

4/13/2012

EXCHANGE AGREEMENT

This Exchange Agreement (“**Agreement**”) is made as of _____, 2012, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation and its successors and assigns (“**City**”); THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate and governing body of the University of Nebraska-Lincoln and its successors and assigns (“**University**”); and NEBRASKA INNOVATION CAMPUS DEVELOPMENT CORPORATION, a Nebraska non-profit corporation and its successors and assigns (“**NICDC**”).

RECITALS

- A. The University is the legal title holder of the property known as Nebraska Innovation Campus (“**NIC**”). The University retained the services and support of NICDC to develop, maintain and operate NIC. In turn, the University and NICDC entered into a Master Lease Agreement, dated September 10, 2010 (“**Master Lease Agreement**”) granting NICDC the right to develop, maintain, operate, sublease, and subdivide NIC.
- B. The City is the owner of the real estate known as Lincoln Wastewater System, located at 2400 Theresa Street (“**Theresa Street Site**”).
- C. To better facilitate the development and operation of NIC and the Theresa Street Site, the parties desire to exchange a portion of NIC for a portion of the Theresa Street Site without additional cash consideration being paid.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Definitions. The following are defined terms contained in this Agreement. Other Paragraphs of this Agreement contain refinements and exceptions which qualify the provisions of this Paragraph 1; all other defined terms are contained in the Recitals above or other provisions of this Agreement.
 - a. “**Area A**” shall mean the area labeled Area A (2.78 acres) on Exhibit “A”, which is attached hereto and incorporated herein by this reference. Area A is currently

part of Theresa Street Site, is owned by the City and is zoned P-Public. After Closing, Area A will be owned by the University.

- b. “**Area B**” shall mean the area labeled Area B (1.20 acres) on Exhibit “A”. Area B is currently part of Theresa Street Site, is owned by the City and is zoned P-Public. After Closing, Area B will be owned by the University.
- c. “**Area C**” shall mean the area labeled Area C (4.32 acres) on Exhibit “A”. Area C is currently part of NIC, is owned by the University and subject to the Master Lease Agreement and is zoned O-3, Office Park District, Planned Unit Development. After Closing, Area C will be owned by the City.
- d. “**Easements**” shall mean the easements described in Paragraph 6 below.
- e. “**Exchange**” shall mean the conveyance of the real estate interest in the context of the Exchange Properties under this Agreement.
- f. “**Exchange Property**” and “**Exchange Properties**” shall mean the real estate interest owned by a Party immediately before Closing of the Exchange. Specifically for the City before the Exchange shall mean Area A and Area B and for the University shall mean Area C.
- g. “**Grantee Party**” shall mean a Party who is intending to accept title as Exchange Property at Closing.
- h. “**Grantor Party**” shall mean a Party who is intending to convey title to an Exchange Property at Closing.
- i. “**Governmental Approvals**” shall mean the City of Lincoln’s final governmental approvals (that has not been appealed from within the time provided by law for such appeals, or that any such appeal has been conclusively decided) of the following:
 - i. Subdivision of the Exchange Properties, creating said Area A and Area B, Area C into buildable lots of record or combining said area(s) with other real estate to create a buildable lot of record;
 - ii. Rezoning of Area A and Area B to O-3, Office Park District, Planned Unit Development; and

iii. Redevelopment agreement for a redevelopment project which includes Area A and Area B, and may include additional adjacent property, upon terms and conditions acceptable to the City and NICDC.

j. “**Parties**” shall mean the City, University and NICDC.

k. “**Party**” shall mean either City, University or NICDC.

2. Exchange. The City agrees to exchange Area A and Area B to the University and in consideration thereof, the University agrees to exchange Area C to the City. The Exchange shall be made with no cash consideration paid to a Party.

3. Date of Closing. The “**Closing**” or “**Date of Closing**” for the Exchange shall take place on or before ten days after Governmental Approvals or at such other time as the Parties may agree. Possession shall occur upon the Closing. The Parties agree and understand that the Exchange shall simultaneously close. The place of Closing shall be at the office of the City Attorney, 555 South 10th Street, Lincoln, Nebraska, or such other location as the Parties may agree.

4. Title. The conveyance and transfer of the Exchange Properties shall be marketable fee simple title conveyed and transferred by special warranty deed, free and clear of all liens, assessments, taxes, restrictions, covenants, encumbrances, but subject to:

- a. Governmental regulations and conditions created or as a result of the Governmental Approvals;
- b. The Easements described in this Agreement;
- c. Acceptable terms and conditions of the Subdivision described in this Agreement;
- d. Easements and restrictions of record;
- e. Facts that may be disclosed or described by an accurate survey or inspection of the Exchange Properties; and
- f. Permitted Exceptions of title matter(s) not expressly objected to by the Grantee Party in writing as provided herein.

5. Subdivision. NICDC, at its expense, will submit for approval consistent with the already approved subdivision for the adjacent NIC for Area A and Area B and consistent with the adjacent City use for Area C subdivision and/or replatting of the Exchange Properties prior to Closing, with terms and conditions acceptable to the Parties.

6. Easements. At Closing, the Parties shall also convey without additional consideration the following easements (“**Easements**”):

- a. Access and Utility Easement. At Closing, the University, NICDC and the City agree to create a thirty (30) feet wide nonexclusive north/south driveway access and utility easement (“**Access and Utility Easement**”) that runs with the land and located on Area B and NIC as follows:
 - i. The west boundary is located ten (10) feet west of and parallel to the one hundred and eighty-six (186) feet long common property line of Area B and NIC;
 - ii. The east boundary is located twenty (20) feet east of and parallel to the one hundred and eighty-six (186) feet long common property line of Area B and NIC;

to permit motor vehicle and pedestrian ingress and egress (i) between Theresa Street Site and Area C to Invention Boulevard (east-west street that provides access to Salt Creek Roadway as shown on Exhibit “A”) and (ii) between NIC and Invention Boulevard (east-west street that provides access to Salt Creek Roadway as shown on Exhibit “A”) as shown on Exhibit “A”. The Access and Utility Easement will be substantially similar to the Access and Utility Easement shown on Exhibit “B”, which is attached hereto and incorporated herein by this reference.

- b. Temporary Grading Easement. At Closing, the City and NICDC agree to create a temporary grading easement (“**Temporary Grading Easement**”) to permit NICDC and its agents and contractors to remove the excess soils from the “Grading Easement Area” as generally shown on Exhibit “A”. The Temporary Grading Easement will be substantially similar to the Temporary Grading Easement shown on Exhibit “C”, which is attached hereto and incorporated herein by this reference.

7. Title Examination.

- a. First Title Examination. At NICDC’s expense, each Grantee Party has received a written title insurance commitment (“**Commitment**”) for an owner’s title insurance policy issued by Nebraska Land Title & Abstract as agent for a licensed title insurance company insuring the marketability of the title to each Exchange Property. Within forty-five (45) days after the date of this Agreement, a Grantee Party shall provide the Grantor Party a letter of any objections to Grantor Party’s title to the Exchange Property or any land use covenant or restrictions against Grantor Party’s intended uses for the Exchange Property as disclosed by the Commitment.

Any items not objected to in writing by Grantee Party within forty-five (45) days after the date of this Agreement shall be “**Permitted Exceptions.**” Within fourteen (14) days after Grantee Party’s letter to Grantor Party of any objections, Grantor Party shall deliver to Grantee Party a statement of any objections which Grantor Party could not, upon the exercise of due diligence in good faith not be cured prior to or concurrent with Grantee Party’s acquisition of the Exchange Property. If Grantor Party gives notice to Grantee Party of any objections which cannot be cured, then Grantee Party shall have the option of: (i) waiving such objections, proceeding to close under this Agreement, and receiving an appropriate credit on account thereof if such objections are to liens or encumbrances securing monetary claims; or (ii) terminating this Agreement, whereupon this Agreement shall be null and void and neither Grantor Party nor Grantee Party shall have any further obligations hereunder.

- b. Further Title Examination. On or before seven (7) days prior to the Date of Closing, the Grantee Party may deliver to Grantor Party a copy of an endorsement to the Commitment reflecting a further title examination of the Exchange Property from the effective date of the Commitment forward, together with a statement of any objections to Grantor Party’s title to the Exchange Property which were not disclosed or could have been disclosed as a matter of record if the Grantee Party had timely obtained the original Commitment. Any items not objected to in writing by Grantee Party within seven (7) days prior to the Date of Closing shall be a Permitted Exceptions. Grantor Party may, at its sole option, attempt to cure all of such objections. If Grantor Party fails or elects not to satisfy all of such objections by Closing, then Grantee Party shall have the option (to be exercised by notice to Grantor Party by the Closing Date) of: (i) waiving such objections, proceeding to close under this Agreement, and receiving an appropriate credit on account thereof if such objections are to liens or encumbrances securing monetary claims; or (ii) terminating this Agreement, whereupon this Agreement shall be null and void and neither Grantor Party nor Grantee Party shall have any further obligations hereunder.
 - c. Title Insurance Policy Premiums. The title insurance premiums for any owner's title insurance policy that a Grantee Party elects to obtain shall be paid by the Grantee Party desiring such owner's title insurance policy.
8. Leases.
- a. Lease. At Closing, NICDC and the City agree to execute and deliver a Lease regarding the two City buildings located on Area B. The Lease will permit the City to continue to use the two buildings currently located on Area B without

additional consideration paid until NICDC needs said Area B for development purposes and delivers a minimum of one (1) year written lease termination notice to the City. The Lease will be substantially similar to the Lease shown on Exhibit 'D', which is attached hereto and incorporated herein by this reference.

- b. No Other Leases. Except for the Lease, Grantor Party covenants to cause any and all other leases concerning the Exchange Property to be terminated prior to Closing and have the Exchange Property be free of any and all tenancy at the Closing. Grantor Party agrees that after Closing, Grantor Party shall indemnify, defend and hold harmless Grantee Party from any and all damages relating to any leases or tenant caused by Grantor Party before the Date of Closing.

9. Environmental; Tests. In connection with effecting the contemplated transfer of the property, the Grantee Party, at its expense, shall have the right after execution of this Agreement to enter the Exchange Property to undertake an environmental audit, surveys, testing, samplings, clean-up soil tests, core drillings, engineering tests and studies, and other tests, delineation, and analysis (collectively "**Tests**") of and affecting the Exchange Property, for which purposes Grantor Party shall allow Grantee Party and Grantee Party's agents reasonable access. Grantee Party agrees to indemnify, defend and hold harmless Grantor Party from and against all claims for injuries to persons on or damage to the Exchange Property caused by the acts of Grantee Party or its agents or caused by the Tests of the Exchange Property. Grantor Party shall provide Grantee Party upon execution of this Agreement with any known environmental reports or surveys. Grantee Party shall have forty-five (45) days after the date of this Agreement, or mutual extensions thereof, in which to notify the Grantor Party that based upon the results of the Tests, Grantee Party has determined, in Grantee Party's sole discretion, that the condition of the Exchange Property is not suitable for the Grantee Party's intended uses of the Exchange Property. In the event of such notice from the Grantee Party to the Grantor Party on or before forty-five (45) days after the date of this Agreement or mutual extensions thereof, this Agreement shall be null and void, the Parties shall have no further obligations hereunder.

10. Board of Regents Approval. Notwithstanding any other provision herein, this Agreement is conditional upon the approval of the Board of Regents of the University of Nebraska of the proposed exchange of the subject property. If such approval is not made by the Date of Closing, including any extensions thereof, this Agreement shall be null and void.

11. Real Estate Taxes and Assessments. The Grantor Party shall pay (i) the real estate taxes, if any, relative to the Grantor Party's applicable Exchange Property that are due and delinquent in all years before the year of Closing. Real estate taxes, if any, relative to the Grantor Party's applicable Exchange Property that are due and delinquent in the year of Closing shall be prorated between Grantor Party and Grantee Party from January 1 of the year of Closing to the Date of Closing based

upon the prior year tax levy rate and land valuation per square foot. Grantee Party shall be responsible for all real estate taxes, if any, due and delinquent in all years following the year of Closing. Grantor Party shall pay any and all duly assessed assessments prior to the date of this Agreement. Grantee Party shall be responsible for any duly assessed assessments after the date of this Agreement. In the event assessments have been levied on the Grantor Party's applicable Exchange Property prior to the date of this Agreement which include a portion of other lands of Grantor Party, then the same shall be fairly and equitably prorated based upon the City of Lincoln special assessment formulas.

12. Prorations. Income, expenses and liabilities attributable to the Exchange Property through the Date of Closing shall be for the account of the Grantor Party and thereafter for the account of the Grantee Party in accordance with generally accepted accounting principles; each Party agrees to timely pay and discharge any and all of its respective liabilities and expenses. The proration to be made and paid, insofar as feasible, on the Date of Closing, with a final settlement sixty (60) days after the Date of Closing.

13. Risk of Loss. The Grantor Party's applicable Exchange Property shall be conveyed and transferred to Grantee Party on an "as is", "where is" basis at Closing except for the warranties of title contained in the special warranty deed and any warranties, representations and covenants stated in this Agreement. Risk of loss on the Grantor Party's applicable Exchange Property prior to Closing shall remain with the Grantor Party.

14. No Brokers. The Parties agree that no Party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee in connection with the Exchange contemplated by this Agreement; and each Party warrant to the other Parties that it shall indemnify and hold the other Parties harmless for money and all claims of any person whomsoever for brokers' or agents' commissions or finder fees making claim through it in connection with the Exchange.

15. Grantor Party's Representations And Warranties. Grantor Party represents and warrants to Grantee Party now and on the date of Closing that:

- a. Litigation. No judgment is issued or outstanding against the Exchange Property. No litigation, action, special assessment, charge, lien, suit, judgment, proceeding, or investigation is pending or outstanding before any forum, court of governmental body, department, or agency of any kind, or to the knowledge of Grantor Party threatened, to which Grantor Party or the Exchange Property is a Party which might reasonably result in any material adverse change in the prospects, development or condition of the Exchange Property. Grantor Party does not know of any basis for such claim, litigation, action, special assessment, charge, lien, suit judgment, proceeding, or investigation;

- b. Hazardous Materials. To the knowledge of the Grantor Party and during the time in which Grantor Party owned the Exchange Property, neither Grantor Party nor any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the Exchange Property or transported to or from the Exchange Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively “**Hazardous Materials**”). To the knowledge of the Grantor Party, there is no proceeding or inquiry by any governmental authority with respect to the presence of such Hazardous Materials on the Exchange Property or the migration thereof from or to other property. For the purpose of this Agreement, Hazardous Materials shall include but not be limited to substances defined as “hazardous substances”, “hazardous materials”, or “toxic substances” in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq; and in the regulations adopted and publications promulgated pursuant to said laws;
- c. Prompt Notice. If, during the period between the date of this Agreement and the Closing, Grantor Party learns of, or has a reason to believe that any of the representations and warranties contained in this Agreement may cease to be true, Grantor Party shall give prompt notice to Grantee Party (which notice shall include copies of any instrument, correspondence, or document upon which Grantor Party’s notice is based); and
- d. Additional Grantee Party’s Right. In the event any warranty or representation in this Paragraph is false, then Grantee Party shall have the right, in addition to Grantee Party’s other rights and remedies hereunder, to notify Grantor Party in writing prior to the applicable Closing, and Grantee Party shall then have the option to declare this Agreement null and void and the Parties shall have no further obligations hereunder.

16. Representations And Warranties. The Parties represent and warrant to each other now and on the Date of Closing that:

- a. Organization and Standing. The Parties now and on the Date of Closing will be a duly organized, validly existing, and in good standing and qualified to do business in the State of Nebraska; and

- b. Authorization. All necessary corporate action to duly approve the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will have been taken by the Parties, and this Agreement will constitute a valid and binding agreement of the Parties enforceable in accordance with its terms.

17. Conditions Precedent to Grantee Party's Obligations. The obligation of Grantee Party to consummate the transactions contemplated hereby is subject to the fulfillment prior to and at the Date of Closing of each of the following conditions:

- a. Representations and Warranties. The representations and warranties of the Grantor Party contained in this Agreement shall be true and correct in all material respects at and as of the Date of Closing as though such representations and warranties were made at and as of such time; and
- b. Performance. Grantor Party shall have in all material respects performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and at the Date of Closing.

18. Conditions Precedent To Grantor Party's Obligations. The obligation of the Grantor Party to consummate the transactions contemplated hereby is subject to the fulfillment prior to and at the Date of Closing of each of the following conditions:

- a. Representations and Warranties. The representations and warranties of the Grantee Party contained in this Agreement shall be true and correct in all material respects at and as of the Date of Closing as though such representations and warranties were made at and as of such time; and
- b. Performance. Grantee Party shall have in all material respects performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and at the Date of Closing.

19. Default. Time is agreed to be of the essence. In the event either Party fails to comply with any of the material terms hereof, then the other Party may declare a default fourteen (14) days after the defaulting Party receives written notice specifying the nature thereof, provided, however, in the case of a default which cannot, in the exercise of reasonable diligence, reasonably be cured within such fourteen (14) day period, the continuation thereof beyond such

period as is required to cure the same with the exercise of reasonable diligence. If any default under this Agreement shall occur and the defaulting Party fails to cure the same within the expressed curative time period herein provided, the other Party may seek any remedy at law or in equity without notice or demand, including specific performance. No delay or omission of any Party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

20. Grantor Party's Indemnification. Grantor Party hereby agrees to indemnify, defend and hold harmless Grantee Party, and its respective successors and assigns, from and against any and all damages occasioned by, arising out of, or resulting from the operation of the Exchange Property on or before the Date of Closing.

21. Grantee Party's Indemnification. Grantee Party agrees to indemnify, defend and hold harmless Grantor Party and its respective successors and assigns, from and against any and all damages occasioned by, arising out of or resulting from the operation of the Exchange Property subsequent to the Date of Closing.

22. Assignment. In the case of the assignment of this Agreement by either of the Parties, prompt 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 assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other Party to this Agreement.

23. Severability. If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

24. Further Assurances. Each undersigned Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other 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.

25. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted

against either Party because such Party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

26. Construction. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

27. Non-Merger. All representations and warranties made herein are intended to survive Closing and shall not be merged in the Deeds. This Agreement shall not be canceled at Closing.

28. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

29. Notice and Demands. Notice, demand, or other communication to the City, University or NICDC required or appropriated under this Agreement shall be in writing, sent by (a) personal delivery, (b) expedited delivery service with proof of delivery, (c) registered or certified United States mail, postage prepaid, or (d) prepaid telecopy if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508
Fax: (402) 441-7120

With a copy to:

City Attorney
555 South 10th Street
Lincoln, Nebraska 68508
Fax: (402) 441-8812

If to the University:

The Board of Regents of The University of Nebraska
3835 Holdrege Street—Varner Hall
Lincoln, Nebraska 68583-0745
Attention: Corporation Secretary
Fax: (402) 472-1237

With a copy to:

The University of Nebraska—Lincoln
Office of Business & Finance

University of Nebraska—Lincoln
302 Canfield Administration
Lincoln, Nebraska 68588 -0425
Fax: (402) 472-7963

With a copy to:

University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, NE 68583-0745
Fax: (402) 472-2038

If to NICDC:

Nebraska Innovation Campus Development
Corporation
c/o The University of Nebraska—Lincoln
Chancellor's Office
University of Nebraska—Lincoln
201 Canfield Administration
Lincoln, Nebraska 68588
Fax: (402) 472-5110

With a copy to:

University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, NE 68583-0745
Fax: (402) 472-2038

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

31. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

32. Successors And Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and assigns.

33. Delegation of Authority. The Mayor (or his designee) is authorized on behalf of the City and the NICDC Chair (or his designee) is authorized on behalf of the University and NICDC to take all necessary or reasonable actions to implement and close the transactions and agreements contained herein and to make any reasonable amendments hereto.

34. Fence Relocation; New Fence Gate. Within thirty (30) days after Closing, NICDC, at its expense, will relocate the City’s chain link security fences and any gate from the boundary line marked as “Existing Fence” to the new Related Fence (Phase 1) boundary line for Area A as shown on Exhibit “E”, which is attached hereto and incorporated herein by this reference. On or before thirty (30) days after the termination of the Lease for said to existing buildings, NIC, at its expense, will relocate the City’s chain link security fences and any gate from the remaining boundary areas marked as “Existing Fence” to the new Relocated Fence (Phase 2) boundary as shown on Exhibit “E”. As part of the Relocated Fence (Phase 1 or Phase 2) NICDC may reuse any Existing Fence and gate materials from the boundary areas shown on Exhibit “E”. The City, at its expense, has the right to purchase a betterment gate and install said gate at the “New Gate Location” shown on Exhibit “E”. In the event the City purchases and installs the betterment gate prior to NICDC relocating the required fence, then NICDC agrees to connect the relocated fence to said betterment gate. At the time NICDC relocates the required Relocated Fence (Phase 2), NICDC, at its expense, will rock or hard road surface the area immediately south of the gate location as shown on Exhibit “E” to permit the relocation of a portion of the existing rock or hard road surface roadway over Area B to use the New Gate Location and provide access for trucks and emergency vehicles between Theresa Street Site and Invention Boulevard.

35. Waste Material on Area C. Within thirty (30) days after Closing, NICDC, at its expense, will properly remove from and safely dispose of the waste material located on Area C.

The Parties have executed this Exchange Agreement as of the day and year first written above.

“City”

City of Lincoln, Nebraska, a municipal corporation

By: _____
Chris Beutler, Mayor

Attest

By: _____
City Clerk

“University”

The Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska-Lincoln

By: _____
James B. Milliken, President

By: _____
Carmen Maurer, Corporation
Secretary

“NICDC”

Nebraska Innovation Campus Development Corporation, a Nebraska non-profit corporation

By: _____
Harvey Perlman, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Chris Beutler, Mayor of the **City of Lincoln**, a municipal corporation, on behalf of the municipal corporation.

(Seal)

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by James B. Milliken, President of **The Board of Regents of The University of Nebraska**, a public body corporate and governing body of the University of Nebraska-Lincoln, on behalf of the public body corporate.

(Seal) _____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Carmen Maurer, Corporation Secretary of **The Board of Regents of The University of Nebraska**, a public body corporate and governing body of the University of Nebraska-Lincoln, on behalf of the public body corporate.

(Seal) _____
Notary Public

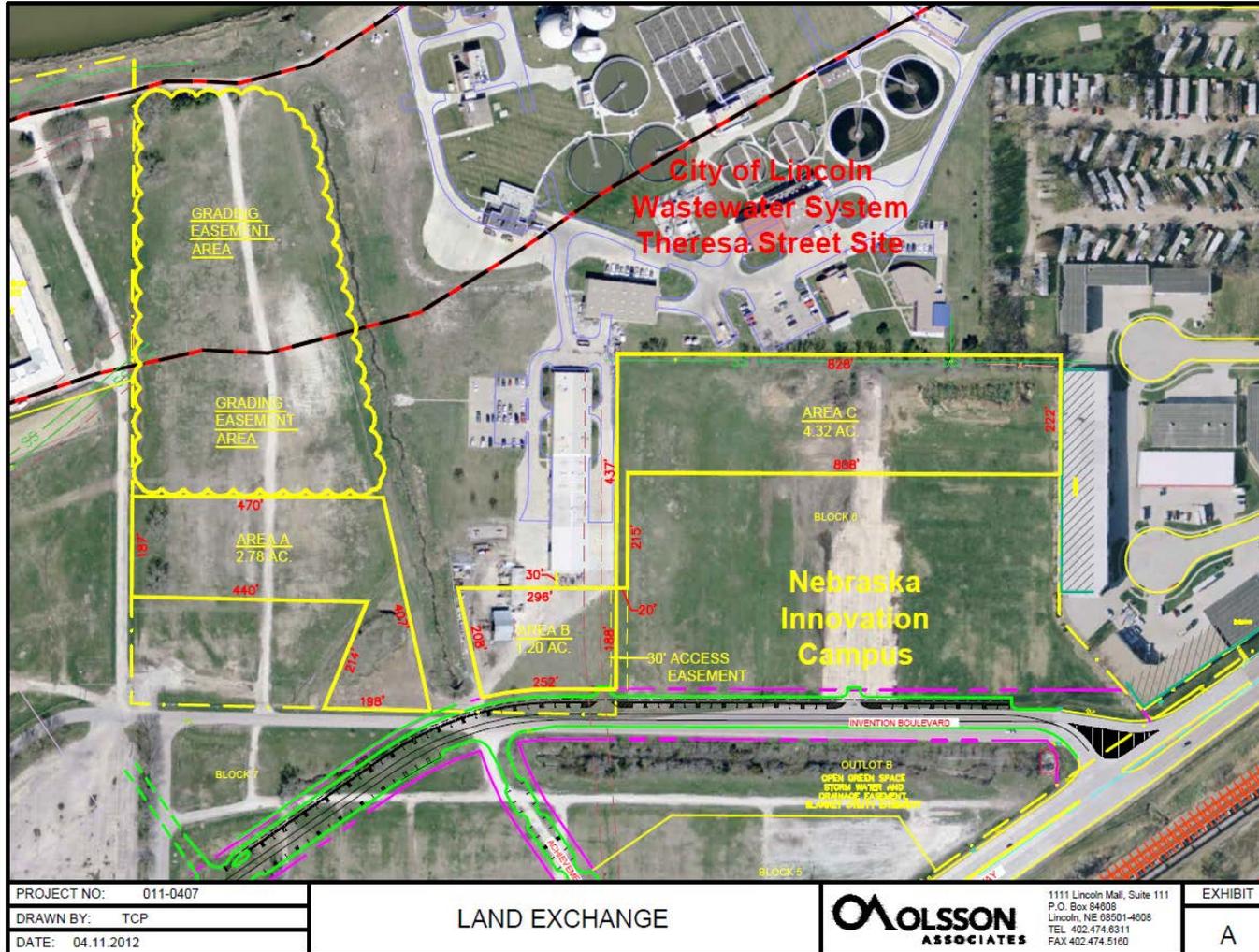
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Harvey Perlman, Chair of **Nebraska Innovation Campus Development Corporation**, a Nebraska non-profit corporation, on behalf of the non-profit corporation.

(Seal) _____
Notary Public

Exhibit "A"

Exchange Properties



4/13/12

Exhibit "B"

Return to:

City Attorney
555 South 10th Street
Lincoln, Nebraska
Fax: (402) 441-8812

Access And Utility Easement

This Access and Utility Easement ("**Agreement**") is made as of _____, 2012, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation and its successors and assigns ("**City**"); THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate and governing body of the University of Nebraska-Lincoln and its successors and assigns ("**University**"); and NEBRASKA INNOVATION CAMPUS DEVELOPMENT CORPORATION, a Nebraska non-profit corporation and its successors and assigns ("**NICDC**").

The parties agree as follows:

1. Definitions and Property Ownership.
 - a. "**Access**" shall mean either:
 - i. The "Current Access" which is the current rock/hard surface roadway that provides existing access over Area B between the City Property and

Invention Boulevard as shown on Exhibit 1, which is attached hereto and incorporated herein by this reference; or,

ii. The “Future Access” which will be a hard surface roadway or driving isle that provides existing access over Area B for trucks and emergency vehicles between the City Property and Invention Boulevard as shown on Exhibit 1.

- b. “**City Property**” shall mean the Lincoln Wastewater System, located at 2400 Theresa Street (Prior to Closing, Olsson Associates needs to prepare the legal description, including the Theresa Street Site and Area C). Titleholder: City.
- c. “**Easement Premises**” shall mean (a) the Current Access; provided that, NICDC may substitute the Future Access for the Current Access by providing written notice to the City and filing said notice of record with the Lancaster County Register of Deeds Office and upon delivery and filing of said written notice, the Access hereunder shall be the Future Access and not the Current Access; and (b) the thirty (30) feet wide north/south corridor for Utilities (collectively “**Access and Utility Easement**”) located on the NIC Property to permit Access and Utilities (i) between the City Property to Invention Boulevard (east-west street that provides access to Salt Creek Roadway) and (ii) between the NIC Property to Invention Boulevard (east-west street that provides access to Salt Creek Roadway) as shown on Exhibit 1.
- d. “**Master Lease Agreement**” shall mean the Master Lease Agreement between the University and NICDC, dated September 10, 2010, as may be amended from time to time, granting NICDC the right to develop, maintain, operate, sublease, and subdivide the NIC Property.
- e. “**NIC Property**” shall mean (Prior to Closing, Olsson Associates needs to prepare the legal description, including Area A and Area B). Titleholder: University, subject to the Master Lease Agreement.
- f. “**Utilities**” shall mean underground electricity, water, sanitary sewer, stormwater, cable, gas, telephone, internet, and other existing and future utilities and technologies in the Easement Premises.

2. Easement Premises; Easement for Access and Underground Utilities. The City, as the owner of the City Property and the University as the owner of the NIC Property (individually and collectively “**Grantor**”) hereby agree to create, establish, and grant to the owners of the City Property and the NIC Property for their mutual benefit and the benefit of

their successors, assigns, agents, tenants, employees, visitors, invitees, licensees, and permittees (individually and collectively “**Grantee**”), a permanent and nonexclusive easement, that runs with the land, in, over and through the Easement Premises, permitting the full and free use of the Easement Premises for the purpose of constructing, reconstructing, inspecting, maintaining, operating, repairing, and replacing Access and Utilities (individually and collectively “**Easement**”):

3. Conditions. The Easement shall be subject to the following terms and conditions:
 - a. Unless the owner of the City Property and the NIC Property agree otherwise, the following are prohibited uses of the Easement Premises:
 - i. Construction of permanent buildings or improvements that impede the use of the Easement Premises for Access and Utilities;
 - ii. Parking motorized and non-motorized vehicles on the Easement Premises that does not involve a temporary delivery or removal of items from said NIC Property.
 - b. Responsibility for the operation, maintenance, repair and replacement costs of the Easement Premises shall rest with the City and no responsibility thereof shall accrue to the owner of the NIC Property by reason of the NIC Property’s benefits from this Easement; provided that the owner of the NIC Property, or its successors and assigns, at its expense, may make hard surface improvements to the Easement Premises and may install, maintain, operate, repair and replace Utilities in the Easement Premises.
 - c. This Easement shall be permanent and shall be appurtenant to and run with the above described Easement Premises for the benefit of the City Property and the NIC Property.
 - d. The Grantee shall be liable to the Grantor for any damage due to the intentional misuse or negligent use of the Easement Premises by Grantee or its successors, assigns, agents, tenants, employees, visitors, invitees, licensees, and permittees.

4. Ownership. The City warrants that it is the owner of the City Property and has legal authority, right, title and capacity to execute and deliver this Agreement. The University warrants that it is the owner of the NIC Property and has legal authority, right, title and capacity to grant the Easement over the NIC Property as granted herein and to execute and deliver this Agreement.

5. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the City Property and the NIC Property.

6. Construction. The captions of the paragraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction. All exhibits attached hereto are by reference incorporated in and made a part of this Agreement.

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

8. Amendment. This Agreement may not be modified, changed or waived orally, but only by an instrument or instruments in writing signed by the parties hereto.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which separately shall be considered an original but all of which together shall be considered one and the same Agreement.

10. Delegation of Authority. The Mayor (or his designee) is authorized on behalf of the City and the Chair (or his designee) is authorized on behalf of the University and NICDC to take all necessary or reasonable actions to implement the transactions and agreements contained herein and to make any reasonable amendments hereto.

IN WITNESS WHEREOF this Agreement has been executed as of the date written above.

“City”

City of Lincoln, Nebraska, a municipal corporation

By: _____
Chris Beutler, Mayor

Attest

By: _____
City Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by James B. Milliken, President of **The Board of Regents of The University of Nebraska**, a public body corporate and governing body of the University of Nebraska-Lincoln, on behalf of the public body corporate.

(Seal) _____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Carmen Maurer, Corporation Secretary of **The Board of Regents of The University of Nebraska**, a public body corporate and governing body of the University of Nebraska-Lincoln, on behalf of the public body corporate.

(Seal) _____
Notary Public

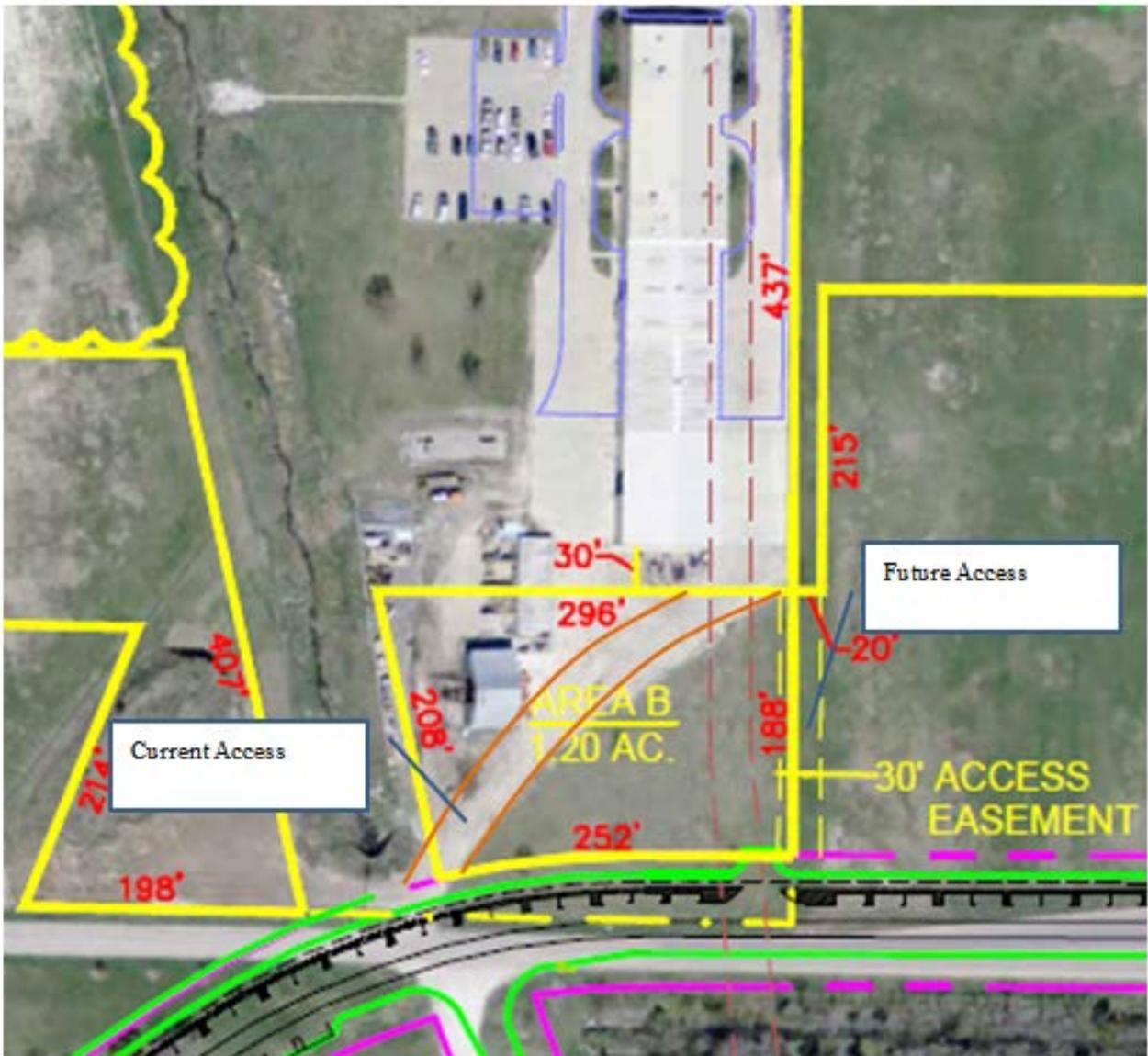
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Harvey Perlman, Chair of **Nebraska Innovation Campus Development Corporation**, a Nebraska non-profit corporation, on behalf of the non-profit corporation.

(Seal) _____
Notary Public

Exhibit 1
Easement Premises

(Prior to Closing, Olsson Associates needs to prepare map showing the Easement Premises (after the Land Exchange) so the City Property includes Theresa Street Site and Area C and the NIC Property includes the NIC and Area A and Area B), Current Access and the 30 feet wide Future Access and Utilities Easement Premises would be located over the revised NIC Property (west boundary is located ten (10) feet west of and parallel to the one hundred and eighty-six (186) feet long the original common property line of Area B and the NIC Property before the Land Exchange and the east boundary is located twenty (20) feet east of and parallel to the one hundred and eighty-six (186) feet long original common property line of Area B and the NIC Property before the Land Exchange)



4/13/12

Exhibit "C"

TEMPORARY GRADING EASEMENT

This Temporary Grading Easement ("**Agreement**") is made and entered into as of the ___ day of _____, 2012, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation and its successors and assigns ("**City**"); THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate and governing body of the University of Nebraska-Lincoln and its successors and assigns ("**University**"); and NEBRASKA INNOVATION CAMPUS DEVELOPMENT CORPORATION, a Nebraska non-profit corporation and its successors and assigns ("**NICDC**").

The parties agree as follows:

1. Definitions and Property Ownership.
 - a. "**City Property**" shall mean the Lincoln Wastewater System, located at 2400 Theresa Street (Prior to Closing, Olsson Associates needs to prepare the legal description which includes the Theresa Street Site and Area C). Titleholder: City.
 - b. "**Easement Premises**" shall mean the area generally located on the City Property as shown on Exhibit 1, which is attached hereto and incorporated herein by this reference and marked "Grading Easement Area".
 - c. "**Master Lease Agreement**" shall mean the Master Lease Agreement between the University and NICDC, dated September 10, 2010, granting NICDC the right to develop, maintain, operate, sublease, and subdivide NIC.
 - d. "**Minimum Elevation**" shall mean one (1) foot or more above the Federal Emergency Management Agency's (FEMA) designated one hundred year floodplain elevation.
 - e. "**NIC Property**" shall mean (Prior to Closing, Olsson Associates needs to prepare the legal description of NIC, including Area A and Area B). Titleholder: University, subject to the Master Lease Agreement.
2. Plans. Originally, the City placed excess surcharge fill soils on top of the former

grade of the Easement Premises. The City's future improvement plans for the Easement Premises suggest that a more desirable grade would be the Minimum Elevation. NICDC, at its expense, hired Olsson Associates to prepare grading and soil removal plans for (a) the removal of excess soils over the Minimum Elevation on the Easement Premises, (b) to transfer and relocate said excess soils from the Easement Premises to NIC, and (c) to restore the Easement Premises to a Minimum Elevation and spread four (4) to six (6) inches of top soil over the disturbed graded areas (collectively "**Plans**"). The City has reviewed the Plans and hereby approves said Plans.

3. Work. NICDC, at its expense, shall implement the Plans in accordance with all applicable governmental permits and approvals (collectively "**Work**") as expeditiously as is reasonable and in a good and workmanlike manner. Upon completion of the Work by NICDC, the City, at its expense, will reseed and reestablish vegetative cover over the disturbed graded areas.

4. Temporary Construction Easement. In connection with the Work to be performed by NICDC on the Easement Premises, the City hereby grants to NICDC and its agents and contractors a temporary construction easement ("**Easement**") upon the Easement Premises in order for the performance of the Work contemplated under this Agreement so long as (a) such easement is kept within the reasonable requirements of Work expeditiously pursued; (b) liability insurance as provided in Paragraph 6 is obtained prior to such Work and is maintained during the Work to protect the City from the insured risks involved; and (c) the Work proceeds in a coordinated manner with the City and NICDC and its agents and contractors.

5. Indemnity; Hold Harmless. Except to the extent caused by the negligence or willful misconduct of City and its employees and agents, NICDC hereby agrees to indemnify, defend, protect, and hold harmless the City (including its elected officials, employees and agents) from and against all suits, actions, claims, costs (including reasonable attorneys' fees to the extent permitted by law), expenses and liabilities, including any action or proceedings brought thereon, arising from or as a result of the injury to or death of any person, or damage to the property of any person as a result of or caused by the negligence or willful misconduct of NICDC, or its agents and contractors, in performing the Work.

6. Insurance. NICDC shall procure and maintain, or cause its contractor to procure and maintain, in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, said insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000) for injury or death of a single person, and to the limit of not less than One Million Dollars (\$1,000,000) for any one occurrence, and to the limit of not less than Three Hundred Thousand Dollars (\$300,000) each occurrence, and Five

Hundred Thousand Dollars (\$500,000) aggregate for property damage. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by NICDC. Such insurance shall name the City as an additional insured and provide that such policy may not be canceled without thirty (30) days prior written notice to the City.

7. Notice and Demands. Notice, demand, or other communication to the City, University or NICDC required or appropriated under this Agreement shall be in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) register or certified United States mail, postage prepaid, or (d) prepaid telecopy if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508
Fax: (402) 441-7120

With a copy to:

City Attorney
555 South 10th Street
Lincoln, Nebraska 68508
Fax: (402) 441-8812

If to the University:

The Board of Regents of The University of Nebraska
3835 Holdrege Street—Varner Hall
Lincoln, Nebraska 68583-0745
Attention: Corporation Secretary
Fax: (402) 472-1237

With a copy to:

The University of Nebraska—Lincoln
Office of Business & Finance
University of Nebraska—Lincoln
302 Canfield Administration
Lincoln, Nebraska 68588 -0425
Fax: (402) 472-7963

With a copy to:

University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, Nebraska 68583-0745
Fax: (402) 472-2038

If to NICDC:

Nebraska Innovation Campus Development Corporation
c/o The University of Nebraska—Lincoln
Chancellor's Office
University of Nebraska—Lincoln
201 Canfield Administration
Lincoln, Nebraska 68588
Fax: (402) 472-5110

With a copy to:

University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, NE 68583-0745
Fax: (402) 472-2038

8. Termination. This Easement shall terminate without further notice upon the earlier of the following events: (i) the completion of the Work by NICDC, (ii) one year after NICDC starts removing any excess soils, (iii) one year after the City provides NICDC written notice that the City has plans and intentions to improve the Easement Premises, or (iv) ten years. Notwithstanding the foregoing, the parties agree that, at the request of one of the other parties hereto and so long as the purposes of this Agreement have been satisfied they will execute a notice of termination of this Agreement in a recordable form.

9. Ownership. The City warrants that it is the owner of the City Property and has legal right, title and capacity to grant the Easement granted herein.

10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the City Property and NIC.

11. Construction. The captions of the paragraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction. All exhibits attached hereto are by reference incorporated in and made a part of this Agreement.

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

13. Amendment. This Agreement may not be modified, changed or waived orally, but only by an instrument or instruments in writing signed by the parties hereto.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which separately shall be considered an original but all of which together shall be considered one and the same Agreement.

15. Delegation of Authority. The Mayor (or his designee) is authorized on behalf of the City and the Chair (or his designee) is authorized on behalf of the University and NICDC to take all necessary or reasonable actions to implement the transactions and agreements contained herein and to make any reasonable amendments hereto.

The undersigned have executed and make this Agreement effective as of the date first written above.

“City”

City of Lincoln, Nebraska, a municipal corporation

By: _____
Chris Beutler, Mayor

Attest

By: _____
City Clerk

“University”

The Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska-Lincoln

By: _____
James B. Milliken, President

By: _____
Carmen Maurer, Corporation Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Carmen Maurer, Corporation Secretary of **The Board of Regents of The University of Nebraska**, a public body corporate and governing body of the University of Nebraska-Lincoln, on behalf of the public body corporate.

(Seal) _____
Notary Public

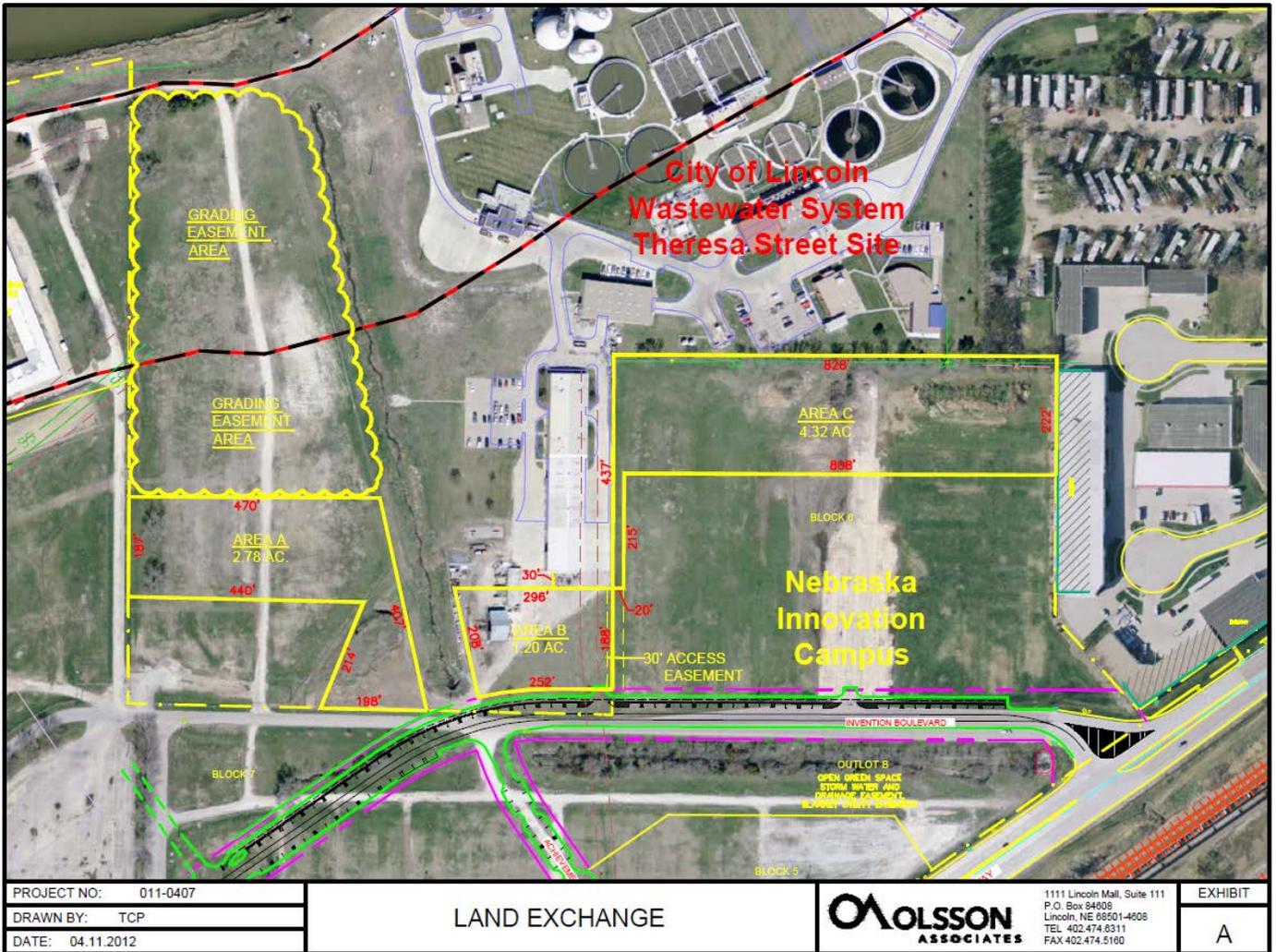
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Harvey Perlman, Chair of **Nebraska Innovation Campus Development Corporation**, a Nebraska non-profit corporation, on behalf of the non-profit corporation.

(Seal) _____
Notary Public

Exhibit 1
Easement Premises

(Prior to Closing, Olsson Associates needs to prepare map showing the Grading Easement Premises (after the Land Exchange) so the City Property includes Theresa Street Site and Area C and the NIC Property includes the NIC, Area A and Area B).



4/13/2012

Exhibit "D"

Return to:

City Attorney
555 South 10th Street
Lincoln, Nebraska
Fax: (402) 441-8812

Sublease Agreement

This Sublease Agreement ("**Agreement**") is made as of _____, 201____, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation and its successors and assigns ("**City**") and NEBRASKA INNOVATION CAMPUS DEVELOPMENT CORPORATION, a Nebraska non-profit corporation and its successors and assigns ("**NICDC**").

The parties agree as follows:

1. **NIC**. The University of Nebraska Board of Regents ("**University**") is the legal titleholder of the property known as Nebraska Innovation Campus ("**NIC**"). The University retained the services and support of NICDC to develop, maintain and operate NIC. In turn, the University and NICDC entered into a Master Lease Agreement, dated September 10, 2010 ("**Master Lease Agreement**") granting NICDC the right to develop,

maintain, operate, sublease, and subdivide NIC.

2. Leased Premises. City agrees to sublease from NICDC, and NICDC agrees to sublease to City that portion of NIC described as the Leased Premises (“**Leased Premises**”) as shown on Exhibit 1, which is attached hereto and incorporated herein by this reference. The term Leased Premises shall also include the Building and Personal Property as defined herein.
3. Term of the Agreement. This Agreement shall terminate without further notice upon the earlier of (i) City permanently vacating the Leased Premises and providing said written vacation notice to NICDC, or (ii) until NICDC needs said Leased Premises for development purposes and delivers a minimum of one (1) year written lease termination notice to the City, whichever event is earlier, unless terminated earlier as provided herein.
4. Consideration and No Additional Rent. City and NICDC each acknowledge that each party has received adequate consideration for this Agreement and there shall be no additional rent paid from the City to NICDC. The City, at its expense, shall be responsible for any and all costs and expenses associated with the Leased Premises.
5. Buildings and Personal Property. City represents that the Leased Premises, and its two existing buildings located on the Leased Premises (individually and collectively “**Buildings**”) and its fixtures, equipment and personal property (collectively “**Personal Property**”) are in a clean, safe, fit and habitable condition. City agrees to maintain in good working order and condition the Leased Premises. On or before termination of the Agreement, the City, or its successors, at its expense:
 - a. At the City’s election, may remove said Buildings from the Leased Premises; and
 - b. Shall remove all the Personal Property at the end of this Agreement.
6. Utilities. “**Utilities**” shall mean underground electricity, water, sanitary sewer, stormwater, cable, gas, telephone, internet, and other existing and future utilities and technologies in the Leased Premises. City, at its expense, shall be responsible for arranging and paying for all utility services required on the Leased Premises.
7. Taxes. City, at its expense, shall be responsible for all real estate, personal property taxes, and any other taxes, if any, assessed against the Leased Premises.
8. Insurance. City, at its expense, shall be responsible for obtaining insurance for City’s Building and Personal Property and the City’s interest in the Leased Premises. NICDC may obtain insurance for the Leased Premises and such other perils as NICDC reasonably considers appropriate. City acknowledges that it will not be a named insured in such

NICDC's policy or policies and that it has no right to receive any proceeds from any such insurance policies carried by NICDC. City shall comply with the requirements of all NICDC's insurance at any time in force with respect to the Leased Premises.

9. Possession. City shall be entitled to the possession and the quiet enjoyment of the Leased Premises for the term of this Agreement, provided City is not in default.
10. Restrictions on City's Use. NICDC and City agree that the Leased Premises shall be used solely for City's use. City shall not commit any waste on the Leased Premises. City shall not use the Leased Premises for any unlawful purpose. City shall not damage the Leased Premises or violate any law or ordinance relating to the Leased Premises.
11. No Assigning or Subletting. City shall not assign or sublet City's interest in this Agreement. Any assignment or subletting shall be a breach of this Agreement and shall be a basis for the termination of this Agreement.
12. City to Keep Leased Premises in Repair. City shall keep and maintain the Leased Premises in good order and condition, and shall pay for all repairs to the Leased Premises caused by City's negligence, waste, neglect or misuse of Leased Premises. City shall also be responsible for the negligence, waste, neglect or misuse of the Leased Premises by any of City's guests, invitees or other occupants of the Leased Premises.
13. Construction Liens. The City covenants and agrees that City will not permit or allow any construction, mechanic's or materialman's liens to be placed upon the Leased Premises during the term hereof. Notwithstanding the foregoing, in the event such lien shall so be placed on the Leased Premises, the City shall take all steps necessary to see that it is removed within thirty (30) days of its being filed, provided however, the City first post a surety bond, in favor of and insuring NICDC, in an amount sufficient to permit the removal of the lien pursuant to Nebraska lien laws.
14. NICDC's Rights of Inspection and Entry. NICDC shall have the right to enter the Leased Premises from time to time for the purpose of inspection. NICDC shall provide City with reasonable notice prior to entering the Leased Premises. Reasonable notice shall be at least 48 hours advance notice except in the instance of an emergency. Advance notice may be given orally or in writing.
15. Environmental Warranty. The City represents and warrants to the University and NICDC that the City and its employees, agents and users will not handle, transport, store, treat or use Hazardous Material on the Leased Premises. "**Hazardous Material**" as that term is used in this Paragraph means any substance, material or waste which is reasonably considered by NICDC to pose an actual or potential threat to health or safety or which is or at any time hereafter becomes regulated as "hazardous," "toxic" or any other similar

designation by any local, state, or federal government authority. Such term includes, without limitation (i) asbestos, (ii) any petroleum products, (iii) any material, substance or waste defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), (iv) any material, substance or waste defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.) or (v) any material, substance or waste defined as a “regulated substance” pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U.S.C. § 6991, et seq.). The City agrees to indemnify, defend and hold harmless the University, NICDC, and any directors, officer, employee or agent of NICDC from and against any and all loss, cost, damage and expense, including, but not limited to fees of site investigators, attorneys, engineers and other consultants, that arise before, during or after the term of this Agreement as a result of (a) the presence, suspected presence or release at any time of any Hazardous Material in, on or from the Leased Premises by the City, and its employees, agents and users, or (b) the inaccuracy or breach of the City’s representations and warranties set forth in this Paragraph. This representation and warranty shall survive the termination of this Agreement.

16. Estoppel Certificate. The City agrees that at any time and from time to time at reasonable intervals, within ten (10) days after written request by NICDC, the City shall execute, acknowledge and deliver to NICDC or others designated by NICDC, including any prospective agents or tenants of the NICDC’s interest, an estoppel certificate in a form as may from time to time be provided.
17. Severability. If any portion of this Agreement shall be determined to be unenforceable, the remainder of this Agreement shall be unaffected and shall remain in full force and effect.
18. Indemnification. City hereby waives all claims against the University and NICDC, its board members, officers, employees and agents for loss, theft or damage to Leased Premises, for loss or damage to the City’s activities or operations or for death or injury to persons on or about the Leased Premises, except to the extent caused by the negligence or willful misconduct of NICDC or its board members, officers, employees and agents. City shall indemnify and hold harmless NICDC and its board members, officers, employees and agents from and against any and all claims and liability for the loss, theft or damage to the Leased Premises, except the City’s indemnification shall not include an indemnification for liability for the negligence or willful misconduct of NICDC or its board members, officers, employees and agents. The City shall indemnify and hold the University and NICDC and its board members, officers, employees and agents harmless from and against any and all claims and liability arising from any breach or default by the City in the performance of any obligation of the City under this Agreement or arising

from the negligence or willful misconduct of the City, or its employees, agents or users. NICDC shall not be liable to the City for any negligence or act of any occupant of NIC or any owner or occupant of any property adjoining the Leased Premise other than NICDC or its board members, officers, employees and agents.

19. City's Default. In the event the City fails to keep and perform any of the terms or conditions hereof, time being of the essence, then thirty (30) days after written notice of default from NICDC, NICDC may, if such default has not been corrected, resort to any remedy at law or in equity; provided, however, in the case of a default which cannot, in the exercise of reasonable diligence, reasonably be cured within such thirty (30) day period, the continuation thereof beyond such period as is required to cure the same with the exercise of reasonable diligence. No action of NICDC shall be construed as an election to terminate the Agreement unless written notice of such intention is given to the City.
20. NICDC's Default. In the event NICDC fails to keep and perform any of the terms or conditions hereof, time being of the essence, then thirty (30) days after written notice of default from the City, the City may, if such default has not been corrected, resort to any remedy at law or in equity; provided, however, in the case of a default which cannot, in the exercise of reasonable diligence, reasonably be cured within such thirty (30) day period, the continuation thereof beyond such period as is required to cure the same with the exercise of reasonable diligence.
21. Cumulative Rights. All rights, powers and privileges conferred hereunder upon the parties, unless otherwise provided, shall be cumulative but not restricted to those given by law.
22. Grammar. In this Agreement if a singular word or phrase is used, it includes the plural and if the plural word or phrase is used, it includes the singular. The use of any gender in any word or phrase shall include all genders.
23. Memorandum Of Lease. At the request of either party, the parties shall execute and deliver a recordable memorandum or short-form Agreement sufficient to put third parties on constructive notice of the interests of the parties hereunder.
24. Nebraska Law. Nebraska law applies to all questions about this Agreement.
25. Notice And Demands. Notice, demand, or other communication to the City or NICDC required or appropriated under this Agreement shall be in writing, sent by (a) personal delivery, (b) expedited delivery service with proof of delivery, (c) registered or certified United States mail, postage prepaid, or (d) prepaid telecopy if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

If to the City: Mayor
555 South 10th Street
Lincoln, Nebraska 68508
Fax: (402) 441-7120

With a copy to: City Attorney
555 South 10th Street
Lincoln, Nebraska 68508
Fax: (402) 441-8812

If to NICDC: Nebraska Innovation Campus Development Corporation
c/o The University of Nebraska—Lincoln
Chancellor's Office
University of Nebraska—Lincoln
201 Canfield Administration
Lincoln, Nebraska 68588
Fax: (402) 472-5110

With a copy to: University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, NE 68583-0745
Fax: (402) 472-2038

26. Ownership. The City warrants that it is the owner of the Buildings and Personal Property and has legal authority, right, title and capacity to execute and deliver this Agreement. NICDC warrants that it is the lessee of NIC and has legal authority, right, title and capacity to grant to the City the sublease to the Leased Premises and to execute and deliver this Agreement.
27. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
28. Construction. The captions of the paragraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction. All exhibits attached hereto are by reference incorporated in and made a party of this Agreement.
29. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall

be interpreted according to the application of rules of interpretation of contracts generally.

30. Amendment. This Agreement may not be modified, changed or waived orally, but only by an instrument or instruments in writing signed by the parties hereto.
31. Counterparts. This Agreement may be executed in multiple counterparts, each of which separately shall be considered an original but all of which together shall be considered one and the same Agreement.
32. Delegation of Authority. The Mayor is authorized on behalf of the City and the Chair is authorized on behalf of NICDC to take all necessary or reasonable actions to implement the transactions and agreements contained herein and to make any reasonable amendments hereto.

IN WITNESS WHEREOF this Agreement has been executed as of the date written above.

“City”

City of Lincoln, Nebraska, a municipal corporation

By: _____
Chris Beutler, Mayor

Attest

By: _____
City Clerk

“NICDC”

Nebraska Innovation Campus Development Corporation, a Nebraska non-profit corporation

By: _____
Harvey Perlman, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by Chris Beutler, Mayor of the **City of Lincoln**, a municipal corporation, on behalf of the municipal corporation.

(Seal) _____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by Harvey Perlman, Chair of **Nebraska Innovation Campus Development Corporation**, a Nebraska non-profit corporation, on behalf of the non-profit corporation.

(Seal) _____
Notary Public

Exhibit 1
Leased Premises

(Prior to Closing, Olsson Associates needs to prepare a map showing the Leased Premises (after the Land Exchange) showing the NIC property includes NIC and Area A and B. The Leased Premises would be located on the north portion of Area B)



