

**AGREEMENT REGARDING FUNDING
FOR WOODS PARK TENNIS CENTER PROJECT**

THIS AGREEMENT is entered into by and between the City of Lincoln, Nebraska on behalf of Lincoln Parks and Recreation Department (“City”) and the Lincoln Parks and Recreation Foundation (“Foundation”)

WHEREAS, Lincoln Parks and Recreation Department is a department of the City of Lincoln that provides and maintains quality parks and green spaces and offers enriching recreation activities and facilities for all people in the City of Lincoln, in accordance with Title 12 of the Lincoln Municipal Code and the City Charter.

WHEREAS, City is the owner of Woods Park, located generally west of 33rd Street, south of "O" Street and north of "J" Street, in Lincoln, Lancaster County, Nebraska, where the Woods Park Tennis Center is currently located and operated.

WHEREAS, Friends of Woods Tennis, Inc. (“FOWT”) is a Nebraska non-profit corporation organized for the purpose of capital improvements, fundraising, and operation of the Woods Park Tennis Center for tennis programming, including lessons, clinics, and leagues, for members of the public, consistent with its Articles of Incorporation and agreements with City, as amended from time to time.

WHEREAS, Lincoln Parks and Recreation Foundation is a Nebraska non-profit corporation organized for the purpose of soliciting and receiving gifts, bequests, grants and devises of property for the use and benefit of Lincoln Parks and Recreation Department, consistent with its Articles of Incorporation as amended from time to time.

WHEREAS, FOWT and the Foundation, with City’s approval, have been engaged in fundraising for a capital campaign called “Taking the Game to the Community” for construction of a new Woods Park Tennis Center indoor tennis building and related facilities to replace the two current aging air structures or “bubbles” that shelter six indoor tennis courts. A new permanent, more energy efficient building is proposed to be constructed that shall consist of six new indoor courts, indoor restrooms, and center mezzanine. The project will result in an additional three outdoor tennis courts when the “bubbles” are removed.

WHEREAS, the parties are desirous of setting forth in this Agreement the mutual responsibilities and understandings of the organizations regarding construction, transfer or dedication of funds, and establishment and maintenance of endowments for the Woods Park Tennis Center in the City of Lincoln.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the parties do agree as follows:

1. **Construction and Endowment of Woods Park Tennis Center.** The parties agree that (a) the City intends to cause the new Woods Park Tennis Center to be constructed

through a construction manager at risk agreement subject to a guaranteed maximum price which allows the Woods Park Tennis Center to be designed, managed, constructed, and fully endowed at a cost which does not exceed the total project cost as provided below in accordance with design plans based upon the attached conceptual images, as shown in Exhibit "A" and incorporated herein by this reference, (b) the project shall include the establishment of an endowment for the ongoing maintenance and repair and replacement costs for the new Woods Park Tennis Center in the amount of at least Six Hundred Thousand Dollars (\$600,000), and (c) the total project cost, including construction, design, special inspections, campaign costs and the endowment, will total no more than Six Million Three Hundred Thirty Eight Thousand Three Hundred Seventy Dollars (\$6,338,370), (\$1,710,000 from City; \$4,539,370 from Foundation, and \$89,000 previously raised from other sources).

2. **City's Role.**

A. **Construction, Financial Assistance.** City, contingent upon the City Council's approval by resolution, shall provide One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) in funding to the Woods Park Tennis Center project, in addition to Three Hundred and Sixty Thousand Dollars (\$360,000) already approved by City in 2015 through Ordinance No. 20234 from keno funds; Fifty Thousand Dollars (\$50,000) through the City's Capital Improvement Program for FY 2012-13 and 2013-14 from General Revenue funds; and Fifty Thousand Dollars (\$50,000) approved by the City in 2013 through Resolution No. A-87532 from keno funds, for a total of One Million Seven Hundred Ten Thousand Dollars (\$1,710,000).

B. **Construction.** In consideration of Foundation's agreement to provide funds for the Woods Park Tennis Center project in the amount of Four Million Five Hundred Thirty-Nine Thousand Three Hundred Seventy Dollars (\$4,539,370) (\$3,939,370 toward the hard and soft costs of Construction, including fundraising campaign expenses in the amount of \$280,000 + \$600,000 Endowment), as provided in paragraph 3 below, City shall enter into a construction manager at risk agreement for construction of Woods Park Tennis Center subject to a guaranteed maximum price that is acceptable to the City. In the event the construction manager at risk's guaranteed maximum price proposal is not acceptable to the City, in the City's sole and exclusive judgement, the City may elect to not proceed with construction of the Woods Park Tennis Center and terminate this Agreement. City shall have final review and approval on all design considerations for Woods Park Tennis Center. Any remodeling, rebuilding, or other improvements, alterations, or additions to the Woods Park Tennis Center shall be subject to written approval by City.

3. **Foundation's Role.**

A. **Financial Assistance.** Foundation shall assist City in receiving and managing funds for construction of the Woods Park Tennis Center. Foundation will establish a project specific account for the purpose of holding charitable donations to be utilized for construction of the new Woods Park Tennis Center. Foundation upon the City Council's approval of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) by ordinance or resolution, as provided in paragraph 2 above, shall provide Three Million Nine Hundred Thirty-Nine Thousand Three Hundred Seventy Dollars (\$3,939,370) in funding for the Woods Park Tennis Center project, to be utilized for project-related costs, including fundraising campaign expenses incurred

by the Foundation. City will invoice Foundation as needed for construction and other project-related costs, and Foundation will provide payment within thirty (30) days.

B. **Endowment.** Foundation shall assist City in receiving and managing funds for the Endowment. Foundation shall set up and fully fund the Endowment in the amount of Six Hundred Thousand Dollars (\$600,000) for the new Woods Park Tennis Center within ten (10) days after approval of this Agreement by the City Council. Foundation and City shall mutually agree on the terms of such Endowment.

4. **Necessary Approvals.** This Agreement is contingent upon the parties obtaining all necessary approvals under applicable state law, municipal ordinances, or any other laws applicable to construction, including, but not limited to, the Lincoln-Lancaster County Planning Commission and the Lincoln City Council. If such approvals are not acquired, this Agreement shall be null and void and the parties shall have no further obligations hereunder.

5. **No Joint Venture and Other Agreements.** The purpose of this Agreement is to further mutual goals by improving the provision of tennis programs and/or services within the Woods Park Tennis Center, and that the parties shall not be provided monetary compensation for any of the activities or services rendered, performed or provided, except as provided herein or as may hereafter be agreed upon in writing or as provided between the parties in other agreements. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties. The parties agree that each of them is acting on its own behalf and not as an employee, joint venturer or partner of the other. Each party is interested only in the results obtained from this Agreement, and each party shall be in exclusive charge and control of its own performance according to its own means and methods. No party shall be deemed an agent or representative of the other parties or has permission or authority to bind or commit the other parties to any agreements or other obligations. Nothing contained herein shall be deemed to change or alter Foundation's status as a 501(c) organization or any separate agreements they each may have with City.

6. **Indemnification.** Foundation shall indemnify and hold harmless City, to the extent of any payments the City is required to make to (a) fully fund the Endowment due to the failure of the Foundation to fund the Endowment to its total amount of Six Hundred Thousand Dollars (\$600,000) and/or (b) its construction manager at risk for construction of the Woods Park Tennis Center due to the failure of Foundation to provide Construction Financial Assistance in the amount of Three Million Six Hundred Fifty Nine Thousand Three Hundred Seventy Dollars (\$3,659,370) which reflects the fact as noted in paragraph 3 above, that the Foundation has been responsible for payment of fundraising campaign expenses in the amount of Two Hundred Eighty Thousand Dollars (\$280,000) and is not required to provide indemnification for these funds.

7. **Fair Employment.** The parties shall not discriminate against any employee (or applicant for employment) with respect to 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.

8. **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.

9. **Integration, Amendments, Assignment, and Severability Clauses.** 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 all the parties. This Agreement may not be assigned without the prior written consent of all the parties. 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 shall not invalidate any other section thereof.

10. **Term.** The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, but in no event longer than four years after the date of execution by City. This Agreement may be renewed for subsequent one year periods for up to four years as the parties may agree.

11. **Termination.** Each party has the right to terminate this Agreement if the other party shall at any time be in default in the performance of any of the other covenants, terms, conditions or provisions of this Agreement and fails to cure such default within thirty (30) days after written notice from such party. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the City of Lincoln, Nebraska below.

CITY OF LINCOLN, NEBRASKA

Mayor

Date

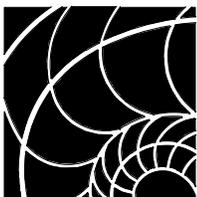
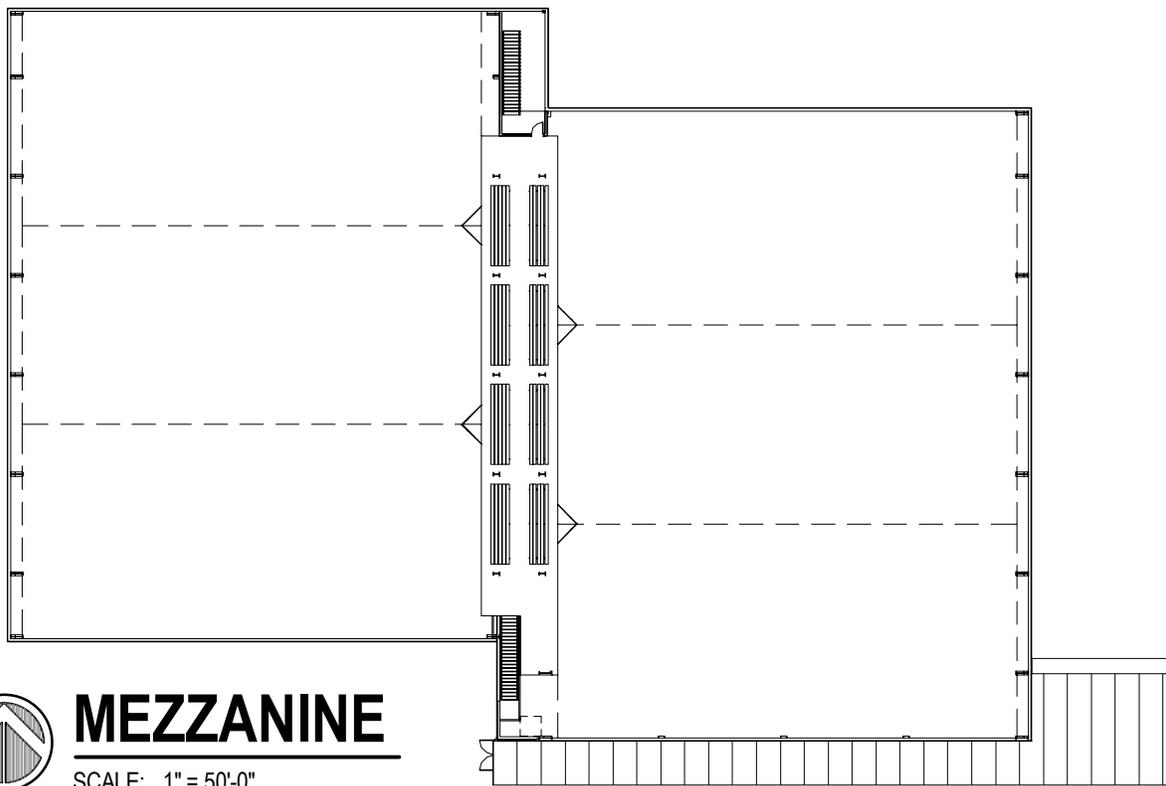
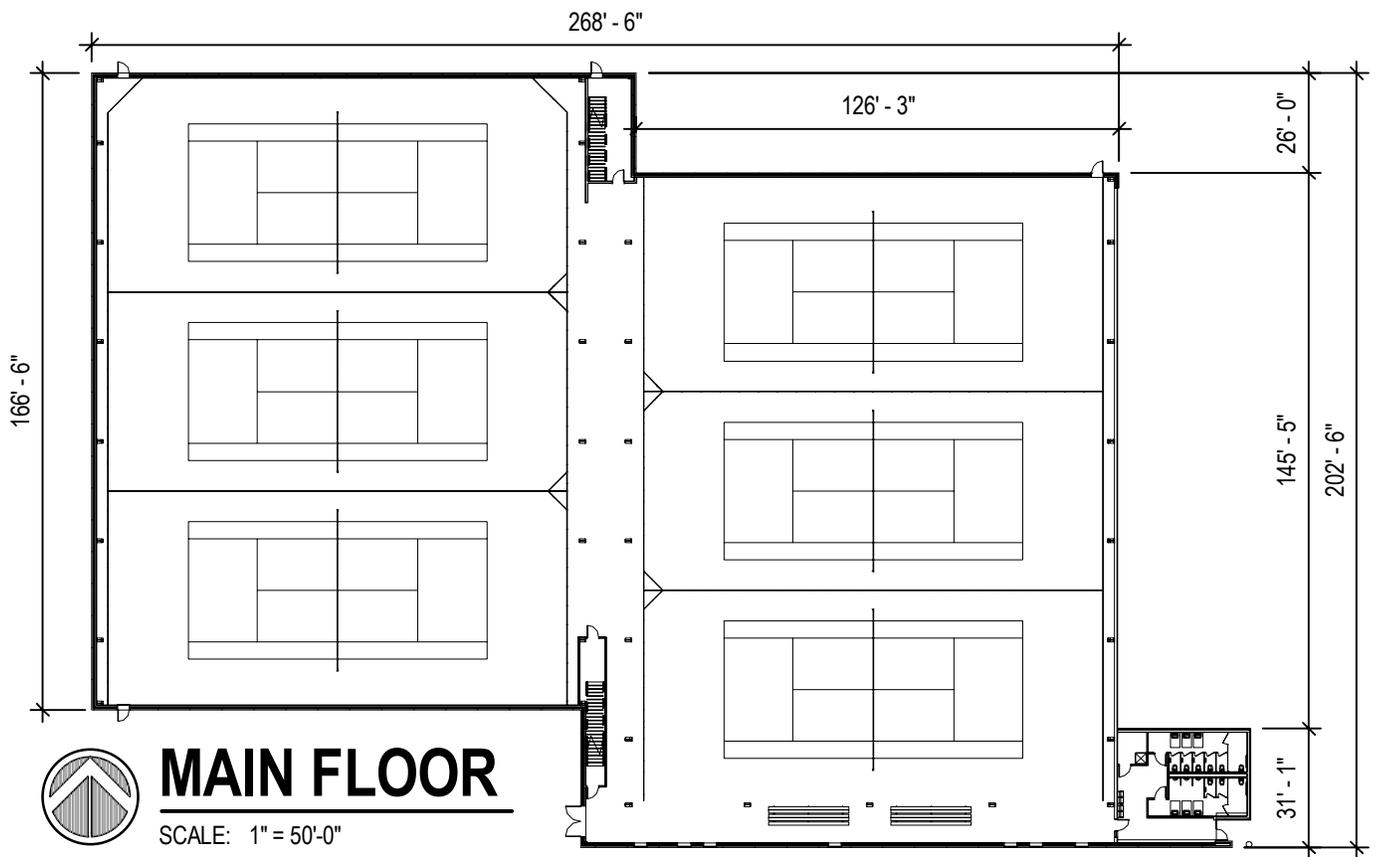
LINCOLN PARKS AND RECREATION FOUNDATION



Foundation Board President

4/26/16

Date



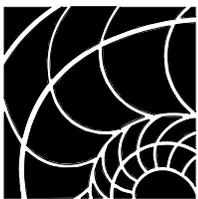
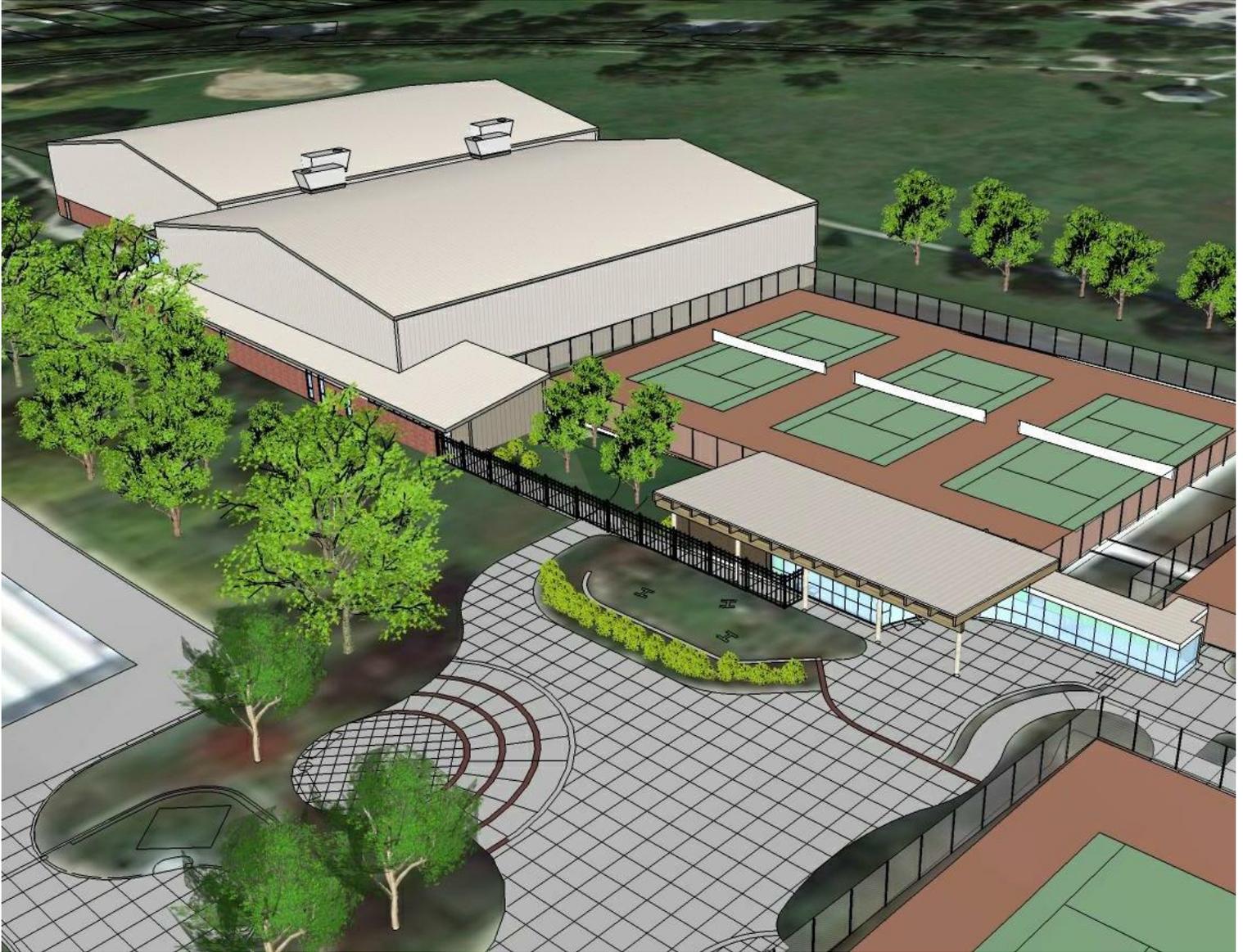
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Woods Tennis Improvements
Lincoln, Nebraska
TCEP No.: 227-159-14

Exhibit: A-1 of 3

Date: 04/19/16



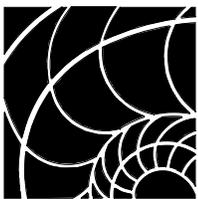
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Woods Tennis Improvements
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Exhibit: A-2 of 3

Date: 04/19/16



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Woods Tennis Improvements
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TCEP No.: 227-159-14

Exhibit: A-3 of 3

Date: 04/19/16