

INTERLOCAL AGREEMENT REGARDING HERITAGE SCHOOL

This Interlocal Agreement ("Agreement") is made and entered into on the dates provided below by and between LANCASTER COUNTY SCHOOL DISTRICT 001, a political subdivision, commonly known as Lincoln Public Schools (hereinafter referred to as "LPS") and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, (hereinafter referred to as "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 cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act and no separate legal or administrative entity is created under this Agreement; and

WHEREAS, City moved the Heritage School House ("Heritage School") from the Nebraska State Fairgrounds to its current location at Pioneers Park adjacent to the Nature Center pursuant to an agreement authorized by Executive Order No. 82653 on October 19, 2009; and

WHEREAS, in addition to other sources of funding, LPS has provided partial funding for the move of Heritage School to its current location and improvements made to Heritage School after the move which LPS has already been billed for and paid. LPS and City have agreed as to who would pay for certain on-going utilities costs as provided herein, and that the funding or shared funding of additional improvements, such as a new roof, at such time that those improvements were necessary; and

WHEREAS, LPS has used and shall continue to use Heritage School for its 4th grade curriculum since it was moved to its current location, but the parties find it prudent to memorialize their respective expenses and obligations for the ongoing use of Heritage School; and

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

1. Purpose, Program Administrators and Duration:

A. Purpose. The purpose of this Agreement is to create a cooperative undertaking between LPS and the City. As such, this Agreement is hereby established between the parties to provide for maintenance and other obligations for Heritage School. No separate legal entity is being created to conduct the cooperative undertaking by the parties. By this Agreement, City grants LPS a license to use Heritage School as a part of its 4th grade curriculum as provided herein. The parties agree to mutual, non-exclusive use of Heritage School except to the extent that the parties otherwise agree to in writing.

B. Program Administrators. Except as otherwise provided herein, the cooperative undertaking shall be administered by a program administrator from LPS and a program administrator from City (the "Program Administrator(s)"). City hereby designates the Director of the Park and Recreation Department of the City of Lincoln, or designee as its Program Administrator under this Agreement. LPS hereby designates the Director of Facilities and Maintenance or designee as its Program Administrator under this Agreement. The Program Administrators shall be directly responsible for making decisions and for administering and managing the use and obligations of Heritage School, to include but not limited to its ongoing day-to-day use, maintenance and upkeep, utilities, and other administrative items and details of this cooperative undertaking. The Program Administrators shall mutually administer this Agreement and agree on the rules, regulations, practices, procedures and parameters of utilization as provided herein. The Program Administrator may be changed from time to time by any party appointing a successor Program Administrator upon no less than seven (7) days advance written notice to the other party.

C. Duration and Rent. This Agreement shall be in full force and effect for a term of twenty (20) years from and after the execution of the Agreement by the parties (initial term) and may be renewed for additional five (5) year terms (renewal term(s)) as mutually agreed upon by the parties. There shall be no charge or other rent due to the City from LPS for such use for the duration of this Agreement, as the payment of other obligations or expenses as noted and set forth herein shall constitute sufficient consideration herein. Either party shall notify the other party ninety (90) days in advance of any intent to terminate the Agreement. In the event that Heritage School is destroyed, significantly damaged, or rendered unusable by fire, earthquake, tornado, hurricane, wind, flood, act of God, or other natural disaster or catastrophic occurrence, this Agreement shall be terminated immediately by that occurrence. Any expenses or obligations shall be completed until the effective date of the termination.

2. Design, Construction Cost and Maintenance Responsibility. Except as provided herein, City shall be responsible for the design, oversight, and actual construction of any improvements to Heritage School. City agrees that the LPS will be kept advised with respect to construction issues and progress of major improvements and may counsel with LPS whenever it deems appropriate. LPS and City Program Administrators must agree upon and approve major improvements and construction timelines. City shall endeavor to provide LPS with twelve (12) months' notice of a major improvement to allow time for budgeting unless the situation requires urgent attention. LPS shall contribute 75% of the cost of any major improvements to City, with City bearing the remaining 25% of costs. Pursuant to the parties' agreement at the time that Heritage School was relocated, LPS shall bear the total cost for construction of a new roof when replacement is deemed necessary by City. The Program Administrators shall come to mutual agreement on cost sharing of any minor improvements or other costs that arise from time to time.

3. Ongoing Maintenance and Cost Responsibility. During the school year, LPS shall keep Heritage School in a clean, sanitary, and safe condition and cause all papers, rubbish, empty containers, garbage, and other trash accumulated inside Heritage School to be picked up and placed in trash and garbage containers, which containers shall be kept in a clean and sanitary condition. City shall be responsible for garbage pick-up costs and maintenance of the immediately surrounding grounds, including cleanup of rubbish and garbage outdoors. In the event that walks or drives are installed or existing, City shall maintain and clear snow from those walks and drives as needed to provide access to Heritage School and shall mow and maintain the immediately surrounding grounds. City shall pay for any electricity and water that is supplied to Heritage School. LPS shall pay for any propane needed to heat Heritage School and for the portable restroom, including weekly cleanings throughout the year. City shall be responsible for any minor maintenance and repairs to the Heritage School and surrounding grounds during the term of the Agreement.

4. Use of Heritage School. During the school year, LPS shall be permitted to use Heritage School for its 4th grade curriculum, shall be in control of the schedule for all use, and shall provide an instructor for all groups scheduled for use. LPS shall schedule and provide instruction for the local parochial schools as well as other schools from Southeast Nebraska that may visit Heritage School, including Milford, Norris, and Malcolm. LPS shall provide City's Program Administrator with a calendar of scheduled uses at least thirty (30) days in advance of the planned use. LPS shall assume all responsibility for supervision during use throughout the school year. City shall schedule use of Heritage School on limited weekends and during the summer months.

5. Indemnification. LPS shall indemnify, defend, and hold the City, its officers, agents and employees harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from its use of Heritage School or the immediately surrounding grounds 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 any intentional or negligent act or omission.

City shall indemnify, defend, and hold LPS, its officers, agents and employees harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from its use of Heritage School or the immediately surrounding grounds 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 any intentional or negligent act or omission.

This section shall 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. The parties do 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.

6. Personal Property and Improvements. All personal property of LPS including fixtures kept, stored, or maintained at Heritage School shall be so kept, stored, or maintained at the sole risk of LPS. Upon the expiration of this Agreement or its termination as herein provided, all structures and other improvements installed, built, or funded by LPS shall be City's property, and shall remain upon thereon without compensation to LPS unless otherwise agreed to in writing. The parties agree to coordinate as to appropriate signage for Heritage School, if any.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns.

7. Amendments. This Agreement may only be amended or modified in writing signed by all parties to this Agreement.

8. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

9. Execution in Counterparts. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. Invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

11. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally.

12. Severability and Savings. 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.

13. 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

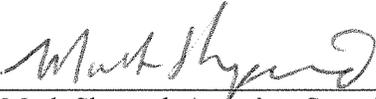
14. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the

City, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties, other than contractual relationships stated in this Agreement.

15. Assignment. In the case of the assignment of the obligations under this Agreement by any of the parties hereto, prompt written notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other party to this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this document by its duly authorized officer this 28th day of March, 2013.

LANCASTER COUNTY SCHOOL DISTRICT 001

BY: 
Mark Shepard, Associate Superintendent for Business Affairs

CITY OF LINCOLN, NEBRASKA

BY: _____
Chris Beutler, Mayor of Lincoln