liable. This section will not require Foundation to indemnify or hold harmless Parks for any losses, claims, damages, and expenses arising out of or resulting from the negligence of Parks. Parks does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

12. INSURANCE.

A. Foundation shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Foundation and 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 operations under this Agreement whether such operations by Foundation and Foundation's agents. 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;
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate;
3. Personal Injury Damage - \$1,000,000 each Occurrence;
4. Contractual Liability - \$1,000,000 each Occurrence;
5. Products Liability and Completed Operations - \$1,000,000 each Occurrence;
6. Medical Expenses (any one person) - \$10,000;
7. Fire Damage (any one fire) - \$100,000.

- B. A Certificate of Insurance for its General Liability Insurance shall be provided and attached to this Agreement by Foundation. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance.
- C. Foundation 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.
- D. All commercial general liability and other property policies maintained by Foundation shall be written as primary policies, not contributing with and not supplemental to the coverage that City may have.

13. AUDIT.

Foundation shall make one copy of its annual audit available to Parks each year. If Parks becomes subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code, the Foundation agrees to make available to a contract auditor copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

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, AMENDMENTS, 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 may not be assigned and the Premises may not be subleased without the prior written consent of City.

16. SEVERABILITY & SAVINGS CLAUSE.

Each 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.

17. E-VERIFY.

In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Foundation agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Foundation shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. § 1324b. Foundation shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

18. CAPACITY.

The undersigned person representing Foundation does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Foundation to this Agreement.

IN WITNESS WHEREOF, City of Lincoln and the Lincoln Parks and Recreation Foundation do hereby execute this Agreement.

CITY OF LINCOLN

Mayor

Date

LINCOLN PARKS AND RECREATION FOUNDATION

Liz Lange

Foundation Board President

9.15.11

Date